

Eric L. Olsen #4811  
Echo Hawk & Olsen, PLLC  
505 Pershing, Suite 100  
P.O. Box 6119  
Pocatello, Idaho 83205-6119  
Telephone: (208) 478-1624  
Facsimile: (208) 478-1670  
[elo@echohawk.com](mailto:elo@echohawk.com)

RECEIVED  
2015 AUG 14 AM 10:48  
IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Idaho Irrigation Pumpers Association, Inc.

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF IDAHO POWER )  
COMPANY'S PETITION TO DETERMINE ) CASE NO. IPC-E-15-18  
PURPA CONTRACT ELIGIBILITY FOR )  
TEN DISAGGREGATED 100 KW SOLAR )  
PROJECTS )

**COMMENTS OF THE IDAHO IRRIGATION  
PUMPERS ASSOCIATION, INC.**

COMES NOW the Idaho Irrigation Pumpers Association, Inc., by and through counsel, Eric L. Olsen of Echo Hawk & Olsen, PLLC, and hereby respectfully makes a written comment in support of Idaho Power Company's Petition for an order determining that the ten 100 kilowatt ("kW") projects, proposed by Site Based Energy as WRCE 1 through WRCE 10, be subject to the Commission's interim relief approving maximum contract terms of five years as directed in Order Nos. 33222 and 33253, and that such projects should also be subject to the Commission's ultimate determination regarding maximum contract term in Case No. IPC-E-15-01.

**BACKGROUND**

The Public Utility Regulatory Policies Act ("PURPA") was passed as part of the National Energy Act of 1978. PURPA requires electric utilities to purchase electric energy from qualifying facilities ("QF") at rates approved by the state regulatory agency, which in this state is the Idaho Public Utilities Commission ("Commission"). 16 U.S.C. § 824a-3; *Idaho Power v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013). PURPA and its implementing

regulations require that 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). The purchase or “avoided cost” rate is not to exceed the “incremental cost” to the utility, defined as the cost of energy which, “but for the purchase from [the QF], such utility would generate or purchase from another source.” 16 U.S.C. § 824a-3(d); 18 C.F.R. § 292.101(6) defining “avoided cost”).

The Commission has established two methods for calculating avoided cost depending on the size of the QF project: (1) the surrogate avoided resource (SAR) methodology (used to calculate “published rates”), and (2) the Integrated Resource Plan (IRP) methodology. The SAR methodology is applied to solar QFs with a design capacity of up to 100 kW. The IRP methodology applies to any QF with a design capacity above the eligibility cap for published rates. 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. Order No. 33262.

The Federal Energy Regulatory Commission prescribes rules for PURPA’s implementation, but the Idaho Public Utilities Commission has discretion in determining how the rules will be implemented. 16 U.S.C. § 824a-3, *Idaho Power Company v. Idaho PUC*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013). PURPA, and the regulations implementing it, are silent as to contract length; consequently, the issue is in the Commission’s discretion. *Afton Energy v. Idaho Power*, 107 Idaho 781, 785-86, 693 P.2d 427, 431-32 (1984); *Idaho Power v. Idaho Public Utilities Commission*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013).

The issue of disaggregation has previously been before the Commission. In Case No. GNR-E-10-04, 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, including disaggregation of projects, to qualify for published rates.

The Commission opened GNR-E-11-01 to investigate the disaggregation issue, and all parties of record from Case No. GNR-E-10-04 were automatically added as parties in the 2011 case. Order No. 32262 at 3. The Commission was concerned that QF projects were disaggregating into smaller projects in order to meet eligibility requirements for published avoided cost rates that may not be just and reasonable to the utility customers or in the public interest. Order No. 32262.

