

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)
COMPANY'S APPLICATION TO UPDATE) CASE NO. IPC-E-13-22
ITS WIND INTEGRATION RATES AND)
CHARGES.)
) ORDER NO. 33030
)

On November 29, 2013, Idaho Power Company filed an Application with the Commission seeking to update its wind integration rates and charges. The Company's Application includes a 2013 Wind Integration Study Report as well as the supporting testimony of Philip DeVol and Michael J. Youngblood.

A Notice of Application was issued on December 31, 2013, allowing 21 days for intervention. Idaho Winds, LLC; Snake River Alliance; Cold Springs Windfarm, LLC; Desert Meadow Windfarm, LLC; Hammett Hill Windfarm, LLC; Mainline Windfarm, LLC; Ryegrass Windfarm, LLC; Two Ponds Windfarm, LLC; Renewable Northwest Project; America Wind Energy Association; Cassia Windfarm, LLC; Hot Springs Windfarm, LLC; Bennett Creek Windfarm, LLC; Cassia Gulch Wind Park, LLC; Tuana Springs Energy, LLC; High Mesa Energy, LLC; Rockland Wind Farm, LLC; Idaho Wind Partners I, LLC; and Meadow Creek Project Company, LLC, petitioned for, and were granted, intervention. A Notice of Parties was issued on January 31, 2014.

Twelve intervenors¹ (all qualifying facilities, "QFs") represented by the firm of Richardson Adams filed a Motion to Dismiss on January 31, 2014 (hereafter, "Petitioners"). On February 7, 2014, pursuant to Rule of Procedure 256.04, the remaining Intervenors² filed motions in response to the Motion to Dismiss. Idaho Power filed an answer to the Motion to Dismiss and additional motions on February 21, 2014. The Petitioners filed a reply to Idaho Power's answer on February 28, 2014.

¹ Cold Springs Windfarm, LLC; Desert Meadow Windfarm, LLC; Hammett Hill Windfarm, LLC; Mainline Windfarm, LLC; Ryegrass Windfarm, LLC; Two Ponds Windfarm, LLC; Cassia Wind Farm, LLC; Hot Springs Windfarm, LLC; Bennett Creek Windfarm, LLC; Cassia Gulch Wind Park, LLC; Tuana Springs Energy, LLC; and High Mesa Energy, LLC.

² American Wind Energy Association; Idaho Wind Partners I, LLC; Idaho Winds, LLC; Renewable Northwest Project; Rockland Wind Farms, LLC; Snake River Alliance;

By this Order, we deny Petitioners' Motion to Dismiss. Also, we clarify our intent regarding the implementation of the underlying wind integration matters.

THE APPLICATION

Idaho Power reports rapid growth in wind generation over the past several years. Idaho Power maintains that it currently manages a total of 678 megawatts (MW) of wind generation capacity on its system – 577 MW of capacity are provided by Public Utility Regulatory Policies Act (PURPA) projects and an additional 101 MW of wind generation capacity is provided by a non-PURPA project (Elkhorn Valley Wind Farm). Idaho Power states that 505 MW of its total wind generation capacity has been added to the Company's system during 2010, 2011, and 2012.

Idaho Power's Application maintains that, due to the variable and intermittent nature of wind generation, the Company must modify its system operations to successfully integrate wind projects without impacting system reliability. Idaho Power explains that it must provide operating reserves from resources that are capable of increasing or decreasing dispatchable generation on short notice to offset changes in non-dispatchable wind generation. The effect of having to hold operating reserves on dispatchable resources is that the use of those resources is restricted and they cannot be economically dispatched to their fullest capability. Idaho Power states that this results in higher power supply costs that are subsequently passed on to customers.

Idaho Power asserts that its capability to integrate wind generation is nearing its limit. The Company maintains that, even at the current level of wind generation capacity penetration, dispatchable thermal and hydro generators are not always capable of providing the balancing reserves necessary to integrate wind generation. Idaho Power states that this situation is expected to worsen as wind penetration levels increase, particularly during periods of low customer demand.

