BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER AND RAINBOW RANCH WIND, LLC	)	**CASE NO. IPC-E-10-59**
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER AND RAINBOW WEST WIND, LLC	)	**CASE NO. IPC-E-10-60**
	)	**ORDER NO. 32300**

On December 16, 2010, Idaho Power Company filed two Applications each requesting acceptance or rejection of a 20-year Firm Energy Sales Agreement ("Agreements") between Idaho Power and Rainbow Ranch Wind, LLC and Rainbow West Wind, LLC (collectively "the Projects"). Both projects are located near Declo, Idaho, and are managed by American Wind Group, LLC (American Wind). On February 24, 2011, the Commission issued a consolidated Notice of Application and Notice of Modified Procedure for the two Applications. Timely comments in response to the Notice of Modified Procedure were filed by the Commission Staff, the Projects, and the public. On March 24, 2011, Idaho Power filed reply comments.

On June 8, 2011, the Commission issued a consolidated final Order disapproving the two Agreements. Order No. 32256 at 9. The Commission found that the Agreements "were not fully executed (signed by both parties) prior to December 14, 2010" – the date that the Commission lowered the eligibility cap for the published avoided cost rate from 10 MW to 100 kW. Thus, the Agreement contained an essential term that was no longer available to the Projects. *Id.*

On June 29, 2011, the Projects timely filed a joint Petition for Reconsideration of the Commission's final Order. The Projects allege that the Commission's final Order is unlawful, erroneous, and not in conformity with the law. Additionally, they allege that the Order is a violation of the rulemaking requirements of the Idaho Administrative Procedures Act.

Idaho Power filed an answer to the Projects' Petition on July 6, 2011. Idaho Power maintains that the Commission's final Order is based on substantial and competent evidence. Idaho Power argues that the Commission was acting within its discretion and in the public interest and, therefore, reconsideration should be denied.

BACKGROUND

A. The Agreements

On December 14, 2010, Idaho Power and the two wind projects entered into their respective Agreements. Under the terms of the Agreements, each wind project agrees to sell electric energy to Idaho Power for a 20-year term using the 10 aMW non-levelized published avoided cost rates. Applications at 4. The nameplate rating of each project is 23 MW. Under normal and/or average conditions, each QF will not exceed 10 aMW on a monthly basis. Idaho Power warrants that the Agreements comport with the terms and conditions of the various Commission Orders applicable to PURPA agreements for a wind resource. *Id.* at ¶ 6 *citing* Order Nos. 30415, 30488, 30738 and 31025.

Each project has selected December 31, 2011, as the Scheduled First Energy Date and December 31, 2012, as the Scheduled Operation Date. Applications at 5. Idaho Power asserts that various requirements have been placed upon the projects in order for Idaho Power to accept the project's energy deliveries. Idaho Power states that it will monitor each project's compliance with initial and ongoing requirements through the term of the Agreement. The parties have agreed to liquidated damage and security provisions of $45 per kW of nameplate capacity. Agreements ¶¶ 5.3.2, 5.8.1.

Idaho Power asserts that it has advised each project of the project's responsibility to work with Idaho Power's delivery business unit to ensure that sufficient time and resources will be available for the delivery unit to construct the interconnection facilities, and transmission upgrades if required, in time to allow the projects to achieve their December 31, 2012, Scheduled Operation Date. The Applications state that the projects have been advised that delays in the interconnection or transmission process do not constitute excusable delays and if a project fails to achieve its Scheduled Operation Date, delay damages will be assessed. Applications at 7. The Applications further maintain that each project has acknowledged and accepted the risk inherent in proceeding with its Agreement without knowledge of the requirements of interconnection and possible transmission upgrades. *Id.*

Idaho Power also states that each project has been made aware of and accepted the provisions in the Agreement and Idaho Power's approved Schedule 72 regarding non-compensated curtailment or disconnection of the project should certain operating conditions develop on Idaho Power's system. The Applications note that the parties' intent and understanding is that "non-compensated curtailment would be exercised when the generation being provided by the Facility in certain operating conditions exceeds or approaches the minimum load levels of [Idaho Power's] system such that it may have a detrimental effect upon [Idaho Power's] ability to manage its thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system." *Id.*

By their own terms, the Agreements will not become effective until the Commission has approved all of the terms and conditions and declares that all payments made by Idaho Power to each project for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreements ¶ 21.1.

