

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY BETWEEN IDAHO POWER COMPANY AND ROCKLAND WIND PROJECT LLC)))))))	CASE NO. IPC-E-10-24 ORDER NO. 32125
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On September 8, 2010, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a negotiated 25-year Firm Energy Sales Agreement (Agreement) between Idaho Power and Rockland Wind Project LLC (Rockland) dated September 3, 2010. The Commission in this Order approves the Agreement.

AGREEMENT

Under the terms of the Agreement, Rockland will sell and Idaho Power will purchase electric energy generated by the Rockland Wind Project (Facility) located near American Falls in Power County, Idaho. The location of the Facility is more particularly described as Township 7 S, Range 31 E, Section 31; Township 8 S, Range 30 E, Sections 13, 24, 23-28, 33-36; Township 8 S, Range 31 E, Sections 6, 7, 16, 19, 30, 31 and Township 9 S, Range 30 E, Sections 1-5, 9-12, Power County, Idaho. Agreement Appendix B-2. Rockland warrants that the Facility is a qualifying facility (QF) under applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). Agreement ¶ 3.2.

The Rockland Wind Project will tentatively be comprised of 44 Vestas V100 turbines for a total nameplate rating of 79.2 MW. Agreement Appendix B-1. The maximum capacity amount is 80 MW. Appendix B-4. Because this amount exceeds 10 aMW, the Company ran its AURORA economic dispatch model consistent with the Commission requirements for projects larger than 10 MW to establish a basis for the energy purchase price in the Agreement.

The Agreement with Rockland contains many terms and conditions that vary from the standard PURPA firm energy sales agreement typically submitted by Idaho Power. The varying terms and conditions of this Agreement identified by the Company include: (1) provisions for Partial Completion Damages; (2) a simplified Mechanical Availability Guarantee (MAG)

calculation; (3) the Company's right to Renewable Energy Credits (RECs) after year 2021; (4) better financial damage and security provisions for the benefit of customers; (5) more extensive wind forecasting data; (6) a 25-year contract term; and (7) an energy price that is lower than the published avoided cost rate. The non-standard terms and conditions are summarized below:

Partial Completion Damages. ¶ 5.11. The expected Nameplate Capacity of the Facility is 80 MW. If the Nameplate Capacity is less than 72 MW, Idaho Power will be entitled to collect Partial Completion Damages from Rockland in the amount of \$10,000 per MW less than 72 MW.

Mechanical Availability Guarantee. ¶ 6.6. The MAG calculation within this Agreement, the Company notes, is more stringent and potentially easier to administer than the MAG in standard PURPA agreements. In both this Agreement and standard PURPA agreements, the MAG is set at 85 percent. However, in this Agreement, the mechanical availability of the Facility is determined by dividing the availability of each turbine as recorded in the automated operating system of each turbine by the Nameplate Capacity of each turbine less Idaho Power-caused curtailments. In comparison, in the standard PURPA agreements, impact of available wind, unplanned maintenance, and many other factors that are difficult to measure are included in the Mechanical Availability calculation.

Renewable Energy Credits.¹ Agreement Article VIII. The Facility retains the rights to all RECs through the end of calendar year 2021. ¶ 8.1. Idaho Power will own the rights to all RECs from the beginning of calendar year 2022 through the remaining term of the Agreement (a minimum of 15 years). ¶ 8.2. This allows the QF developer to retain the RECs for the initial 10 years of the Agreement and obtain what value it can for them to help offset the cost of development for the project at a time when the Company does not have a Renewable Portfolio Standard (RPS) obligation for the RECs. At the same time, it also allows the Company to retain the RECs for the last 15 years of the Agreement, after the project is developed and mature, and when a future RPS may require the Company to obtain and have RECs.

Damages and Security. This Agreement, the Company contends, has considerably more identified damages and security requirements of Rockland than those that are typically applied to a QF project in a standard PURPA firm energy sales agreement. All specified

¹ Under Agreement paragraph 5.12, if Rockland is unable to obtain an agreement for the sale of RECs associated with the expected Net Energy (initial year 218,062,000 kWh, ¶ 6.4.1) produced by the Facility on terms acceptable to Seller, then Seller shall have the right to terminate the Agreement.

damages are supported by liquid security requirements placed upon Rockland. Thus, in the event Idaho Power must exercise any of the damage claims, there is established security that Idaho Power may draw upon to satisfy the damages. Just as in standard PURPA agreements, Rockland must post \$45 per kW (80 MW equals \$3,600,000) of Delay Security that Idaho Power may draw upon if the Facility is delayed in achieving its Operation Date. ¶ 5.10.1. Additional security required in this Agreement that is above and beyond that required in standard PURPA agreements includes:

- (a) Signing Security - \$300,000. Rockland must post this security prior to Idaho Power filing this Agreement with the Commission seeking its approval. As of September 3, 2010, Rockland posted the required \$300,000 signing security with the Company. ¶ 5.9.
- (b) Operational Security - \$1,500,000. Rockland must post this security prior to the project achieving its Operation Date and shall then maintain this security for the full term of the Agreement. ¶ 5.3(e).