The Company states that it considers the cost of integrating wind generation in its integrated resource planning when evaluating the costs of utility and third-party generation resources. Idaho Power maintains that the costs associated with wind integration are specific and unique for each individual electrical system based on the amount of wind being integrated and the other types of resources that are used to provide the necessary operating reserves. The Company explains that, in general terms, the cost of integrating wind generation increases as the amount of nameplate wind generation on the electrical system increases. Idaho Power asserts

that a failure to calculate and properly allocate wind integration costs to wind generators when calculating avoided cost rates impermissibly pushes those costs onto customers.

The Company discusses three separate methods by which wind integration costs could be accounted for in avoided cost rates.

- 1) Maintaining current allocation;
- 2) Current allocation with an integration tariff; and
- 3) Equitable allocation of costs.

The Company proposes two overall changes, which have been incorporated into each of the three methods offered above, to address the collection of wind integration costs. Change one abandons the use of percentage of avoided cost rate allocation and instead allocates a fixed amount based upon penetration level. Change two decouples the wind integration charge from the avoided cost rate contained in the power sales agreement and instead has wind integration costs assessed as a stand-alone tariff charge.

Idaho Power asserts that the costs associated with wind integration are currently under-collected. The costs are assessed on a percentage basis of various avoided cost rates, which results in an inequitable contribution of the various wind QFs to the cost of integrating wind on the system.

The Company states that the use of the percentage of avoided cost rates really has no relation to actual costs of the additional reserves necessary to integrate variable and intermittent resources on the system. Idaho Power further maintains that setting the amount of wind integration charge for the entire duration of the power sales agreement assures further under-collection of integration costs as those costs rise. The under-collection from existing wind QFs results in an additional allocation to new wind QFs.

PROCEDURAL BACKGROUND

A. Petitioners' Motion to Dismiss

Petitioners filed a Motion to Dismiss on January 31, 2014. Petitioners claim that Idaho Power's Application to update its wind integration rates and charges illegally requests "that the Commission modify the rates and terms in existing contractual legally enforceable obligations of qualifying facilities (QFs) without the consent of the QFs." Motion at 2. Petitioners assert that unilateral modification of existing contracts is a violation of PURPA and "the entire administrative process of entertaining Idaho Power's Application" is preempted by

federal law. Consequently, Petitioners ask that the Commission dismiss the Application in its entirety. Alternatively, Petitioners request that the Commission “dismiss and strike from the record the portions of Idaho Power’s Application and testimony that recommend that the Commission alter the rates and terms in existing contractual legally enforceable obligations.” *Id.*

B. Intervenors’ Filings in Response to Motion

AWEA and RNP

American Wind Energy Association (AWEA) and Renewable Northwest Project (RNP) support the Motion to Dismiss and request that the Commission direct Staff to schedule a series of workshops for interested parties to confer with Idaho Power on its wind integration rates and charges prior to the Company submitting a revised application. AWEA and RNP argue that “it is not in the public interest to dismiss and strike from the record only those portions of the Application and testimony identified by Movants as applying to existing contractual legally enforceable obligations.” Comments at 3. The Intervenors assert that dismissing the entire Application “would send a strong signal regarding the sanctity of contracts and the importance of fostering a business climate that is conducive to new investments while also respecting existing investments.” *Id.* at 4.

The Intervenors agree with Petitioners that Method 3 within Idaho Power’s Application is a violation of law. However, the Intervenors go on to maintain that Methods 1 and 2 are also inconsistent with PURPA because they would impose revenue shortfalls related to existing QFs on future wind QFs. *Id.* at 6.

Snake River Alliance

“The Alliance does not question that the current wind integration rates and charges need to be reexamined in light of, among other things, the increased volume of wind on Idaho Power’s system. However, we support the Movant’s proposed dismissal of the immediate case to allow parties to explore other options toward resolution – or at least to determine whether the number of disputed issues can be reduced.” Comments at 2. SRA requests that, should the case proceed, the Commission consider the benefits of a series of workshops “to enable parties in this case to gain a better understanding of their respective positions.” *Id.* at 3. SRA also asks that the Commission schedule a technical hearing in order for the parties to adequately address all of the issues.

