

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-10-26
APPROVAL OF A FIRM ENERGY SALES)	
AGREEMENT WITH AGPOWER)	
JEROME, LLC, FOR THE SALE AND)	ORDER NO. 32138
PURCHASE OF ELECTRIC ENERGY.)	

On October 20, 2010, Idaho Power Company filed an Application with the Commission requesting approval of a 20-year Firm Energy Sales Agreement (the "Agreement") between Idaho Power and AgPower Jerome, LLC, (AgPower) dated October 13, 2010. The Application states that AgPower would sell and Idaho Power would purchase electric energy generated by the Double A Digester Project (the "Facility") located in Lincoln County, Idaho. The Company requested that its Application be processed by Modified Procedure.

On November 16, 2010, the Commission issued a Notice of Application/Notice of Modified Procedure setting a December 8, 2010, comment deadline. Staff was the only party to file comments. By this Order, the Commission approves the Agreement between Idaho Power and AgPower without change or condition and declares that all payments made by Idaho Power to AgPower for purchases of energy shall be allowed as prudently incurred expenses for ratemaking purposes.

THE AGREEMENT

The Agreement is for a term of 20 years and contains the non-levelized published avoided cost rates established by the Commission in Order No. 30744 for energy deliveries of less than 10 average megawatts ("aMW"). The maximum capacity of the Facility is expected to be 4.5 MW. Idaho Power warrants that the Agreement comports with the terms and conditions of the various Commission Orders applicable to PURPA agreements (Order Nos. 30415, 30488, 30738, and 30744). Application at 2.

Although the Agreement is dated October 13, 2010, Idaho Power submits that AgPower should be entitled to the avoided cost rates set out in Order No. 30744 (rates superseded on March 16, 2010, by Order No. 31025). Idaho Power asserts that, but for a disagreement as to the damage and security provisions, the Agreement would have been signed by both parties prior to March 16, 2010. The Agreement, as submitted, contains the most recent

terms and conditions, including liquidated damages and security provisions. As such, Idaho Power maintains that this Agreement is similarly situated to other power purchase agreements approved by this Commission that contain grandfathered avoided cost rates.

Idaho Power asserts that AgPower is current in all of its interconnection study payments. AgPower selected a Scheduled Operation Date of January 1, 2012, for its Facility. By its own terms, the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declares that all payments made by Idaho Power to AgPower for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreement ¶ 21.1.

THE COMMENTS

Staff identified AgPower's entitlement to grandfathered rates as the only issue of real significance in this case. Staff noted that on April 9, 2010, AgPower filed a complaint against Idaho Power with the Commission alleging that AgPower was entitled to a contract containing the higher avoided cost rates of Order No. 30744. Idaho Power filed an answer on May 5, 2010, alleging that AgPower was not entitled to Order No. 30744 avoided cost rates because AgPower was disputing damage and security provisions that are part of Idaho Power's "standard" terms and conditions for PURPA agreements. Application at 6.

Subsequent to AgPower's complaint, the parties entered into negotiations to attempt to resolve their dispute over damage and security provisions. As evidenced by the submitted Agreement, the parties have resolved their dispute. The Agreement contains the most recent terms and conditions, including liquidated damages and security provisions. In effect, the Agreement contains all of the terms, conditions and rates that Idaho Power maintained were appropriate in the beginning, before the dispute arose.

Idaho Power maintains that this Agreement is similarly situated to other power purchase agreements approved by this Commission that contain grandfathered avoided cost rates. Staff agrees. Consequently, Staff recommended the Commission approve all of the Agreement's terms and conditions and declare that all payments made by Idaho Power to AgPower for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

FINDINGS AND CONCLUSIONS

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.

The Commission has reviewed the record in this case, including the Application, the October 13, 2010 Agreement, and the comments and recommendations of Commission Staff. The Agreement contains the non-levelized published avoided cost rates established by the Commission in Order No. 30744. Because the Agreement is dated October 13, 2010, Order No. 31025 (effective March 16, 2010) would require that the rates paid to AgPower under its Agreement be the rates set out in Order No. 31025 rather than the previously higher rates approved by the Commission in Order No. 30744. However, Idaho Power asserts that, but for the disagreement as to liquidated damages and security provisions, the Agreement would have been signed by both parties prior to March 16, 2010.

We find that Idaho Power has fairly represented our past grandfathering criteria requirements and their application to the particular facts of previously decided cases. We further find Idaho Power's approach in this case regarding published 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. Consequently, based on the record established in this case, we find that AgPower is entitled to the grandfathered rates of Order No 30744. We further find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the October 13, 2010, Firm Energy Sales Agreement between Idaho Power and AgPower is approved without change or condition.

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.

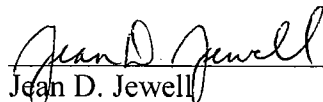
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 16th
day of December 2010.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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