Wind forecasting. ¶ 9.3. In addition to Rockland being required to contribute to the Idaho Power wind forecasting cost as specified for all new PURPA wind agreements, the Agreement also requires Rockland to install, maintain, and provide wind measurement data from state-of-the-art wind monitoring equipment to Idaho Power for the full term of the Agreement.

Contract Term. The Facility has selected July 15, 2011, as the Scheduled First Energy date and December 31, 2011, as the Scheduled Operation Date. Appendix B-3. The contract term specified in this Agreement is 25 years. ¶ 5.1. This term is greater than the standard term of 20 years as provided in the less than 10 MW PURPA agreements. This 25-year contract term was a result of negotiations that attempted to balance many related factors within the Agreement in a manner that was favorable to Idaho Power customers and also manageable for Rockland. Some of those factors are: the project's willingness to meet performance requirements for the full 25-year term; financial security in place for the entire term; advantageous energy pricing for the years past 20 years; Idaho Power ownership of the RECs generated in years 11 through 25; and Idaho Power's right of first offer to participate in expansion and/or ownership of the Facility at any time during the term of the Agreement.

Energy Price. Agreement Article VII. As a basis for energy prices in this Agreement, Idaho Power executed the AURORA economic dispatch model for this Facility's estimated energy shape as specified by Commission requirements. This model provides strictly

an energy price based upon the estimated generation from this Facility being available to meet Idaho Power's customers' energy needs. This AURORA energy price contains no value for RECs or other items of value identified within the Agreement. The energy price identified by the AURORA run, including a discount of \$6.50 per megawatt-hour (MWh) for wind integration, was a levelized price of \$56.21. In comparison, the published avoided cost levelized price for a 10 average MW or less PURPA wind project with a planned on-line year of 2011 is \$75.88 per MWh.

The negotiated levelized energy price contained within the Agreement for the 25-year term calculates to be \$71.29 per MWh. The actual all-hours energy pricing stream (§ 7.3) begins at \$57.15 per MWh in 2011, escalates at 2.5 percent through the first 20 years to \$91.36 in the 20th contract year (2030), then escalates at a reduced rate of 2 percent for the last 5 years of the Agreement, ending at a price of \$101.37 in the 25th contract year (2035). In comparison, the published avoided cost rate available to PURPA wind projects less than 10 average MW for the year 2011 is \$55.26 per MWh, escalating to \$113.21 per MWh in year 2030. This Agreement also contains both the seasonal and time-of-day pricing as required in all PURPA agreements. §§ 7.1-7.2.

Although the \$71.29 levelized energy price within this Agreement is greater than the base AURORA value of \$56.21, the Company notes that it is also lower than the published avoided cost rate of \$75.88. This Agreement, the Company contends, provides many additional items of value to Idaho Power and its customers in comparison to a standard PURPA agreement for QFs 10 MW and under, some of those items being REC ownership, greater security and damage provisions, wind forecasting data, additional contract years at comparatively lower cost, and the right of first offer for ownership or expansion of this site. In addition, the \$71.29 price is considerably lower than prices bid into the 2012 wind RFP issued in May 2009, which Idaho Power recently concluded without awarding a contract.

Idaho Power believes that the negotiations with Rockland, which resulted in the present Agreement, evidence the fact that the large PURPA negotiation process for large QFs greater than 10 MW is viable and can result in a project that is both feasible for the developer and favorable to Idaho Power customers.

Interconnection and Transmission

The Firm Energy Sales Agreement provides that Rockland must have completed an interconnection feasibility study, is responsible to complete a Generation Interconnection Agreement (GIA), and is responsible for all costs associated with interconnection of the Facility to Idaho Power's system. ¶ 5.8. As of the time of filing this Application, Idaho Power represents that the Company has completed the feasibility study, and Rockland has accepted the same. The parties are in the final stages of a facility study with an executed Generation Interconnection Agreement to follow. Idaho Power Power Supply has also filed a Transmission Service Request for this project (rated at 80 MW) and has received a favorable response from the transmission group that transmission capacity is available for this project contingent upon completion of the GIA and this Agreement.

The Agreement provides that it 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 Rockland for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. ¶ 21.1.

On September 23, 2010, the Commission issued a Notice of Application and Modified Procedure in Case No. IPC-E-10-24. IDAPA 31.01.01.201.203. The deadline for filing written comments was November 19, 2010. Comments were received from Blue Ribbon Energy LLC, an Idaho QF, and Commission Staff.

