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UTILITIES COMMISSION

DONOVAN E. WALKER
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April 14, 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-11-01
*IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY
FOR A DETERMINATION REGARDING A FIRM ENERGY SALES
AGREEMENT WITH WESTERN DESERT ENERGY, LLC FOR THE SALE
AND PURCHASE OF ELECTRIC ENERGY*

Dear Ms. Jewell:

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

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-11-01
A DETERMINATION REGARDING A FIRM)	
ENERGY SALES AGREEMENT WITH)	IDAHO POWER COMPANY'S
WESTERN DESERT ENERGY, LLC FOR)	REPLY COMMENTS
THE SALE AND PURCHASE OF ELECTRIC)	
ENERGY.)	
)	
)	
)	

Idaho Power Company ("Idaho Power"), in response to Order No. 32203, the Comments of the Idaho Public Utilities Commission ("Commission") Staff, and the Comments of Western Desert Energy, LLC ("Western Desert" or "Project") hereby submits the following Reply Comments:

I. INTRODUCTION

On February 2, 2011, Idaho Power filed with the Commission an Application for a determination regarding the Firm Energy Sales Agreement ("Agreement") between Idaho Power and Western Desert. On March 10, 2011, the Commission issued Notice

of that Application and Notice of Modified Procedure, Order No. 32203, setting forth a comment deadline of April 7, 2011, and a reply comment deadline of March 14, 2011.

Commission Staff filed Comments on April 7, 2011, recommending that the Commission not approve the Agreement between Idaho Power and the Project because Staff does not consider the Agreement to be effective prior to the December 14, 2011, effective date of the Commission's Order No. 32176, which lowered the published avoided cost rate eligibility cap for wind and solar Qualifying Facilities ("QF") from 10 average megawatts ("aMW") to 100 kilowatts ("kW"). On April 7, 2011, the Project submitted comments advocating approval of the Agreements.

In these Reply Comments, Idaho Power submits factual information regarding the Company's processes for receiving requests, negotiating, and executing power purchase agreements pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"), factual information regarding the processing of the Project's PURPA power purchase agreement, and contextual information regarding the review of the Project's power purchase agreement by the Commission.

II. SUMMARY OF IDAHO POWER'S PROCESSES FOR PURPA AGREEMENTS

A. Initial Project Inquiries.

Idaho Power continuously receives numerous inquiries from various potential generation projects. Upon this initial contact, typically, a general discussion is had with each of the potential projects to explain the Power Purchase Agreement ("PPA") and Generation Interconnection Agreement ("GIA") process, which are two separate and required processes that must be completed in order to sell generation to Idaho Power.

The potential project is advised that to begin the official process of either the PPA or the GIA, that written documents and information will be required from the project.

In the case of the GIA process, a completed Generation Interconnection Application is required. In the case of a PURPA PPA, a document specifying information such as the location, contracting party, resource type, estimated nameplate rating, general description of the project, estimated on-line date, and other pertinent information is required so that a draft PPA may be created.

B. Generator Interconnection and Transmission Availability.

Any generator desiring to connect to Idaho Power's system must arrange for appropriate interconnection and transmission services. The GIA process is conducted by Idaho Power's Delivery business unit. Federal Energy Regulatory Commission ("FERC") regulations require Idaho Power to maintain separations between certain Idaho Power business units, in this case between Delivery, or the Company's Transmission Provider function, and Power Supply, or the Company's Merchant function. The first step in the interconnection process is the submission of a Generator Interconnection Application. Submittal by the project and acceptance of this application as complete establishes the proposed project's position in the interconnection queue and begins the engineering process of determining the feasibility and costs of interconnecting the proposed project to Idaho Power's electrical system. Additionally, the potential upgrades and/or availability of transmission capacity to move the project's energy from the point of interconnection within Idaho Power's system to Idaho Power's customer loads must also be determined.

