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July 6, 2011

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-10-60
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

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Answer to Petition for Reconsideration in the above matter.

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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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 IDAHO POWER COMPANY'S ANSWER TO PETITION FOR RECONSIDERATION
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 IDAHO POWER COMPANY'S ANSWER TO PETITION FOR RECONSIDERATION

Idaho Power Company ("Idaho Power"), in accordance with Idaho Code § 61-626 and RP 331.05, hereby responds to the Petition filed by Rainbow Ranch Wind, LLC, and Rainbow West Wind, LLC (collectively "Petitioner") for Reconsideration of Commission Order No. 32256 issued on June 8, 2011.

Petitioner has failed to demonstrate that the Idaho Public Utilities Commission's ("Commission") Order No. 32256 is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331.01. The Commission's Order No. 32256 is based upon

substantial and competent evidence in the record. The Commission regularly pursued its authority and was acting within its discretion. Consequently, reconsideration should be denied.

I. BACKGROUND

The relevant background is recited by the Commission in Order No. 32262, Case No. GNR-E-11-01. On November 5, 2010, Idaho Power Company, 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 the Public Utility Regulatory Policies Act of 1978 ("PURPA"). While the Commission pursued its investigation, the utilities also moved the Commission to "lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW [to] be effective immediately . . . ." *Id. citing* Joint Petition at 7. When a Qualified Facility ("QF") project is larger than the eligibility cap set for access to *published* avoided cost rates, the avoided cost rates 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.

On December 3, 2010, the Commission issued Order No. 32131 declining the utilities' motion to immediately reduce the published avoided cost rate eligibility cap from 10 average megawatts ("aMW") to 100 kilowatts ("kW"). Order No. 32181 at 5. However, the Order did notify parties that the Commission's decision regarding the motion to reduce the published avoided cost eligibility cap for published avoided cost eligibility cap would become effective on December 14, 2010. *Id.* at 5-6, 9.

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 a MW to 100 kW for wind and solar only while the Commission further investigates" other avoided cost issues. Order No. 32176 at 9 (emphasis original). The Commission also announced its intent to initiate additional proceeding to investigate and address the disaggregation of large projects. *Id.* at 11.

On reconsideration, the Commission affirmed its decision to temporarily reduce the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar projects. Order No. 32212. Thus, the eligibility cap for published avoided cost rates for wind and solar QF projects was set at 100 kW effective December 14, 2010.

On June 8, 2011, the Commission issued Order No. 32262, after a full evidentiary hearing in Case No. GNR-E-11-01, affirming and maintaining the 100 kW published rate eligibility cap for wind and solar QFs, and directing further investigation into the appropriate avoided cost price. Order No. 32262, p. 9.

II. DISCUSSION

The Contracts Were Not Approved Because the Commission Found Them to be Contrary to the Public Interest.

All PURPA Firm Energy Sales Agreements ("FESA") contain a provision stating, "This Agreement shall become finally effective upon the Commission's approval of all terms and provisions hereof without change or condition . . . ." Case No. IPC-E-10-59, and IPC-E-10-60, Application, Attachment No. 1, FESA between Petitioner and Idaho Power at p. 27, Article 21. Commission review is not a rubber stamp formality once the FESA is signed. It is, and must be, a meaningful review of the terms and conditions, reasonableness, and prudency of the contractual relationship and obligations. It must be a meaningful review of whether, as a whole, the FESA is in the public interest.

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. In the state of Idaho, contracts are afforded constitutional protection against interference from the State. Idaho Const. Art. I, § 16. However, despite this constitutional protection, the Commission may annul, supersede, or reform the contracts of the public utilities it regulates in the public interest. *Agricultural Products Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 29, 557 P.2d 617, 623 (1976) ("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."); *see also Federal Power Comm's v. Sierra Pac. Power Co.*, 350, U.S. 348, 76 S.Ct. 368, 100 L.Ed. 388 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373, 100 L.Ed. 373 (1956) (U.S. Supreme

Court finding that rates fixed by contract could be modified only "when necessary in the public interest"). The Commission may interfere in such a way with the contracts of a public utility only to prevent an adverse affect to the public interest. *Agricultural Products*, 98 Idaho at 29. "Private contracts with utilities are regarded as entered into subject to reserved authority of the state to modify the contract in the public interest." *Id.*

Petitioner has asked for reconsideration of Commission Order No. 32256 which disapproved the December 14, 2010, PURPA Firm Energy Sales Agreements ("FESA") between Petitioner and Idaho Power. Petitioner and Idaho Power had entered into two separate FESAs for wind QF resources of 20 MWs each. The Commission found that it was not in the public interest to allow large projects to disaggregate into 10 aMW increments in order to qualify for the published avoided cost rate calculated pursuant to the Surrogate Avoided Resource methodology. Order No. 32262 p. 8. Case No. GNR-E-11-01.

> Avoided cost rates are to be just and reasonable to the utility's ratepayers. 18 C.F.R. § 292.304(a)(1). PURPA entitles QFs to a rate equivalent to the utility's avoided cost, a rate that holds utility customers harmless – not a rate at which a project may be viable. 18 C.F.R. § 292.304(a)(2). If we allow the current trend to continue, customers may be forced to pay for resources at an inflated rate and, potentially, before the energy is actually needed by the utility to serve its customers. ***This is clearly not in the public interest.*** . . . While we recognize the impact that this decision will have on small wind and solar projects, it would be erroneous, and illegal pursuant to PURPA, for this Commission to allow large projects to obtain a rate that is not an accurate reflection of the utility's avoided cost for the purchase of the QF generation. *Rosebud Enterprises*, 128 Idaho at 623, 917 P.2d at 780, *citing Connecticut Light & Power Co.,* 70 F.E.R.C. ¶ 61,012 (1995).