The Commission solicited information and investigation of a published avoided cost rate eligibility cap structure that prevents wind and solar QFs from disaggregating into smaller projects in order to obtain published avoided cost rates that exceed a utility's actual avoided cost. Order No. 32262. Testimony was received by several witnesses, including Rick Sterling, the Commission's Engineering Supervisor<sup>1</sup> and Bruce W. Griswold, Rocky Mountain Power's Director of Short-term Origination and QF Contracts.<sup>2</sup>

The purpose of Mr. Sterling's testimony was to present criteria to distinguish a single QF for purposes of determining eligibility for published avoided cost rates. Sterling Testimony at 2. He proposed that the Commission identify a set of criteria to be considered in determining whether a proposed project represents a "Single Project." *Id.* at 6. Under his recommendation, the utility makes an initial determination and the Commission is only required to make a determination in instances where there is uncertainty or disagreement between the project developer and the utility. *Id.*

---

<sup>1</sup> Case No. GNR-E-11-01 Direct Testimony of Rick Sterling, Idaho Public Utilities Commission, March 25, 2011 ("Sterling Testimony").

<sup>2</sup> Case No. GNR-E-11-01 Rebuttal Testimony of Bruce W. Griswold, Rocky Mountain Power, April 22, 2011 ("Griswold Testimony").

Mr. Sterling's Single Project Criteria suggests that the Commission consider all relevant factors in determining whether a project with multiple generation sources qualifies as a Single Project, and allows the Commission the discretion to call a project a Single Project on the basis of "knowing it when you see it." However, relevant factors include, but are not limited to whether each generation source within the project:

- a. uses the same motive force or fuel source;
- b. is owned or controlled by the same person(s) or affiliated person(s);
- c. is placed in service within 12 months of an affiliated Project's commercial operation dates as specified in the power sales agreement;
- d. shares a common point of interconnection or interconnection facilities;
- e. shares common control, communications, and operation facilities;
- f. shares a common transmission interconnection agreement;
- g. has a power sales agreement executed within 12 months of a similar facility in the same general vicinity;
- h. is operated and maintained by the same entity;
- i. is constructed by the same entity within 12 months;
- j. uses common debt or equity financing;
- k. is subject to a revenue sharing agreement;
- l. obtains local, state and federal land use permits under a single application or as a single entity;
- m. shares engineering and/or procurement contracts;
- n. shares common land leases; or

o. is in close proximity to other similar facilities.<sup>3</sup>

Mr. Griswold submitted testimony, and then after reviewing the other witnesses' testimony concerning the disaggregation proposals submitted rebuttal testimony. Griswold Testimony at 1. Mr. Griswold's rebuttal testimony included looking at such factors as whether the generating project:

- a. is located within five miles of any generator comprising the applicant's project;
- b. is constructed within the same 24-month period as the applicant project; and
- c. exhibits characteristics of being developed in common with the applicant's project,

including, but not limited to:

- 1. ownership by the same or affiliated entities,
- 2. an umbrella sales arrangement,
- 3. shared interconnection point, facilities and/or interconnection agreement,
- 4. shared transmission agreements,
- 5. common control, communication or operations facilities,
- 6. permitted as a single application or entity,
- 7. shared land leases,
- 8. shared engineering or procurement contracts,
- 9. revenue sharing arrangements, and
- 10. common debt or equity financing.<sup>4</sup>

After concluding its investigation, the Commission issued specific findings. It found that "wind and solar are intermittent energy resources with unique characteristics." Order No. 32697 at 13. Wind and solar projects can be broken up in order to obtain multiple published rate

---

<sup>3</sup> *Id.* at Exhibit No. 301.

<sup>4</sup> *Id.* at Exhibit No. 205.

contracts. When a wind or solar project is disaggregated, “the SAR Methodology no longer produces a rate that accurately reflects the value of the energy to the utility.” *Id.* Therefore, to prevent projects from disaggregating in order to obtain published avoided rates, the Commission found that the eligibility cap for published avoided cost rate contracts for wind and solar projects shall be set at 100 kW or less. *Id.*

The Commission determined that a 100 kW eligibility cap for published avoided cost rates for wind and solar QFs was appropriate, and that any attempt to implement criteria in an effort to prevent disaggregation would be met by attempts to circumvent such criteria. Order No. 32262. The Commission emphasized that PURPA and published rate structures were never intended to promote large scale wind and solar development to the detriment of utility customers. *Id.*

Now, once again, QFs, such as those proposed by Site Based Energy, are attempting to circumvent the cap imposed by this Commission in a disaggregation scheme in order to obtain more favorable published rates to the detriment of utility customers.