B. The Utilities' Joint Petition

On November 5, 2010, prior to the date that Idaho Power and the Projects entered into their Agreements, Idaho Power, Avista Corporation, and PacifiCorp dba Rocky Mountain Power filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues related to the Commission's implementation of PURPA. Case No. GNR-E-10-04. On December 3, 2010, the Commission issued Order No. 32131 declining a motion made by the utilities to immediately reduce the published avoided cost rate eligibility cap from 10 aMW to 100 kW. Order No. 32131 at 5. However, the Order did notify parties that the Commission's decision regarding whether to reduce the published avoided cost eligibility cap would become effective on December 14, 2010. *Id.* at 5-6, 9.

Section 210 of PURPA generally requires electric utilities to purchase power produced by QFs at "avoided cost" rates set by the Commission. "Avoided costs" are those costs which a public utility would otherwise incur for electric power, whether that power was purchased from another source or generated by the utility itself." 18 C.F.R. § 292.101(b)(6). Order No. 32176 at 1. Under PURPA regulations issued by the Federal Energy Regulatory Commission (FERC), the Commission must "publish" avoided cost rates for small QFs with a design capacity of 100 kW or less. Order No. 32176 at 1. However, the Commission has the discretion to set eligibility for the published avoided cost rate at a higher capacity amount –

commonly referred to as the "eligibility cap." 18 C.F.R. § 292.304(c)(1-2). When a QF project is larger than the Commission-established eligibility cap the avoided cost rate for the project must be individually negotiated by the QF and the utility using the Integrated Resource Plan (IRP) Methodology. Order No. 32176.

The purpose of utilizing the IRP Methodology for large QF projects is to more precisely value the energy being delivered. *Id.* at 10. The IRP Methodology recognizes the individual generation characteristics of each project by assessing when the QF is capable of delivering its resources against when the utility is most in need of such resources. The resultant pricing is reflective of the value of QF energy to the utility. Utilization of the IRP Methodology does not negate the requirement under PURPA that the utility purchase the QF energy.

Based upon the record in the GNR-E-10-04 case, the Commission subsequently found that a "convincing case has been made to temporarily reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar only while the Commission further investigates" other avoided cost issues. Order No. 32176 at 9 (emphasis original). On reconsideration, the Commission affirmed its decision to temporarily reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kW. Order No. 32212. Thus, the eligibility cap for the published avoided cost rate for wind and solar QF projects was set at 100 kW effective December 14, 2010. No party appealed from the Orders in Case No. GNR-E-10-04.

C. The Prior Final Order in this Case

On June 8, 2011, the Commission issued Order No. 32256 disapproving the Agreements between Idaho Power and each of the wind projects – Rainbow Ranch Wind and Rainbow West Wind.[1] The Commission determined that the Agreements were not fully executed (signed by both parties) prior to December 14, 2010, the date upon which the eligibility for published avoided cost rates changed from 10 aMW to 100 kW for wind and solar projects. Consequently, the Commission found that the rates contained in the Agreements did not comply with Order No. 32176 because each of the projects requesting published avoided cost rates are in

[1] The two projects had previously filed consolidated comments because the relevant facts for each of these projects are substantially similar. Consequently, the Commission found it reasonable and appropriate to consolidate the cases and issue a consolidated final Order. Order No. 32256 n.1.

excess of 100 kW. Order No. 32256 at 9. The "old" 10 aMW published rate is available only to non-wind and non-solar QFs.

