

## DECISION MEMORANDUM

**TO:** COMMISSIONER REDFORD  
COMMISSIONER SMITH  
COMMISSIONER KEMPTON  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL

**FROM:** NEIL PRICE  
DEPUTY ATTORNEY GENERAL

**DATE:** JULY 2, 2008

**SUBJECT:** FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER COMPANY AND DF-AP #1 LLC FOR THE BIG SKY WEST DAIRY DIGESTER GENERATION FACILITY; CASE NO. IPC-E-08-09.

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 Idaho resident.

### THE AGREEMENT

The sales agreement (“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 Utility Regulatory Policies 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 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.

#### **INDIVIDUAL COMMENTS**

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

#### **IDAHO CONSERVATION LEAGUE COMMENTS**

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 COMMENTS

Staff notes that “there are two provisions in the Agreement that distinguish it from other recent PURPA agreements.” Staff Comments at 2. First, the Agreement contains a liquidated damages 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 QF 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 opines that this “liquid security” is reasonable to ensure the availability of assets and/or funds should the liquidated damages provision be triggered. *Id.*

Second, the Agreement 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. Staff states that this is noteworthy because it is the first Agreement to include provisions delineating separate heavy load and light load hour rates. *Id.*

Staff has reviewed Idaho Power’s Application and recommends 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

Does the Commission wish to approve Idaho Power’s Application for approval of its Firm Energy Sales Agreement with DF-AP dated April 21, 2008?



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Deputy Attorney General

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