

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-08-09
APPROVAL OF A FIRM ENERGY SALES)	
AGREEMENT WITH DF-AP #1 LLC)	ORDER NO. 30608

On April 28, 2008, Idaho Power Company ("Idaho Power" or "Company") filed an Application with the Commission seeking approval of its Firm Energy Sales Agreement with DF-AP #1 LLC ("DF-AP") dated April 21, 2008. On June 6, 2008, the Commission issued a Notice of Application and Modified Procedure and allowed 21 days for interested parties to submit their comments to the Commission regarding Idaho Power's Application. *See* Order No. 30570. Thereafter, the Commission received written comments from the Commission Staff, Idaho Conservation League and an individual Idaho resident.

THE APPLICATION

The Agreement entered into between Idaho Power and DF-AP dictates that DF-AP would sell and Idaho Power would purchase a specified amount of electric energy generated by the Big Sky West Dairy Digester Generation Facility ("Big Sky") near Gooding, Idaho. Application at 1.

DF-AP "proposes to design, construct, install, own, operate and maintain an anaerobic digester adjacent to the Big Sky Dairy near Gooding, Idaho. . . ." *Id.* This facility qualifies as a "small power production facility under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 ("PURPA")" and will provide a total of 1.5 MW of nameplate generation. *Id.* at 1-2.

The parties entered into the aforementioned Energy Sales Agreement on April 21, 2008. The Application states that the Agreement was entered into pursuant to the terms and conditions of prior Commission Orders; will have a 20-year term of effectiveness; utilizes the "Non-Levelized Published Avoided Cost Rates established by the Commission for energy deliveries of less than 10 average MW"; and will not become effective until all of its terms and conditions have been approved by the Commission as "allowable expenses for ratemaking purposes." *Id.* at 2. The Agreement also contains terms and conditions similar to other PURPA

agreements previously approved by the Commission – “including provisions for delay damages and delay security in the event the facility does not achieve its Scheduled Operation Date.” *Id.*

DF-AP will begin delivering energy to Idaho Power’s system on November 21, 2008 and has set apart February 14, 2009 as its Scheduled Operation Date. *Id.* DF-AP must meet certain requirements and preconditions under the Agreement prior to any energy deliveries to Idaho Power’s system. *Id.* Idaho Power states that it will monitor for compliance with these terms throughout the term of the Agreement. *Id.* at 2-3. Finally, the Application states that the Agreement dictates that “all applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 will be assessed to DF-AP and administered by Idaho Power’s delivery business unit.” *Id.* at 3.

COMMENTS

Idaho Resident

On June 23, 2008, the Commission received an e-mail from a resident of Shoshone, Idaho. The individual expressed a generalized level of support and approval for utilizing “our natural resources to help the environment.”

Idaho Conservation League

Idaho Conservation League (“ICL”) is an Idaho-based conservation organization representing over 9,500 members. ICL’s organizational activities include “citizen action, public education and public advocacy.” ICL Comments at 1.

On June 26, 2008, the Commission received a letter from ICL supporting the Agreement. Specifically, ICL expressly supported the conversion, through anaerobic digestion, of dairy waste into “clean energy” as a means of increasing “clean power production and reducing greenhouse gas emissions.” *Id.* ICL stated that it was “excited to see Idaho use the Public Utilities Regulatory Policy Act (PURPA) to further support the use of renewable energy sources.” *Id.*

Staff

Staff noted that the Agreement contains a clause that requires DF-AP to pay a stipulated amount if the project comes online after February 14, 2009. Staff believes that this provision is reasonable in light of the recent history of at least six separate qualifying facilities (“QFs”) projects that have failed to meet their contractual online dates. A failure to meet the contractual online target date can adversely affect Idaho Power’s power supply costs given

recent high market prices for replacement power. The Agreement requires DF-AP to post what is referred to as “delay security” that can be drawn upon if DF-AP does not meet its February 14, 2009 Scheduled Operation Date. Staff opined that this “liquid security” is reasonable to ensure the availability of assets and/or funds should the delay damages provision be triggered. *Id.*

The Agreement also contains provisions reflecting the Commission’s approval of “adjustments to the published avoided cost rates to reflect Idaho Power’s daily load shape and to recognize the difference in value between energy delivered by QFs during heavy load hours and energy delivered during light load hours.” *Id.* at 3; *see also* Order No. 30415. According to Staff, this is noteworthy because it is the first energy sales agreement submitted for Commission approval that includes provisions delineating separate heavy load and light load hour rates. *Id.*

Staff reviewed Idaho Power’s Application and recommended that the Commission “approve all of the Agreement’s terms and conditions.” *Id.* Staff believes that all payments Idaho Power makes to DF-AP pursuant to this Agreement for purchases of firm energy should be deemed “prudently incurred expenses for ratemaking purposes.” *Id.*

COMMISSION DECISION AND FINDINGS

The Commission has reviewed and considered the filings in Case No. IPC-E-08-09, including the underlying Agreement submitted for approval and filed comments. Idaho Power has presented a Firm Energy Sales Agreement with DF-AP for the Commission’s consideration. The Agreement stipulates that DF-AP will provide, and Idaho Power will purchase, 10 aMW or less of electric energy on a monthly basis. Specifically, the Commission notes that the Agreement includes a provision that requires DF-AP to provide “delay security” in an amount to be calculated by Idaho Power according to a “good faith forecast” of future energy prices and not to exceed \$200,000. *See* Application, Attachment No. 1 at 8-9.

The Commission generally agrees with Staff’s assertion that the “delay security” provision is reasonable and necessary in order to protect an electric utility against any potential default or failure by a PURPA supplier in meeting its scheduled operation date. However, the Commission is concerned that such provisions will have a potentially deleterious effect upon future PURPA projects. Quite often, operators of qualified small power production facilities do not have ready access to the necessary amount of security or capital delineated in this Agreement.

Therefore, the Commission finds that such provisions calling for delay security should not be punitive in nature. Rather, the amount of delay security ultimately provided in this case, as well as future energy sales agreements with other PURPA suppliers, should constitute a fair and reasonable offset of a regulated utility's estimated increase in power supply costs attributable to the PURPA supplier's failure to meet its contractually scheduled operation date.

Accordingly, we find that the project is qualified to receive the published avoided cost rates and that the Agreement contains acceptable contract terms and includes the non-levelized published rates previously approved by the Commission. *See* Order No. 30480. Additionally, we find it reasonable to allow payments made pursuant to the terms of the Agreement to be deemed prudently incurred expenses for ratemaking purposes.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Idaho Power, an electric utility, and the issues raised in this matter pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 ("PURPA").

The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission ("FERC") to set avoided costs, to order electric utilities to enter into fixed term obligations for the purchase of energy QFs and to implement FERC rules.

ORDER

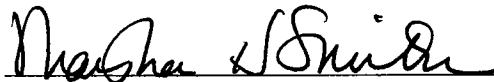
IT IS HEREBY ORDERED that the Commission does hereby approve Idaho Power Company's Firm Energy Sales Agreement with DF-AP #1 LLC dated April 21, 2008.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30th
day of July 2008.



MACK A. REDFORD, PRESIDENT

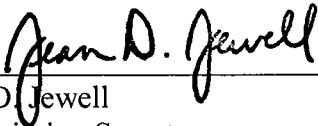


MARSHA H. SMITH, COMMISSIONER



JIM D. KEMPTON, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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