The Projects signed the Agreements on December 13, 2010, and Idaho Power signed on December 14, 2010. The Commission noted that the Agreements contain language regarding the effective date. The terms of the Agreements unequivocally state that the "Effective Date" of the Agreements is "The date stated in the opening paragraph of this . . . Agreement representing the date upon which this [Agreement] was fully executed by both Parties." Agreements ¶ 1.10 (emphasis added). The opening paragraph is dated "this 14th day of December, 2010." We stated that "[t]he Commission does not consider a utility and its ratepayers obligated until both parties have completed their final reviews and signed the agreement." Order No. 32256 at 8. We found that "a thorough review is appropriate and necessary prior to signing Agreements that obligate ratepayers to payments in excess of $200 million" over the 20-year term of the Agreements. *Id.* at 7. The Commission established a bright line rule that for a wind or solar QF larger than 100 kW to be eligible for published avoided cost rates, a Firm Energy Sales Agreement/Power Purchase Agreement must have been executed, i.e., signed by both parties, prior to the December 14, 2010, effective date of the change in eligibility criteria. *Id.* at 8. The Commission additionally found that it was "not in the public interest to allow parties with contracts executed on or after December 14, 2010, to avail themselves of an eligibility cap that is no longer applicable." *Id.*

PETITION FOR RECONSIDERATION

On June 29, 2011, the Projects filed a timely joint Petition for Reconsideration. *Idaho Code* § 61-626. The Projects allege that the Commission's Order is unreasonable, erroneous, and not in conformance with the law. Specifically, the Projects argue that the Agreements became legally binding between the parties on December 14, 2010; that these projects would have been eligible for "grandfathering" under traditional criteria; that application of a bright line rule may constitute an improper governmental interference with contractual rights; and that a bright line rule generally results in manifest injustice. Alternatively, the Projects purport to adopt the "more general objections" asserted by "other parties in companion

cases."[2] Reconsideration at 7. The Projects request reconsideration in the form of written briefs or comments.

Idaho Power filed an answer to the Projects' Petition for Reconsideration. Idaho Power states that the Commission's Order is based on substantial and competent evidence. Idaho Power argues that the Commission, "in its role as the regulatory authority for all investor-owned, public utilities in the state of Idaho, has an independent obligation and duty to assure that all contracts entered into by the public utilities it regulates are ultimately in the public interest." Answer at 4. Idaho Power further maintains that the Commission regularly pursued its authority and was acting within its discretion in choosing to disapprove the Agreements. *Id.* at 2. Consequently, Idaho Power asks that the Projects' Petition for Reconsideration be denied.

ISSUES ON RECONSIDERATION

A. Legal Standards

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by reviewing the existing record, by written briefs, or by evidentiary hearing. IDAPA 31.01.01.311.03. If reconsideration is granted, the Commission must complete its reconsideration within 13 weeks after the deadline for filing petitions for reconsideration. *Idaho Code* § 61-626(2).

Consistent with the purpose of reconsideration, the Commission's Procedural Rules require that petitions for reconsideration "set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law." Rule 331.01, IDAPA 31.01.01.331.01. Rule 331 further requires that the petitioner provide a "statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." *Id.*

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[2] The Projects do not elaborate on these objections. However, they included in their Petition a bulleted list: (1) the bright line rule is inconsistent with federal law; (2) the Commission's bright line rule is in violation of the rulemaking requirements of the Idaho Administrative Procedures Act; (3) "the retroactivity feature of the Order is suspect"; and (4) adoption of a bright line rule is an unexplained departure from past precedent.

B. Legally Binding Agreement on December 14, 2010

The Projects argue that, "by their express terms, the Agreements define the date upon which they become a binding contract on the parties." Reconsideration at 3. The Projects assert that their Agreements became effective on December 14, 2010. The Projects contend that Idaho Power acknowledges that the Agreements were binding legal obligations as of December 14, 2010. The Projects maintain that the Commission's intent behind a December 14 effective date is "vaguely written" and "a reasonable person could believe that FESAs effective December 14, 2010, qualified for published avoided cost rates." *Id.* at 4. Specifically, the Projects argue that a reasonable person could understand the Commission's Order to mean that agreements executed on or before December 14, 2010, are eligible for the 10 aMW eligibility cap.

