

SCOTT WOODBURY  
DEPUTY ATTORNEY GENERAL  
IDAHO PUBLIC UTILITIES COMMISSION  
PO BOX 83720  
BOISE, IDAHO 83720-0074  
(208) 334-0320  
BAR NO. 1895

RECEIVED  
2010 APR -1 AM 9: 23  
IDAHO PUBLIC  
UTILITIES COMMISSION

Street Address for Express Mail:  
472 W. WASHINGTON  
BOISE, IDAHO 83702-5918

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-10-05  
OF A FIRM ENERGY SALES AGREEMENT )  
FOR THE SALE AND PURCHASE OF ) COMMENTS OF THE  
ELECTRIC ENERGY BETWEEN IDAHO ) COMMISSION STAFF  
POWER COMPANY AND RIVERSIDE )  
INVESTMENTS, LLC. )**

**COMES NOW** the Staff of the Idaho Public Utilities Commission (Commission), by and through its attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on March 17, 2010 in Case No. IPC-E-10-05, submits the following comments.

**BACKGROUND**

On March 9, 2010, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a March 8, 2010, Firm Energy Sales Agreement (Agreement) between Idaho Power and Riverside Investments, LLC (Riverside).

Riverside is the owner/developer of a 450 kW hydro-generation facility (Arena Drop) located near Parma, Idaho. Riverside warrants that it is a qualified small power generation facility (QF) as defined in Sections 201 and 210 of the Public Utility Regulatory Policies Act of

1978 (PURPA) and the implementing regulations of the Federal Energy Regulatory Commission (FERC), 18 C.F.R. § 292. ¶ 3.2.

The purchase price for Riverside generation is the non-levelized published avoided cost rates established by the Commission for monthly energy deliveries of less than 10 average megawatts (aMW). Order Nos. 30744, 30738 and 30415; Agreement Article VII. The term of the Agreement is 20 years. ¶ 5.1. The scheduled Operation Date for Arena Drop is July 15, 2010. If the facility has not achieved its Operation Date prior to 90 days past that date, Delay Liquidated Damages of \$45 per nameplate kW rating will be assessed and collected from the facility. ¶ 5.3.2. In addition, as specified in ¶ 5.7, within 30 days of the date of the Commission Order approving this Agreement, Riverside shall post security of \$45 per nameplate kW rating.

Idaho Power represents that an interconnection feasibility study was not required for the Arena Drop facility. A final Facility Study was completed on March 4, 2010. All applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 will be assessed and collected from Riverside.

The Idaho Power/Riverside Firm Energy Sales Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments the Company makes to Riverside for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. ¶ 20.

## **STAFF ANALYSIS**

Staff has carefully reviewed the Agreement and finds that the rates contained therein are consistent with the non-levelized published avoided cost rates for projects smaller than 10 aMW that were approved and in effect at the time the Agreement was signed by both parties. The Agreement was submitted for Commission approval on March 9, 2010, exactly one week before the Commission issued Order No. 31025 on March 16, 2010 that significantly lowered avoided cost rates.

All of the other terms and conditions included in the Agreement are identical to those contained in recent PURPA contracts approved by the Commission. One of the significant new features of recent Agreements is an increase in Delay Liquidated Damages and an associated requirement for Delay Security equal to the greater of \$45 per kW or the sum of three months' estimated revenue. Consequently, for this Facility, the total Delay Security amount will be approximately \$20,250. ¶ 5.7.1. The purpose of Delay Security is to insure that liquid funds

will be available in the event Delay Liquidated Damages are assessed. Delay Liquidated Damages would be assessed if the Facility failed to come online within 90 days following the Scheduled Operation Date.

Prior to December 2006, Idaho Power's Firm Energy Sales Agreements for PURPA projects did not include a Delay Liquidated Damages penalty. However, due to the failure of some PURPA projects to achieve their scheduled operation date, Idaho Power began including the penalty in recent contracts. The Company had been requiring Delay Security in an amount of \$25 per kW prior to January 29, 2010.

Idaho Power increased the amount of Delay Security from \$25 per kW in prior agreements to \$45 per kW in this and one other recent Agreement because it did not believe that the lower amount was sufficient to cover actual Delay Liquidated Damages should they be incurred. In addition, the Company believed that the lower amount did not provide sufficient motivation for project owners to complete their projects on time. In adopting the \$45 per kW amount, Idaho Power reviewed the security levels required by ten other electric utilities throughout the U.S. in their renewable energy procurements and contracts. Only one requires security less than \$25 per kW, while the remainder require security of at least \$50 per kW.

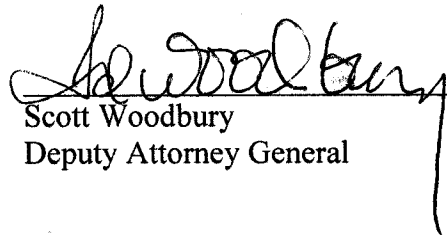
Staff believes that the \$45 amount is reasonable. Staff believes that the amount should be high enough to cover possible damages and to motivate owners to complete projects on time, yet not so high as to make it too difficult for owners and developers to post the security and obtain project financing.

Staff notes that the Delay Liquidated Damages provisions of the Agreement and the associated requirement for Delay Security of \$45 per kW were reached through mutual agreement of the parties. Staff maintains that whether the project achieves its scheduled operation date is mostly in control of the project owner. The Facilities Study needed to determine interconnection requirements for the project has already been completed by Idaho Power. Construction by Idaho Power of the necessary interconnection facilities commences once the project owner pays the expected interconnection costs.

**STAFF RECOMMENDATIONS**

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

Respectfully submitted this *1<sup>st</sup>* day of April 2010.

  
\_\_\_\_\_  
Scott Woodbury  
Deputy Attorney General

Technical Staff: Rick Sterling

i:\umisc:comments\ipce10.05swrps comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 1<sup>ST</sup> DAY OF APRIL 2010, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-10-05, 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](mailto:dwalker@idahopower.com)  
[bkline@idahopower.com](mailto:bkline@idahopower.com)

RANDY C ALLPHIN  
CONTRACT ADMINISTRATOR  
IDAHO POWER COMPANY  
PO BOX 70  
BOISE ID 83707-0070  
E-MAIL: [rallphin@idahopower.com](mailto:rallphin@idahopower.com)

  
\_\_\_\_\_  
SECRETARY

CERTIFICATE OF SERVICE