Idaho Winds

Idaho Winds agrees with Petitioners that, “to the extent the Company’s Application seeks to modify terms, rates, and prices contained in an existing Firm Energy Sales Agreement . . . the Company’s Application is unsupportable as a matter of law and should be dismissed.” Motion at 2. Idaho Winds argues that this Commission, in Order No. 30488, has stated that an integration charge will be calculated at the time the wind QF achieves operation and “remain fixed throughout the term of the contract.” See IPC-E-07-03. Consequently, Idaho Winds maintains that the Company’s Application should be dismissed because the wind integration charges in existing contracts are not subject to modification.

Meadow Creek/Rockland/Idaho Wind Partners

Meadow Creek, Rockland and Idaho Wind Partners join in Petitioners’ Motion to Dismiss as it applies to existing PPAs. To the extent that Idaho Power’s proposed Methods 1 and 2 might apply to existing contracts, these Intervenors request that the Commission clarify that adoption of either method would only apply to new contracts. Intervenors argue that modification of existing contracts “would be contrary to the terms of existing FESAs, previous Commission orders, and PURPA and its implementing regulations.” Response at 4. Intervenors also reason that “limiting the scope of any action requested in the Application to new contracts will permit the Application to proceed while avoiding the burden and expense imposed on existing contract holders associated with this case.” *Id.* at 2.

C. Idaho Power’s Answer

Idaho Power requests that the Commission deny Petitioners’ Motion to Dismiss. Idaho Power also opposes workshops that would only delay the Commission’s consideration of the Company’s Application. Idaho Power argues that “whether or not the Commission has authority to modify the existing contractual obligations of a utility that it regulates does not preclude the Commission’s consideration of updated wind integration costs and a just and reasonable allocation of those costs that is consistent with the public interest of the people of the State of Idaho.” Answer at 10. The Company further maintains that “factual information of the costs caused by all megawatts of wind that exist on Idaho Power’s system, whether that be from existing, new, or future development, is relevant information that would be inappropriate to exclude from the Commission’s consideration and examination of wind integration costs.” *Id.*

Idaho Power states that Petitioner's argument and basis for its request for dismissal is inappropriate and inapplicable.

D. Petitioners' Reply to Idaho Power's Answer

Petitioners filed a reply to Idaho Power's answer on February 28, 2014, asserting that PURPA bars Idaho Power's attempt to change the terms of existing contracts. Petitioners maintain that Commission re-examination of existing contracts would amount to utility-type regulation that is prohibited by PURPA. Additionally, Petitioners point to the Commission's recent decision granting Idaho Power's Motion to Dismiss against J.R. Simplot in relation to acquisition of Company distribution facilities, wherein the Commission reasoned that "a valuation of the property by the Commission is meaningless if the Company is unwilling to sell at anything less than its stated price." Order No. 32970. Because the Commission cannot modify existing PPAs, "engaging in a valuation of the wind integration charge which Idaho Power proposes to apply to Movants' FESAs would be a meaningless waste of resources." Reply at 7.

FINDINGS AND CONCLUSIONS

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, 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 thoroughly reviewed the Application, Petitioners' Motion to Dismiss, the corresponding motions by Intervenors, Idaho Power's answer and Petitioners' reply. The procedural posture of this case is straightforward: Idaho Power filed an Application with the Commission asking the Commission to modify the Company's wind integration rates and charges. Idaho Power provided several alternatives for the Commission to consider. In its Notice of Application, the Commission directed Staff, following the issuance of a Notice of Parties, to "convene an informal prehearing conference for the purpose of discussing a schedule to process this case, the service of discovery, and other issues raised by the parties." Order No.

32961 at 4. Before the parties had an opportunity to meet to discuss the particulars of the case, Petitioners filed their Motion to Dismiss with the Commission.