#### **RECOMMENDATION**

The Commission should determine that Site Based Energy’s disaggregation of a project into ten 100 kW projects is a wrongful attempt to sidestep the Commission’s previous Orders. The Commission should grant Idaho Power Company’s Petition and issue an order finding that the ten 100 kW projects identified as WRCE 1 through 10 proposed by Site Based Energy should be subject to the Commission’s interim relief approving maximum contract terms of five years as directed in Order Nos. 33222 and 33253, and such projects should be subject to the Commission’s ultimate determination regarding maximum contract term in Case No. IPC-E-15-01.

## STATEMENT OF REASONS IN SUPPORT

There are several reasons for this recommendation:

(A) PURPA and its regulations use a one mile radius test to determine whether a facility meets the 80 megawatt size restriction of a qualifying small power production facility, and thereby restricts any attempts to disaggregate facilities. 18 CFR § 292.204(a)(1)-(2) (The power production capacity of a facility for which qualification is sought, together with the power production capacity of any other small power production facilities within one mile may not exceed 80 megawatts). Site Based Energy's WRCE 1 through 10 use the same solar energy and are located within one mile of each other.

(B) The Commission has already shown its disapproval in disaggregation tactics. Order Nos. 32697; 32262.

(C) Allowing Site Based Energy to disaggregate in order to obtain a rate that is not an accurate reflection of the utility's avoided cost for the purchase of the QF generation would be erroneous and illegal. *Rosebud Enterprises, Inc. v. Idaho Public Utilities Commission*, 128 Idaho 609, 623, 917 P.2d 766, 780 (1995).

(D) The testimony received in prior cases on criteria for a "single project" from Mr. Sterling and Mr. Griswold show that this is a "single project." Specifically the projects appear to be owned or controlled by the same or an affiliated person—Site Based Energy; all of the projects identify the same anticipated commencement date of energy deliveries to Idaho Power as March 31, 2016; and the projects are located within a close proximity that does not exceed five miles. This is a classic "knowing it when you see it" case of disaggregation.

DATED this 13<sup>th</sup> day of August, 2015.

ECHO HAWK & OLSEN, PLLC

By:   
ERIC L. OLSEN Attorney for  
Idaho Irrigation Pumpers Association, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of August, 2015, I caused to be served a true, correct, and complete copy of the foregoing document by the method indicated below, and addressed to the following:

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
P.O. Box 83720  
472 W. Washington Street  
Boise, ID 83720-0074  
Email: [jjewell@puc.state.id.us](mailto:jjewell@puc.state.id.us)

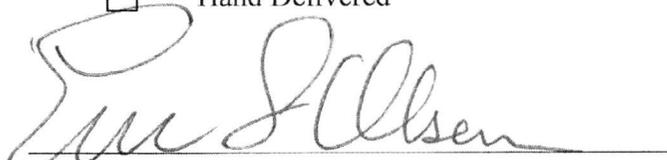
- U.S. Mail/Postage Paid
- E-Mail
- Telecopy (Fax)
- Overnight Mail
- Hand Delivered

Donovan E. Walker  
Idaho Power Company  
1221 W. Idaho St.  
P.O. Box 70  
Boise, ID 83707-0070  
Email: [dwalker@idahopower.com](mailto:dwalker@idahopower.com)

- U.S. Mail/Postage Paid
- E-Mail
- Telecopy (Fax)
- Overnight Mail
- Hand Delivered

John Reuter  
Site Based Energy  
21 Comet Lane  
P.O. Box 3432  
Hailey, ID 83333  
Email: [John@sitebasedenergy.com](mailto:John@sitebasedenergy.com)

- U.S. Mail/Postage Paid
- E-Mail
- Telecopy (Fax)
- Overnight Mail
- Hand Delivered

  
ERIC L. OLSEN

H:\WDOX\CLIENTS\1343\0001\00058838.DOC