Commission Findings: The Idaho Supreme Court has held that "[t]he implementation of PURPA as it relates to cogeneration and small power producers, and the regulations promulgated by FERC, have been largely left to the regulatory authorities of the individual states." *A.W. Brown Company, Inc. v. Idaho Power Company*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992). "FERC regulations grant the states latitude in implementing the regulation of sales and purchases between QFs and electric utilities." Order No. 32262 *citing Federal Energy Regulatory Commission v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982). As we stated in our final Order, "[a]ccording to the FERC, 'it is up to the States, not [FERC] to determine the specific parameters of individual QF power purchase agreements, including the date at which a legally enforceable obligation is incurred under State law." Order No. 32254 at 9 *citing Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 623-624, 917 P.2d 766, 780-781 (1996) *citing West Penn Power Co.*, 71 FERC ¶ 61,153 (1995).

The Commission's change in eligibility cap became effective on December 14, 2010. The new 100 kW threshold for wind and solar projects' access to published avoided cost rates began on December 14, 2010. There is no other reasonable interpretation but that the new rates were in effect on the day that the Commission declared they become effective – December 14, 2010. *Idaho Code* § 61-618. There is nothing ambiguous or vague about when the new eligibility cap took effect. The Projects' argument to the contrary is without merit. If the Projects' argument regarding an effective date were applied to its own contract, December 14 could not be relied upon as the execution date of the Agreements – the self-proclaimed "effective date" upon which the Agreement was fully executed by both parties. It is inconsistent and

insincere for the Projects to declare that the Commission's assertion of an effective date is ambiguous only to subsequently rely on an effective date declaration in their Agreements to support approval of the contracts.

Moreover, the final Order disapproving the Projects' Agreements was abundantly clear: "in order for the 10 aMW eligibility cap to be available to wind and solar QFs, the agreement must have been effective *prior to* December 14, 2010." Order No. 32256 at 8 (emphasis added). We find that, for each of these two projects, a legally enforceable obligation was incurred on December 14, 2010. By the Projects' own admission and the very terms of the contracts, the Agreements were not effective until December 14, 2010. Agreements ¶ 1.10. We further find that, on that date, wind projects larger than 100 kW were no longer entitled to published avoided cost rates. However, as QFs, the Projects remain entitled to PURPA contracts with avoided cost rate terms calculated using the IRP Methodology. This finding is based on substantial and competent evidence and supported by the record in this case.

Although no party has argued this position on the matter, we recognize that the contracts also provide that the Agreement will not become effective *until the Commission has approved* all of the terms and conditions and declares that all payments made by Idaho Power to each project for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreements ¶ 21.1 (emphasis added). An effective date based on Commission approval of the Agreement has been supported on Idaho Supreme Court review.[3] However, based upon this record, we find that the legally enforceable obligation is the date that the parties executed the Agreements and agreed to be bound by the terms contained therein. On that date, wind projects with a capacity of greater than 100 kW were not eligible to receive published rate contracts. The considerations made by this Commission are authorized by PURPA and FERC regulations. The Projects have failed to demonstrate that we were not regularly pursuing our authority.

The Commission's finding is also in the public interest and strikes a balance between "the local public interest of a utility's electric consumers and the national public interest in development of alternative energy sources." *Rosebud Enterprises*, 128 Idaho at 613, 917 P.2d at

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[3] "Rosebud is not entitled to a lock-in of an avoided cost rate until it has entered into a legally enforceable *and IPUC approved* obligation for the delivery of energy and capacity." *Rosebud Enterprises*, 128 Idaho at 620, 917 P.2d at 777 (emphasis added).

770. Allowing a project to avail itself of an eligibility cap (and therefore published rates) that is no longer applicable could cause ratepayers to pay more than the utility's avoided cost which "would be in direct violation of PURPA policies." *A.W. Brown Company v. Idaho Power Company*, 121 Idaho 812, 818, 828 P.2d 841, 847 (1992). Based on the foregoing, the Projects' request for reconsideration on this issue is denied.

C. Grandfathering Treatment

The Projects next argue that the Commission's "long history of grappling with claims eligibility for higher rates following a reduction in rates or change in methodology is well known and will not be repeated here." Reconsideration at 5. The Projects maintain that they would be eligible for grandfathering treatment under "traditional criteria" because contract negotiations between Idaho Power and the Projects were materially complete prior to December 14, 2010. *Id. citing* Order Nos. 29389, 29954, and 30109.

