

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION</b>	)	
<b>OF IDAHO POWER COMPANY FOR</b>	)	<b>CASE NO. IPC-E-10-18</b>
<b>APPROVAL OF A FIRM ENERGY SALES</b>	)	
<b>AGREEMENT FOR THE SALE AND</b>	)	
<b>PURCHASE OF ELECTRIC ENERGY</b>	)	
<b>BETWEEN IDAHO POWER COMPANY</b>	)	<b>ORDER NO. 32027</b>
<b>AND NEW ENERGY THREE, LLC (DOUBLE</b>	)	
<b>B)</b>	)	

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On May 25, 2010, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a 15-year Firm Energy Sales Agreement between Idaho Power and New Energy Three, LLC dated May 24, 2010 (Agreement).

**AGREEMENT**

Under the terms of the Agreement, New Energy will sell and Idaho Power purchase electric energy generated by the Double B Dairy Anaerobic Digester Power Project (Facility) located near Murtaugh in Cassia County, Idaho. The location of the Facility is more particularly described as Section 33, Township 10 S, Range 21 E, Milner Quadrangle, Cassia County, Idaho. Appendix B-2. New Energy warrants that the Facility is a qualifying facility (QF) under applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). ¶ 3.2.

The nameplate rating of the Facility is 2 MW. Appendix B-1. The Maximum Capacity Amount is 2 MW. Appendix B-4. Under normal and/or average conditions, the Facility will not exceed 10 aMW on a monthly basis. Should the Facility exceed 10 aMW on a monthly basis, Idaho Power will accept the energy (Inadvertent Energy) that does not exceed the Maximum Capacity Amount; however, the Company will not purchase or pay for the Inadvertent Energy. ¶ 7.5.

The Agreement contains the non-levelized published avoided cost rates approved in Order No. 30744 and comports with the terms and conditions of Order Nos. 30738 (SAR non-fueled cost variables) and 30415 (daily load shape adjustment). ¶ 7.1. New Energy has selected a Scheduled Operation Date of December 1, 2012. Appendix B-3.

Idaho Power notes that the purchase rates set forth in the Agreement, Order No. 30744, had on the May 24, 2010, date of contract signing been replaced by the lower rates of Order No. 30125 approved by the Commission on March 16, 2010, in Case No. GNR-E-10-01.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 recites 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. Although not filing a complaint with the Commission, by signing the Agreement and voluntarily presenting it to the Commission, Idaho Power has nevertheless concluded that New Energy meets the second test of the Commission and should be entitled to the rates established by Order No. 30744.

In determining that New Energy was entitled to grandfathering under the higher rates of Order No. 30744, the Company concluded that New Energy 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 New Energy Facility meets all of the above-referenced criteria. The Interconnection and Transmission criteria were met 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 New Energy and Idaho Power had resolved all material outstanding contract issues. Both parties expected the final review to be a relatively straightforward process. However, in early February, the Company became aware of some new procedural requirements from the Federal Energy Regulatory Commission (FERC) that affected the way that the Facility would qualify for a network resource designation and thereby obtain the transmission needed to bring the power to be generated by the Facility from the interconnection to the Company load centers. The new procedure required some changes to the internal process at Idaho Power. Idaho Power embarked upon interpreting the regulations and implementing a process to be in compliance. In Idaho Power's opinion the Agreement would have been signed by both parties prior to March 16, 2010, except for the time required by Idaho Power to implement the new internal transmission and network resource process and, as a result, the Facility should qualify for a contract including the Order No. 30744 rates. New Energy is current in all its interconnection study payments and so long as New Energy continues to provide requested information in a timely manner and pay invoices on time, it appears that the interconnection can be completed in time for New Energy to achieve its Scheduled Operation Date for the Facility.

In further support of its request for grandfathering, Idaho Power states that the Facility Agreement 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 and the Dry Creek anaerobic digester projects, Order Nos. 31060 and 31034, respectively.

Agreement ¶ 21.1 provides that the New Energy Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to New Energy for purchases of energy from the Facility will be allowed as prudently incurred expenses for ratemaking purposes.

On June 3, 2010, the Commission issued a Notice of Application and Modified Procedure in Case No. IPC-E-10-18. The deadline for filing written comments was June 23, 2010. Commission Staff was the only party to file comments.

### ***Staff Comments***

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 recommends approval of all of the Agreement's terms and conditions including grandfathered purchase rates (Order No. 30744).

### **COMMISSION FINDINGS**

The Commission has reviewed and considered the filings of record in Case No. IPC-E-10-17 including the Firm Energy Sales Agreement between Idaho Power Company and New Energy Three, LLC (Double B) dated May 24, 2010, and comments and recommendations of Commission Staff. The Agreement is for a 15-year term. The nameplate rating of the Double B Facility is 2 MW.

The Agreement contains the non-levelized published avoided cost rates established by the Commission in Order No. 30744. On the May 24, 2010 date of contract signing the higher contract rates had been replaced by the lower rates of Order No. 30125 (Case No. GNR-E-10-01) approved by the Commission on March 16, 2010. We find that the Company has fairly represented our past grandfathering criteria requirements. We further find the Company's approach in this case regarding contract rates to be in concert with the spirit of those prior grandfathering cases. *See A.W. Brown v. Idaho Power*, 121 Idaho 812, 828 P.2d 841 (1992); Order No. 29872, Case No. IPC-E-05-22.

In this case, Idaho Power and Staff believe that New Energy is entitled to grandfathering and the rates of Order No. 30744. Idaho Power represents that all outstanding contract issues had been resolved prior to March 16, 2010, and that but for the internal review process of the Company a contract would have been signed prior to March 16. Based on the record established in this case, we find that New Energy is entitled to the grandfathered rates of Order No. 30744. As represented and pursuant to contract terms, under normal and/or average conditions the generation from the Double B Facility will not exceed 10 aMW on a monthly basis. The Commission finds the Agreement submitted in this case contains acceptable contract terms. We further find it reasonable to allow payments made under the Agreement as 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 from qualified facilities (QFs) and to implement FERC rules.

## **ORDER**

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby approve the May 24, 2010, Firm Energy Sales Agreement between Idaho Power and New Energy One, LLC for the Double B Dairy Anaerobic Digester Power Project.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of 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 1<sup>st</sup>  
day of July 2010.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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