After receipt and acceptance of the Generator Interconnection Application from the potential generation project, Idaho Power Delivery works through a process of

inquires and meetings to obtain the required information to perform a Feasibility Study, a System Impact Study, and a Facility Study. The interconnection and transmission process is governed by Idaho Power's Tariff Schedule 72, filed with and approved by the Commission, and provisions of its Open Access Transmission Tariff ("OATT"), filed with and approved by FERC. The potential project is informed of the progress of each step in this process. In addition, the potential project has various decision points and financial deposit requirements throughout this process. Failure by the potential generation project to make these decisions or make the deposit payments in a timely manner can lead to delays or termination of the interconnection process pursuant to Idaho Power's Tariff Schedule 72 and OATT.

C. PURPA Power Purchase Agreements.

Once a potential generation project has submitted written information on its proposed project that demonstrates the project is eligible for a PURPA PPA and wishes to move forward with the development of the proposed project, Idaho Power begins the process of drafting a PPA for the proposed project. Quite often, a proposed project will send in incomplete and/or non-definitive information, which requires inquiries and exchanges between the Company and the project developer in order to obtain the information necessary to prepare a draft agreement. In many cases, the potential projects never provide definitive information and never move forward with PPA discussions.

The schedule for processing a PPA can be affected by multiple factors, including the proposed project's responsiveness to information requests, the proposed project's provision of key decisions at key decision points, and the quantity of proposed projects being processed by the Company. In the case of multiple PPA requests received by the

Company, Idaho Power processes the requests on a “first-come, first-served” basis. This does not mean that multiple projects are not being processed at the same time. Multiple requests and draft contracts are often being processed simultaneously and are in various stages of the contract process.

Once the terms and conditions of a proposed project’s PPA are agreed upon by the parties and in final draft form, an internal Idaho Power Sarbanes Oxley (“SOX”) review is required. This review is required to achieve compliance with the SOX regulatory requirements; it involves a review and approval of the draft agreement by Idaho Power management, accounting, financial reporting (FAS133, Fin 46, etc.), legal, and confirmation of the appropriate Idaho Power executive authorized to execute the agreement. As this review requires the involvement of numerous areas within the Company, an expected completion time of this review is approximately ten business days. Very rarely does this review result in any material changes to the draft PPA. Instead, the review process provides confirmation from all the necessary divisions within the Company that the contract meets each area’s SOX requirements, enabling Idaho Power to execute the PPA.

Upon completion of the internal SOX review, three executable copies of the PPA are prepared and sent to the project for signature and execution. The project is notified that the PURPA agreement must be executed within ten days. In addition, the project is also notified that if any rules or regulations applicable to the agreement are modified or changed prior to both parties executing the agreement, that Idaho Power will be required to modify the agreement accordingly.

Upon return of the three copies of the agreement, signed and executed by the project, Idaho Power then schedules a time with the appropriate Idaho Power executive

to sign and execute the agreement. Generally this is accomplished within one to two business days of when the executed agreement is received back from the project, but is dependent on the limited availability of the required Company executive with the requisite authority to execute contracts containing such large monetary obligations as those contained in the typical 20-year PURPA PPA.

Upon execution of the agreement by both parties, the executed agreement is forwarded to Idaho Power's legal department for preparation of an application and filing of the agreement with the Commission for its review. Generally this application is prepared and submitted within five business days of the date that the agreement is fully executed.

III. WESTERN DESERT'S POWER PURCHASE AGREEMENT PROCESS

Idaho Power records indicate initial contacts between Idaho Power, Power Supply, and the developer of the Project began in late August/September of 2010. Idaho Power records also indicate that initial contact between the Project and Idaho Power, Delivery, began in March of 2010. Currently, the Project is working towards its GIA with Idaho Power Delivery. On March 9, 2010, the Project's interconnection application was received. On March 29, 2010, a Feasibility Study Agreement was offered to the Project. On June 24, 2010, a draft Feasibility Study Report was issued, and on August 9, 2010, a Facility Study Agreement was offered to the Project. The Facility Study is completed, with a draft report issued to the Project on January 24, 2011.

On September 28, 2010, the Project was sent a PPA, an Interconnection and Transmission Process letter, as well as a Transmission Capacity Application Questionnaire, and a draft Network Resource Integration Agreement. On October 12,

2010, the Company sent a follow-up communication to the Project to verify receipt of the documents sent to it on September 28.