Commission Findings: The Projects' reliance on prior Commission Orders that permit projects to be grandfathered is misplaced. First, the Commission explicitly stated that "we look at the totality of the facts" in assessing entitlement to grandfathering status. Order No. 29954 at 2. In these Agreements, the "effective date" of each Agreement is the same day that the Commission's 100 kW eligibility cap for wind and solar projects' access to published rates became effective. Thus, the Projects' Agreements do not support that use of grandfathering. Second, the Idaho Supreme Court has stated that "[c]onferment of grandfathered status on [a] qualifying facility is essentially an IPUC finding that a legally enforceable obligation to sell power existed by a given date. *Such a finding is within the discretion of the state regulatory agency.*" *Rosebud Enterprises*, 128 Idaho 624, 917 P.2d at 781 (emphasis added). In this consolidated case, we found that each of the two projects incurred a legally enforceable obligation on December 14, 2010. Thus, there is no occasion to resort to the use of grandfathering criteria. The Commission's decision to not utilize grandfathering criteria and, instead, adhere to the stated effective date of the reduced eligibility cap is within the Commission's discretion. This finding is consistent with our authority under federal and state law.

Third, our Supreme Court has noted, "Because regulatory bodies perform legislative as well as judicial functions in their proceedings, they are not so rigorously bound by the doctrine of *stare decisis* that they must decide all future cases in the same way as they have

decided similar cases in the past." *Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 618, 917 P.2d 766, 775 (1996) *citing Intermountain Gas Co. v. Idaho PUC*, 97 Idaho 113, 119, 540 P.2d 775, 781 (1975). "So long as the Commission enters sufficient findings to show that its action is not arbitrary and capricious, the Commission can alter its decisions." *Washington Water Power v. Idaho PUC*, 101 Idaho 567, 579, 617 P.2d 1242, 1254 (1980). Therefore, simply because grandfathering criteria have been used in consideration of QF eligibility to published rates in the past does not mean that this Commission must decide all future QF eligibility cases in the same manner.

Regardless of whether it is a change in the eligibility cap for access to published rates or a change in the rates themselves, the Commission is not bound by prior grandfathering treatment decisions so long as our decision is based on substantial and competent evidence in the record and we enter sufficient findings to demonstrate that is the case. In contrast to the change in eligibility for published rates in 2005,[4] no criteria were enunciated or established by this Commission to determine project eligibility through the use of grandfathering for QF agreements executed on or after December 14, 2010. Because the Commission's decision to not utilize grandfathering criteria was not arbitrary and/or capricious, we deny reconsideration on this issue.

As stated in our final Order, it is adverse to the public interest to allow parties who have not executed timely contracts to avail themselves of an eligibility cap that is no longer in place. Order No. 32256 at 8. Grandfathering contracts that were executed on or after December 14, 2010, and allowing them to utilize an eligibility cap that is no longer applicable, would be contrary to our determination regarding what the public interest requires. This finding is supported by substantial and competent evidence in the record and as explained in our Orders.

Moreover, no appeal was taken from the Commission's Order to lower the eligibility cap. *Idaho Code* § 61-625 prohibits collateral attacks of Commission Orders that are final and conclusive. "A different rule would lead to endless consideration of matters previously presented to the Commission and confusion about the effectiveness of Commission orders." *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 373, 597 P.2d 1028, 1063 (1979). The Projects are, in essence, collaterally attacking the Commission's prior Order

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[4] The Commission outlined criteria that it would consider in determining whether a project was eligible for the previous, no longer applicable, eligibility cap for published avoided cost rates, i.e., whether a project would be "grandfathered" and permitted to utilize the old eligibility cap. Order No. 29839.

reducing the eligibility cap by arguing that grandfathering criteria should apply. However, no party timely appealed the Commission's decision in that case. Case No. GNR-E-10-04; Order Nos. 32176 and 32212. Therefore, the Commission's decision to lower the eligibility cap from 10 aMW to 100 kW for wind and solar projects effective December 14, 2010, is a final and conclusive Order of the Commission that is not subject to collateral attack. Based upon the foregoing, we deny reconsideration of this issue.