Blue Ribbon Energy LLC

Blue Ribbon has no objection to the Commission's approval of the contract but notes that large QFs such as the developer of Rockland have greater ability to absorb a lower payment rate in order to obtain tax credits and other benefits compared to smaller developers. Blue Ribbon recommends that Idaho Power or any other utility not be allowed to treat the Agreement as establishing a precedent for rates.

Commission Staff

Commission Staff recommends approval of the Rockland/Idaho Power Agreement for reasons set forth below.

The Rockland Agreement, Staff states, is unique because it represents the only PURPA agreement negotiated by Idaho Power for a facility larger than 10 aMW. The only other

instance of a PURPA agreement for a facility larger than 10 aMW is between Avista Utilities and Clearwater Paper (formerly Potlatch). Staff estimates that Idaho Power will pay Rockland approximately \$422 million over the life of the 25-year Agreement. This equates to a net present value of nearly \$183 million.

Energy Price (Agreement Article VII)

Idaho Power believes, and Staff agrees, that the AURORA-generated avoided cost rate (\$56.21) simply represents a market price alternative that primarily reflects the value of energy and does not fully reflect capacity value. Furthermore, the AURORA energy price contains no value for RECs or other items of value identified in the Agreement. The Company, Staff notes, believes that many, if not all, of these additional items of value are difficult, if not impossible, to quantify precisely. These items include the following:

- Renewable Energy Certificate ownership for years 11-25
- Mechanical Availability Guarantee
- Wind forecasting data
- Greater security and damage provisions
- Right of first offer for ownership or expansion of the site
- Extended contract term at reasonable cost

In addition, Idaho Power believes there is value in a long-term fixed priced contract as compared to volatile market prices over the same period.

It is unclear to Staff *exactly* how Idaho Power and Rockland began with a 20-year AURORA price of \$56.21 and ultimately reached a negotiated 25-year levelized rate of \$71.29. The value of each factor was not individually quantified. Nevertheless, the rates included in the Agreement, Staff notes, were the result of mutual negotiations.

One way to judge the reasonableness of the negotiated rates in the Agreement, Staff contends, is to compare those rates to the published avoided cost rates for projects 10 aMW and smaller. Another way is to compare the rates in the Agreement to prices bid into the Company's 2012 Wind RFP issued in May 2009, which Idaho Power recently concluded without awarding a contract. By both measures – comparison to published avoided cost rates or comparison to 2012 Wind RFP bid prices – Staff believes the prices in the Agreement are reasonable. When REC ownership and other factors are considered as well, the prices in the Agreement seem to Staff even more reasonable.

Idaho Power believes that the negotiations with Rockland, which resulted in the present Agreement, evidence the fact that the PURPA negotiation process for large QFs greater than 10 aMW is viable and can result in a project that is both feasible for the developer and favorable to Idaho Power customers. Staff agrees.

Contract Term

PURPA, and the implementing regulations of the Federal Energy Regulatory Commission, Staff notes, are silent as to the length of the contract over which the QF is entitled to receive the avoided cost rate. Consequently, this is a matter that lies within this Commission's discretion. The reason for the earlier 35-year maximum contract length was that 35 years was the amortization period allowed for similar utility owned facilities. A contract length that agreed with the project's amortization schedule served to make financing easier, and in effect, helped to encourage QF development.

Staff notes that in 1987, the Commission in Order No. 21630 shortened the standard contract length to 20 years reasoning that risk and uncertainty inherent in long-range forecasting increases dramatically with time and that a shorter contract term would reduce that risk. The Commission ruled that contracts longer than 20 years would be available to QFs only upon a persuasive showing of need. In 1996, the Commission in Order No. 26576 shortened the contract length to five years.

In 2002, the Commission returned to 20 years, stating a 20-year contract length "better coincides with the amortization period or planned resource life of the renewable or cogeneration resources being offered, better reflects the amortization period of generation projects constructed by the utilities themselves and will coincidentally provide a revenue stream that will facilitate the financing of QF projects."² (Order No. 29029, p. 7). The 20-year standard contract length has remained in place since 2002.

One thing that has stayed consistent in the standard contract length for QF agreements, Staff states, is that the Commission has always remained amenable to considering longer contract lengths upon a persuasive showing of need. (Reference e.g., Order Nos. 21630,

² At the same time it increased the standard contract length to 20 years, the Commission increased the size limitation for eligibility for published rates from 1 MW to 5 MW. That size limit was subsequently increased to 10 aMW in 2002. (Reference Order No. 29069).

26576). In the case of Rockland, a 25-year contract term coincides with the expected 25-year life of the Project.