On October 22, 2010, the Company received communication from the Project stating that the Project was working through the Transmission Capacity Questionnaire and had some questions. Idaho Power responded to the questions that same day, October 22, 2010. On November 9, 2010, Idaho Power sent a communication to the Project addressing the Project's inquiry to potentially add an additional 3 megawatts ("MW") to its 5 MW project. The Company explained that the total size of the project was needed for the Transmission Capacity Questionnaire, so that the proper request for any available transmission capacity could be made to Idaho Power Delivery, and if it was not included, that a separate request for the additional MW would have to be made. The Transmission Capacity Questionnaire was delivered to Idaho Power by the Project on December 13, 2010. Idaho Power, Power Supply, submitted the Transmission Service Request to Idaho Power Delivery the same day it received the information from the Project, December 13, 2010.

On January 3, 2011, Idaho Power sent the Project a letter notifying it that transmission capacity was available and also sent the Project a draft PPA for review and comment. On January 4, 2011, the Company received the draft PPA back from the Project. On January 6, 2011, the Company initiated its internal review process, including the SOX review. On January 19, 2011, the Company notified the Project that the final execution copy agreement was ready to be picked up or mailed to it for signatures. The Project responded on January 19, 2011, that it would pick up the agreement the following morning. The Project signed the agreement on January 22, 2011. On January 24, 2011, Idaho Power received the signed contract back from the

Project. Idaho Power signed the agreement on January 28, 2011, and filed the same for the Commission's review on February 2, 2011.

IV. IDAHO POWER'S APPLICATION FOR REVIEW OF THE AGREEMENT

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 Project's PURPA contract for review with the Commission specifically seeking the Commission's acceptance or rejection of the Agreement. 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 PPA. 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 is in the public interest.

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 MW, 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 Project's Agreement, 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 Commission-mandated 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.

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”) (“*Sierra-Mobile doctrine*”). 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.*

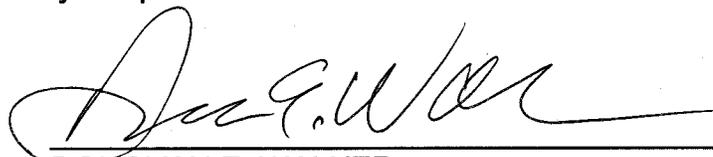
Idaho Power proceeded reasonably and in good faith in the negotiation and eventual signing and execution of the published avoided cost rate 10 aMW PURPA contract with the Project as required by the then current applicable law, rules, and regulations. Idaho Power will continue to meet its legal and regulatory requirements and obligations with regard to the Commission’s implementation of PURPA. However,

as also required by the Commission, Idaho Power has an additional obligation when contracting with QF projects, recently reiterated to it by the Commission: "We intend for the Company to assist the Commission in its gatekeeper role of assuring that utility customers are not being asked to pay more than the Company's avoided cost for QF contracts. We expect Idaho Power to rigorously review such contracts." Order No. 32104.

V. CONCLUSION

While meeting its legal obligations to contract with QF projects pursuant to the Commission's implementation of PURPA, the Company also asks that the Commission review such contracts to assure that they comport with the public interest. The public interest implications raised in the GNR-E-10-04 proceeding are of similar magnitude as those contemplated and required by the *Sierra-Mobile* doctrine and *Agricultural Products* and its progeny, as to invoke and authorize the Commission – in the exercise of its legislative, state police power and authority to protect the public in the contractual rates that it sets and the public utility contracts that it reviews for the purchase of energy from QF projects under PURPA. Idaho Power respectfully reiterates its request for the Commission to review the Project's contract as to whether it is in the public interest and issue its Order either accepting or rejecting the same.

Respectfully submitted this 14th day of April 2011.


DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 14th day of April 2011 I served a true and correct copy of the within and foregoing IDAHO POWER COMPANY'S REPLY COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

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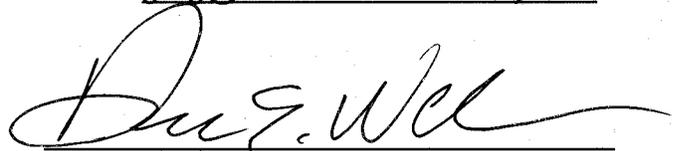
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