

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

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Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 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-10-15
OF A FIRM ENERGY SALES AGREEMENT)	
FOR THE SALE AND PURCHASE OF)	COMMENTS OF THE
ELECTRIC ENERGY BETWEEN IDAHO)	COMMISSION STAFF
POWER COMPANY AND CARGILL)	
INCORPORATED.)	

COMES NOW the Staff of the Idaho Public Utilities 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 May 26, 2010 in Case No. IPC-E-10-15, submits the following comments.

BACKGROUND

On May 5, 2010, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a 10-year Firm Energy Sales Agreement between Idaho Power and Cargill Incorporated (Cargill) dated May 4, 2010 (Agreement). Under the terms of the Agreement, Cargill will sell and Idaho Power will purchase electric energy generated by the Bettencourt B6 Dairy Anaerobic Digester Power Project (B6 Facility) located near Jerome, Idaho. The nameplate rating of the B6 Facility is 2.25

MW. Cargill warrants that the B6 Facility is a qualifying facility (QF) under applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). ¶ 3.2.

The B6 Facility is already providing energy to Idaho Power under an existing Non-Firm Schedule 86 Agreement (June 30, 2009). The Facility began actual energy deliveries to Idaho Power under the Schedule 86 agreement in November of 2009. The Firm Energy Sales Agreement specifies that the existing Schedule 86 agreement shall be terminated at the time the Facility achieves its Operation Date.

The Firm Energy Sales Agreement

The parties entered into the Firm Energy Sales Agreement on April 30, 2010, pursuant to the terms and conditions of Commission Order Nos. 30415, 30488, 30738, and 30744. The Agreement is for a 10-year term and utilizes the non-levelized published avoided cost rates as established by the Commission in Order No. 30744.

The Scheduled Operation Date for the Agreement is 30 days after the approval of the Agreement by the Commission. The Agreement includes a formula for the assessment and calculation of Delay Liquidated Damages and associated Delay Security provisions if Cargill fails to achieve the Scheduled Operation Date. The Agreement states that it is effective once the Commission has approved all of the Agreement's terms and conditions and declared that all payments to Cargill will be allowed as prudently incurred expenses for ratemaking purposes. Idaho Power states in its Application that if the Commission approves the Agreement the effective date of the Agreement will be April 30, 2010.

Interconnections with the Facility and applicable charges have been completed in accordance with the parties' existing Schedule 86 Agreement transacted in 2009. All applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 have already been assessed and collected from Cargill.

STAFF ANALYSIS

Staff has carefully reviewed the Agreement and notes that the terms and conditions included in the Agreement are identical to those contained in other recent PURPA contracts approved by the Commission. The purchase rates contained in the Agreement are consistent with approved non-levelized published avoided cost rates for projects smaller than 10 aMW. However, there is a legitimate question as to whether the rates should be grandfathered under the

higher rates of Order No. 30744, or based on the lower rates of Order No. 31025, the avoided cost rates in effect on the date of contract signing.

The purchase rates set forth in the Agreement are from Order No. 30744. However, those rates had on the May 4, 2010, date of contract signing been replaced by the lower rates of Order No. 30125 approved by the Commission on March 16, 2010, in Case No. GNR-E-10-01. Idaho Power states that the Commission has previously determined grandfathering eligibility for (older and higher) published avoided cost rates by requiring (1) a signed power sales agreement be executed prior to the change in rates; or (2) a meritorious complaint filed with the Commission demonstrating project maturity and that but for the actions of the utility a sales agreement would have been signed prior to the change in rates. Clearly, a signed power sales agreement had not been signed prior to the change in rates, nor had a complaint been filed with the Commission. Nevertheless, by signing the Agreement and voluntarily presenting it to the Commission, Idaho Power represents that Cargill satisfies the second test of the Commission and should be entitled to the rates established by Order No. 30744.

In determining that Cargill was entitled to grandfathering under the higher rates of Order No. 30744, the Company concluded that Cargill satisfied the following grandfathering criteria prior to March 16, 2010:

a. Interconnection and Transmission

- i. Filed an interconnection application; and
- ii. Received and accepted an interconnection feasibility study report for the project and paid any requested study deposits (or established credit) for the next phase of the interconnection process in accordance with Schedule 72; and
- iii. Received confirmation from Idaho Power that transmission capacity is available for the project and/or received accepted transmission capacity study results and cost estimates.

b. Purchase Power Agreement

- i. An agreement was materially complete and would have been executed by both parties prior to March 16, 2010, and except for routine Idaho Power final processing, an agreement would have been executed prior to March 16, 2010.

It is Idaho Power's opinion that the Cargill B6 Facility meets all of the above-referenced criteria. The Interconnection and Transmission criteria were satisfied at the time the B6 Facility was interconnected with Idaho Power to make sales of non-firm energy under the Schedule 86 Agreement.

With respect to the Power Purchase Agreement criteria, the Company contends that Cargill and Idaho Power had finally resolved all outstanding contract issues and that Cargill had agreed to execute the Agreement after being notified that the B6 project had passed Idaho Power's final internal review process. Both parties expected final review to be a relatively straightforward process given that the parties had recently executed a substantially similar Firm Energy Sales Agreement for the Dry Creek Dairy Anaerobic Digester Project which was approved by the Commission in Order No. 31034 issued on April 1, 2010. The B6 Facility Agreement was commercially and legally similar to the Dry Creek Firm Energy Sales Agreement. Approximately 10 days prior to March 16, 2010, Idaho Power's management started the process of reviewing the agreed-upon draft for final approval and execution. The final Sarbanes-Oxley review process and the routine internal approval had not been completed as of March 16, 2010.

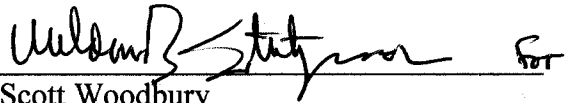
In further support of its request for grandfathering, Idaho Power states that the B6 Facility is a small project that is already certified as a QF and is currently selling power to Idaho Power under a Schedule 86 contract. The Agreement also contains the most recent contract terms and conditions, including the liquidated damages and security provisions previously approved by the Commission in the contracts for the Arena Drop hydro project and in the contracts for the Dry Creek anaerobic digester projects, Order Nos. 31060 and 31034, respectively.

Staff believes that the grandfathering criteria developed and applied by Idaho Power in this case are fair and reasonable. Based on the facts presented in this case, Staff believes that but for the actions of Idaho Power, the Agreement would have been fully-executed prior to March 16, 2010. Consequently, Staff concludes that the Order No. 30744 purchase rates contained in the Agreement are appropriate.

STAFF RECOMMENDATION

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 Cargill for purchases of energy from the B6 Facility will be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 16th day of June 2010.


Scott Woodbury
Deputy Attorney General

Technical Staff: Rick Sterling

i:umisc:comments/ipce10.15swrps comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 16TH DAY OF JUNE 2010, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-10-15, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

DONOVAN E WALKER
LISA D NORDSTROM
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
E-MAIL: dwalker@idahopower.com
lnordstrom@idahopower.com

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



SECRETARY

CERTIFICATE OF SERVICE