Id. at p. 8 (emphasis added). Additionally, in the present cases, the Commission found that the FESAs entered into between Petitioner and Idaho Power were not in the public interest. Order No. 32256 p. 8.

> The Idaho Supreme Court has recognized that 'a balance must be struck 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. ***We find 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 p. 8, Case Nos. IPC-E-10-59, 10-60; Order No. 32254 p. 9, Case Nos. IPC-E-10-51 through 10-55; Order No. 32257 p. 9, Case Nos. IPC-E-10-61, 10-62 (emphasis added).

Idaho Power stated in its Reply Comments for this matter that it executed the FESAs in good faith and that if those agreements were approved by the Commission, the Company would honor and comply with the requirements therein. Idaho Power Reply Comments, p. 8.

> As the Company did with all PURPA contracts that were executed subsequent to the filing of the Joint Petition of the three Idaho electric utilities in Case No. GNR-E-10-04, Idaho Power filed the Projects' PURPA contracts for review with the Commission specifically seeking the Commission's acceptance or rejection of the agreements. Idaho Power specifically did not ask for the Commission's approval, nor did the Company specifically ask for the Commission's rejection. Instead, the Company asked for and seeks the Commission's independent review of the agreement. The Commission's independent review of the agreement serves several functions including: (1) Commission approval as required by the terms of the contract in order for it be effective; (2) if accepted by the Commission, the Company seeks authorization that all payments for purchases of energy under the agreement be allowed as prudently incurred expenses for ratemaking purposes; and (3) a

> Commission determination as to whether such agreement(s) is/are in the public interest.

Id. at p. 7. However, Idaho Power also recognized the broader context and environment that these agreements were a part of:

> As stated in its Application, Idaho Power clearly understands its obligation under federal law, FERC regulations, and this Commission's Orders, that it has not been relieved of, to enter into power purchase agreements with PURPA QFs. As stated in the Joint Petition filing, Idaho Power has received a very large amount, in terms of both number of projects and volume of MWs, of requests from PURPA QF developers in a very short time frame demanding to enter into published avoided cost rate PURPA contracts. The Company diligently and in good faith processed these requests, in the ordinary course of business and on an expedited basis, and filed the same for review with this Commission, as is its legal obligation. The Company executed these contracts in good faith and if those contracts are approved by the Commission, will honor and comply with the requirements therein.
>
> However, the request for review of the Projects' Agreements, as well as several other executed PURPA agreements that were filed subsequent to the November 5, 2010, Joint Petition in Case No. GNR-E-10-04, were made with the specific reservation of rights and incorporation of the averments set forth in that Joint Petition regarding the possible negative effects to the both the utility and its customers of additional and unfettered PURPA QF generation on system reliability, utility operations, the costs of incorporating and integrating such a large penetration level of PURPA QF generation into the utility's system, and, most importantly, the dramatic increase in costs that must be borne by the Company's customers because of the disaggregation of large projects into 10 aMW increments and the inflated avoided cost rates obtained thereby from the use of the Surrogate Avoided Resource methodology.
>
> Even though Idaho Power was legally obligated to continue to negotiate, execute, and submit PURPA QF contracts for Commission review containing published rates for projects at and below 10 aMW, the Company is also obligated to reiterate that the continuing and unchecked requirement for

> the Company to acquire additional intermittent and other QF generation regardless of its need for additional energy or capacity on its system not only circumvents the Integrated Resource Plan ('IRP') planning process and creates system reliability and operational issues, but it also increases the price its customers must pay for their energy needs above the Company's actual avoided costs.

Id. p. 7-9.

The Company specifically asked the Commission to review Petitioner's FESAs in this light, "Idaho Power respectfully reiterates its request for the Commission to review the Projects' contracts as to whether they are in the public interest and issue its Order either accepting or rejecting the same." *Id.* p. 10-11. The Commission gave a very clear answer, "We find that 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 p. 8, Case Nos. IPC-E-10-59, 10-60; Order No. 32254 p. 9, Case Nos. IPC-E-10-51 through 10-55; Order No. 32257 p. 9, Case Nos. IPC-E-10-61, 10-62.

III. CONCLUSION

The individual grounds alleged by Petitioner for reconsideration are moot when, as was done here, the Commission finds that the contract as a whole is not consistent with the public interest. However, should the Commission grant reconsideration, or otherwise desire additional authorities and briefing, Idaho Power is prepared to offer the same, although the Company believes it to be unnecessary.

Petitioner has failed to demonstrate that the Commission's Order No. 32256, or any issue decided in that Order, is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331. The Commission's Order No 32256 is based upon

substantial and competent evidence in the record. The Commission regularly pursued its authority and was acting within its discretion to protect the public interest. Reconsideration should be denied.

DATED at Boise, Idaho, this 6th day of July 2011.

DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of July 2011 I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO PETITION FOR RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

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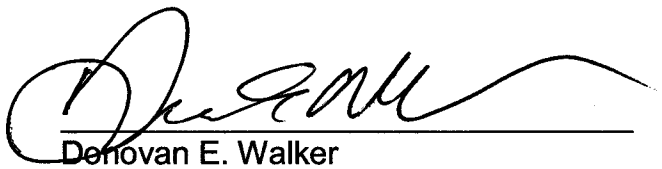

Donovan E. Walker