D. Improper Governmental Interference with Contractual Rights

The Projects claim that application of a bright line rule "renders the contracts a nullity" and may constitute an improper governmental interference with contractual rights. Reconsideration at 6. The Projects argue that the constitutional protection against governmental interference requires a "quantity of proof" in order to justify altering a rate fixed by contract. *Id. citing Agricultural Products v. Utah Power*, 98 Idaho 23, 557 P.2d 617 (1976).

Commission Findings: First, we note that a firm energy sales agreement/power purchase agreement differs from a standard offer and acceptance contract. Unlike standard offer and acceptance contracts, PURPA agreements are subject to review and approval by this Commission pursuant to Idaho statutes. *Idaho Code* §§ 61-502 and 61-503. "The Commission, as part of its statutory duties, determines reasonable rates and investigates and reviews contracts." *A.W. Brown Company v. Idaho Power Company*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992). Thus, QF power purchase agreements are different from typical or standard contracts. "Interference with private contracts by the state regulation of rates is a valid exercise of the police power, and such regulation is not a violation of the constitutional prohibition against impairment of contractual obligations." *Agricultural Products Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 29, 557 P.2d 617, 623 (1976). Moreover, "[p]rivate contracts with utilities are regarded as entered into subject to reserved authority of the state to modify the contract *in the public interest*." *Id.* (emphasis added). This Commission specifically stated that it was not in the public interest to approve the Projects' Agreements because they were executed after a new, lower eligibility to published rates became effective. Order No. 32256 at 8. The Projects have failed to prove that this finding is unreasonable, erroneous or not in conformance with the law.

Second, this Commission is not modifying the Agreements between Idaho Power and the Projects. We did not change the terms of the Agreements – we disapproved the contracts

because the terms did not comply with Order No. 32176 requiring wind projects with a capacity greater than 100 kW to utilize the IRP Methodology to determine avoided cost rates. Order No. 32256 at 9. It would be contrary to the public interest and a violation of Order No. 32176 to approve agreements executed on or after December 14, 2010, that contain published avoided cost rates for wind projects with a design capacity of more than 100 kW. The Projects have failed to demonstrate that we were not regularly pursuing our authority in disapproving their Agreements. Consequently, reconsideration of this issue is denied.

E. Remaining Assertions of Error

The Projects summarize their position by arguing that application of the Commission's bright line rule "offends fundamental conceptions of justice." Reconsideration at 6. The Projects also reference "other parties in companion cases [who] intend to assert more general objections to the Bright Line Rule." *Id.* at 7. The Projects do not elaborate on these objections beyond a bulleted list: (1) the bright line rule is inconsistent with federal law; (2) the Commission's bright line rule is in violation of the rulemaking requirements of the Idaho Administrative Procedures Act; (3) "the retroactivity feature of the Order is suspect"; and (4) adoption of a bright line rule is an unexplained departure from past precedent. *Id.* The Projects state that, if "the Commission is unable to reach the result herein requested, Rainbow will, of necessity, join in the assertion of those other, more general objections." *Id.*

Commission Findings: Commission Rule 331 requires that petitions for reconsideration describe "specifically the ground or grounds why the petitioner contends that the Order or any issue decided in the Order is unreasonable, unlawful, erroneous or not in conformance with the law, and [set forth] a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." IDAPA 31.01.01.331.01. We find that a notation regarding manifest injustice and a bulleted list of additional issues argued by other parties in other cases fails to meet the requirements of Rule 331 for these issues. In particular, the Projects have failed to identify the specific grounds upon which they contend the Order is unlawful or erroneous in these regards. We further find that they have failed to provide "the nature and quantity of evidence or argument."[5] *Id.* Accordingly, we deny reconsideration of these issues.

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[5] In response to the Projects' bullet point regarding rulemaking under the APA, we note our finding in Order Nos. 32298 at 13 and 32299 at 12-13.

