

NEIL PRICE
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0314
ISB NO. 6864

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Street Address for Express Mail:
472 W WASHINGTON
BOISE ID 83702-5983

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
IDAHO POWER COMPANY FOR APPROVAL)	CASE NO. IPC-E-08-9
OF A FIRM ENERGY SALES AGREEMENT)	
WITH DF-AP #1 LLC.)	
)	COMMENTS OF THE
)	COMMISSION STAFF
)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 30570 on June 6, 2008, submits the following comments.

BACKGROUND

On April 28, 2008, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) seeking approval of a 20-year Firm Energy Sales Agreement (Agreement) between Idaho Power and DF-AP #1 LLC (DF-AP) for the Big Sky West Dairy Digester Generation Facility (Big Sky). The parties entered into the Agreement on April 21, 2008.

The Big Sky facility will be located approximately 7 miles southwest of Gooding, Idaho. DF-AP warrants the facility will be a qualified small power production facility (QF) under the

applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). The facility will consist of two reciprocating internal combustion engines with individual nameplate ratings of 710 kW for each unit, for a total facility nameplate generator rating of 1.5 MW.

The Agreement contains the non-levelized, published avoided cost rates set forth in the Errata to Order No. 30480, adjusted in accordance with Order No. 30415 for heavy and light load hour deliveries. Under normal and/or average operating conditions, the Big Sky facility will not generate more than 10 aMW on a monthly basis. Energy delivered in excess of this monthly amount is Inadvertent Energy. Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount (1.5 MW) but will not purchase or pay for Inadvertent Energy. Agreement ¶ 7.5. DF-AP has selected November 21, 2008 as the Scheduled First Energy Date and February 14, 2009 as the Scheduled Operation Date.

ANALYSIS

There are two provisions in the Agreement that distinguish it from other recent PURPA agreements. Each of the unique provisions are discussed below.

1. Security for Online Delay Damages

This Agreement contains delay damage provisions that require the project to pay Idaho Power liquidated damages if the project comes on-line after February 14, 2009, the project's Scheduled Operation Date. The delay damages will accrue for a period of up to 90 days, after which Idaho Power may terminate the Agreement. Idaho Power has included a similar contract provision in contracts signed after mid-2007.

At least six recent QF projects have failed to meet their contractual on-line dates; therefore, Staff believes it is reasonable for Idaho Power to continue to insert damage provisions into PURPA contracts to provide a mechanism for the Company to be made whole if it incurs higher costs to acquire replacement power. The delay, and in some cases complete failure, of PURPA projects to come online as expected has had severe consequences on Idaho Power's power supply costs, particularly recently due to the extremely high market prices that have had to be paid for replacement power.

This Agreement introduces a new set of provisions that requires DF-AP to post liquid security that can be drawn upon to pay for liquidated damages should they be incurred (delay security). The amount of delay security will be equal to the estimated difference between the

contract rates and market energy costs, multiplied by the project's expected monthly energy generation. Under the terms of the Agreement, a minimum of \$10,000 and a maximum of \$200,000 shall be required as delay security.

Staff believes it is reasonable to require delay security to provide assurance that funds will be available in the event liquidated damages are assessed. Without delay security, liquidated damages could not be collected from projects with no assets, which is not uncommon for projects developed and owned by limited liability companies.


2. Heavy and Light Load Hour Rates

On September 7, 2007, the Commission, in Order No. 30415, approved 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. Although not likely significant for this project because it will likely generate on a relatively flat schedule, the inclusion of heavy and light load hour rates is noteworthy simply because this Agreement is the first to include them. Future Idaho Power contracts will also include them.

RECOMMENDATION

Staff recommends that the Commission approve all of the Agreement's terms and conditions and declare that all payments Idaho Power makes to DF-AP for purchases of firm energy will be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 27th day of June 2008.


for Neil Price
Deputy Attorney General
ISB #1895

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 27TH DAY OF JUNE 2008, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-08-09, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

DONOVAN E WALKER
BARTON L KLINE
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
E-MAIL: dwalker@idahopower.com
bkline@idahopower.com

RANDY C ALLPHIN
SR PLANNING ADMINISTRATOR
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
E-MAIL: rallphin@idahopower.com



SECRETARY

CERTIFICATE OF SERVICE