Staff is concerned, however, that the current vintage of wind turbines does not have a long track record upon which to judge their long-term durability and performance. A 25-year equipment life may be possible, but it has not been proven. Staff's concerns, however, are significantly mitigated by the performance requirements within the Agreement which provide financial motivation for the project to maintain, operate, and replace the wind turbines as required to meet the Mechanical Availability Guarantee for the full 25-year contract term. In addition, Staff notes that the turbines for this project will be supplied by one of the oldest and most reputable manufacturers in the wind industry.

Renewable Energy Credits³ (Agreement Article VIII)

In response to Staff production requests, Idaho Power admits that many, if not all, of the additional items of value in the Agreement – including RECs – are difficult, if not impossible, to quantify precisely. Based on available information, Idaho Power estimates REC pricing to range from a low of approximately \$4 to \$5 to a high of \$50 per REC.

Staff believes that current pricing is not indicative of prices that might be expected 15 years from now. Furthermore, Staff expects REC prices to vary widely in the future based on state and federal REC policy.

Signing Security – \$300,000

As Staff understands it, the viability of the Rockland project depends upon the QF's ability to secure a sale of RECs for the first ten years of the contract term. Because such a sale has yet to be secured, there is some risk that the project will not be developed. The signing security addresses this possibility. If Rockland terminates within 30 days of Commission approval, it incurs a penalty of \$1 million, of which the \$300,000 Signing Security can be used as partial payment.

Operational Security – \$1,500,000 (Agreement ¶ 5.3(e))

The Agreement provides for the calculation of damages due Idaho Power if the project fails to meet various performance and other contract requirements throughout the contract term. Past history on PURPA agreements, Staff states, has indicated that while damages can

³ Under Agreement paragraph 5.12, if Rockland is unable to obtain an agreement for the sale of RECs associated with the expected Net Energy (initial year 218,062,000 kWh, ¶ 6.4.1) produced by the Facility on terms acceptable to Seller, then Seller shall have the right to terminate the Agreement.

contractually be calculated and assessed, quite often recovery of those calculated damages can be very difficult because the projects quite often do not have liquid assets available. Rockland must post this security prior to the project achieving its Operation Date and shall then maintain this security for the full term of the Agreement.

Partial Completion Damages (Agreement ¶ 5.11)

Because the 80 MW nameplate capacity of the proposed facility is so large, Staff believes that it is reasonable to include provisions for damages in the event of partial completion. The negotiated amount is \$10,000 per each MW less than 72 MW. If the Project were to achieve only partial completion, it is reasonable, Staff contends, to expect that Idaho Power would be forced to acquire an alternate resource to satisfy load, perhaps at a higher cost and perhaps on short notice.

Mechanical Availability Guarantee (Agreement ¶ 6.6)

The Mechanical Availability Guarantee (MAG) calculation within this Agreement, the Company notes, is more stringent and potentially easier to administer than the MAG in standard PURPA agreements. The MAG in this Agreement is still set at 85%. Staff does not oppose this change.

Wind Forecasting (Agreement ¶ 9.3)

Installation of wind monitoring equipment, Staff believes, is standard practice for new, large wind projects. The Agreement requires Rockland to install, maintain, and provide wind measurement data from state-of-the-art wind monitoring equipment to Idaho Power for the full term of the Agreement. It makes sense to Staff that if such equipment is installed by Rockland, that the data be shared with Idaho Power.

Interconnection and Transmission

Staff expects that an executed Generation Interconnection Agreement will be submitted for Commission approval once it is finalized.

COMMISSION FINDINGS

The Commission has reviewed the filings of record in Case No. IPC-E-10-24 including the proposed Agreement and filed comments. We are satisfied with the developed record on Modified Procedure and find it reasonable and in the public interest to consider the matter and enter our Order without a hearing and without further notice or procedure. IDAPA 31.01.01.204.

Idaho Power has presented a 25-year negotiated Firm Energy Sales Agreement with Rockland Wind Project LLC for electric energy provided by an 80 MW wind generation project in Power County, Idaho. Rockland warrants that the project is a PURPA qualified facility as that term is used and defined in 18 C.F.R. § 292.201 *et seq.* We commend the parties for negotiating an Agreement that we find sets forth a creative solution to resource issues that have heretofore often resulted only in impasse and the filing of complaints.

The Commission finds that the proposed Agreement submitted in this case contains acceptable contract provisions and includes negotiated non-levelized avoided cost rates that we find to be just and reasonable. 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 Company, an electric utility, pursuant to the authority and power granted 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 and to implement FERC rules.

ORDER

IT IS HEREBY ORDERED and the Commission hereby approves the September 3, 2010, Firm Energy Sales Agreement between Idaho Power Company and Rockland Wind Project LLC.

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.

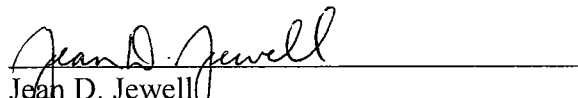
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24th
day of November 2010.


J.M.D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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