Nothing cited by the Projects demonstrates that the Commission's Order is arbitrary or capricious or inconsistent with federal or state law. On the contrary, FERC specifically delegated authority to the States to determine when and how a legally enforceable obligation is created. We find that a legally enforceable obligation is incurred and a contract is fully executed upon obtaining the signature of both parties. We further find that a legally enforceable obligation was incurred by Idaho Power and these two projects on December 14, 2010. On that date, wind projects larger than 100 kW were no longer entitled to the 10 aMW published avoided cost rate. In determining when the parties incurred a legally enforceable obligation, we properly exercised the authority granted us by FERC. "For purposes of [FERC] regulations, the critical date is the date on which a legally enforceable obligation is incurred, and choosing that date for a specific QF is the responsibility of the States, not of [FERC]." *West Penn Power Co.*, 71 FERC ¶ 61153, 61495 (1995). This finding is based on substantial and competent evidence. The Commission's finding is also in the public interest and strikes a balance between "the local public interest of a utility's electric consumers and the national public interest in development of alternative energy sources." *Rosebud Enterprises*, 128 Idaho at 613, 917 P.2d at 770.

As we stated in our final Order, a comprehensive review of a power purchase agreement is consistent with this Commission's directive to utilities that they assist the Commission in its gatekeeper role when reviewing QF contracts.[6] Order No. 32256 at 7. We find that it is reasonable and consistent with the authority granted us under PURPA, and that the public interest requires that each party have a full and final review of the contract before signing and obligating the utility and its ratepayers to hundreds of millions of dollars in energy payments over the 20-year life of the agreement. The Projects were given unrestricted time to adequately review the contracts before signing. Idaho Power is obligated to be as diligent in its review prior to requesting Commission approval that will commit ratepayer dollars.

CONCLUSION

The 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

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[6] "The Commission, as part of its statutory duties, determines reasonable rates and investigates *and reviews contracts*." *A.W. Brown Company v. Idaho Power Company*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992) (emphasis added).

authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided cost rates, to order electric utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities (QFs) and to implement FERC rules. *Rosebud Enterprises, Inc. v. Idaho Public Utilities Commission*, 128 Idaho 609, 612, 917 P.2d 766, 769 (1996).

Although FERC promulgated the general scheme and rules, it left the actual implementation of PURPA to the state regulatory authorities. *Id.*, 128 Idaho at 614, 917 P.2d 771. FERC rules insist that rates for purchases from QFs be just and reasonable to ratepayers, in the public interest, and not discriminatory against QFs. 18 C.F.R. § 292.304(a)(1). Notably, PURPA and the implementing regulations require only that published/standard avoided cost rates be established and made available to QFs with a design capacity of 100 kW or less. 18 C.F.R. § 292.304(c). When this Commission reduced wind and solar projects' eligibility to published avoided cost rates we unequivocally stated that continuing to allow large wind and solar projects access to published avoided cost rates for projects greater than 100 kW was "clearly not in the public interest." Order No. 32262. We reaffirmed that determination in the present case by finding that "it is not in the public interest to allow parties with contracts executed on or after December 14, 2010, to avail themselves of an eligibility cap that is no longer applicable." Order No. 32256 at 8. The Projects have failed to demonstrate that the Commission's findings are unreasonable, unlawful, erroneous, or not in conformity with the law. Rule of Procedure 331, IDAPA 31.01.01.331.01.

The Firm Energy Sales Agreements between Idaho Power and the two projects were executed on December 14, 2010. The Agreements recite that each project will have a maximum capacity amount of 23 MW. Under normal and/or average conditions, each project will not exceed 10 aMW on a monthly basis. Because the size of each of these wind projects exceeds 100 kW, they are not eligible to receive the published avoided cost rate. Nevertheless, the Projects are entitled to PURPA contracts with avoided cost rates calculated using the IRP Methodology.

ORDER

IT IS HEREBY ORDERED that the joint Petition for Reconsideration filed by Rainbow Ranch Wind and Rainbow West Wind is denied.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case Nos. IPC-E-10-59 or IPC-E-10-60 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th day of July 2011.

PAUL KJELLANDER, PRESIDENT

MACK A. REDFORD, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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