While the Commission understands the concerns raised by the Petitioners and other Intervenors, the basis for Petitioners' arguments in support of their Motion to Dismiss is misplaced. The bulk of Petitioners' arguments rely on the principles of preemption. "Under the Supremacy Clause of the United States Constitution, a federal agency acting within the scope of its congressionally delegated authority has the power to preempt state regulation and render unenforceable state or local laws" which are inconsistent with federal law. *Freehold Cogeneration Asso. v. Bd. of Regulatory Comm'rs of the State of New Jersey*, 33 F.3d 1178, 1190 (3rd Cir. 1995).

Federal preemption has sometimes been explained as two distinct categories. In one kind, sometimes called 'occupy the field' preemption, the federal role is so pervasive that no room is left for the states to supplement it. In the other, sometimes called 'conflict' preemption, state law is preempted to the extent that compliance with both laws is physically impossible, or state law would be an obstacle to the accomplishment of the full purposes and objectives of Congress.

Sayles Hydro Asso. v. Maughan, 140 P.U.R.4th 461, 465, 985 F.2d 451, 456 (9th Cir. 1993). The cases cited by Petitioners involve disputes in which the regulator had already taken action that immediately affected contractual rights. In the present case, this Commission has done nothing more than provide notice of the pending Application and allow interested parties the right to participate. Moreover, the Petitioners have not provided evidence that the Commission has threatened or is likely to take action that would affect their contract rights. *See North American Natural Resources v. Strand*, 252 F.3d 808, 814 (2001). A Commission proceeding commenced to consider a request by a utility to update its wind integration rates and charges does not conflict with federal statutes. See Reply in Support of Motion to Dismiss at 4. Based on the foregoing, we find that preemption principles do not apply to prohibit the Commission from considering the Application of Idaho Power.

Petitioners and Intervenors also generally argue that any modification of their existing contracts is prohibited by federal and state law, Commission precedent and the terms of the contracts themselves. Whether and to what extent modification of wind integration charges should apply to new and/or existing contracts is the basis for the underlying case. Therefore, it

would be inappropriate for us to make a determination in this regard without the benefit of a fully developed record.

While we decline to make a premature substantive finding on whether it is legally permissible to modify existing contracts, we find that it is fair, just and reasonable to only apply changes prospectively. Therefore, we clarify that any Commission approved modifications to Idaho Power's wind integration rates and charges will only apply prospectively – to new contracts as they are entered into by the parties and submitted to the Commission for approval. This clarification should alleviate the concerns of many intervenors to this case.

In the event that one or more intervenors petitioned for intervention in order to protect the rights of existing contracts, and in consideration of the clarification provided herein, we find it appropriate to allow the parties of record an opportunity to withdraw as intervenors. The parties shall have fourteen (14) days from the service date of this Order to withdraw as intervenors if they believe that they no longer have a direct and substantial interest in the underlying proceeding. After the deadline for withdrawal has passed, we direct the Commission Secretary to issue an amended Notice of Parties and direct Staff to convene without delay an informal conference with the remaining parties to discuss and propose an expeditious process to consider this application.

ORDER

IT IS HEREBY ORDERED that Petitioners' Motion to Dismiss is denied.

IT IS FURTHER ORDERED that Intervenors' Motions to partially and/or fully dismiss this matter are denied.


IT IS FURTHER ORDERED that the outcome of the underlying proceeding in Case No. IPC-E-13-22 only be applied prospectively – to new contracts as they are entered into by the parties and submitted to the Commission for approval.

IT IS FURTHER ORDERED that the parties be provided fourteen (14) days from the service date of this Order to withdraw from Case No. IPC-E-13-22 if they find that they no longer have a direct or substantial interest in the proceeding.

IT IS FURTHER ORDERED that the Commission Secretary issue a Notice of Parties after the deadline for withdrawal has passed.

IT IS FURTHER ORDERED that, following the issuance of the amended Notice of Parties, Staff convene an informal prehearing conference with the remaining parties to discuss the processing of this case.

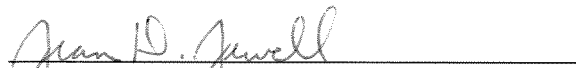
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 29th day of April 2014.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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