

FEB 10 1989

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF BYPASS LIMITED PARTNERSHIP)
FOR AN ORDER APPROVING A FIRM)
ENERGY SALES AGREEMENT WITH)
IDAHO POWER COMPANY.)
_____)

CASE NO. IPC-E-89-2

ORDER NO. 22326

On January 30, 1989, Bypass Limited, a California limited partnership (Bypass), submitted an Application to the Idaho Public Utilities Commission (Commission) for an order approving a Firm Energy Sales Agreement (Agreement) with Idaho Power Company (Idaho Power). Bypass is the developer of a 9.9 megawatt hydroelectric project (Hazelton "A") located in the Northeast Quarter of Section 2, Township 10 South, Range 10 East, Boise Meridian, Jerome County, Idaho. The project is a qualified small power production facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. §824-A-3.

The Commission finds that the Agreement, as signed and submitted by the parties, contains avoided cost rates in conformity with applicable Commission Orders. The terms of the contract are reasonable and we approve them. We also approve payments made under this agreement as prudently incurred expenses for ratemaking purposes.

The Commission reminds the parties that jurisdiction may not be conferred on the Commission by contractual stipulation. The authority and jurisdiction of the Commission is restricted to that expressly and by necessary implication conferred upon it by enabling statutes. The nature and extent of Commission jurisdiction to resolve actual disputes will be determined by the Commission on an individual case by case basis. (Reference: Agreement, ¶21.1, Disputes; ¶6.5.2 Capacity Exceeding 10 mw.)

The Commission acknowledges that the proposed utility treatment of Qualifying Facility (QF) contributions as nontaxable is seemingly in accord with the "safe harbor" exemption for QF property transfers to public utilities. (Reference: Agreement, ¶26, Taxes; IRS Notice 88-129.) The Company is nevertheless directed to segregate or isolate in a separate account all monies expended in defending its position before the IRS. All associated costs should be charged to the QF.

CONCLUSIONS OF LAW

I

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the *Idaho Code* and the Public Utility Regulatory Policies Act of 1978.

II

The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act of 1978 (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 to purchase energy from small power producers and to implement FERC rules. PURPA, §§210, 210A, 210F; 16 U.S.C.A. §§824-A-3, 824-A-3(a)(f); *Afton Energy, Inc. v. Idaho Power Company*, 107 Idaho 781, 693 P.2d 427.

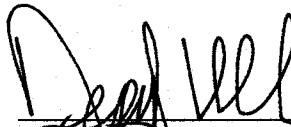
O R D E R

In consideration of the foregoing and as so qualified, IT IS HEREBY ORDERED that the Firm Energy Sales Agreement between Idaho Power Company and Bypass Limited submitted in this proceeding be and the same is hereby approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one

(21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho,
this 9th day of February, 1989.



DEAN J. MILLER, PRESIDENT



PERRY SWISHER, COMMISSIONER



RALPH NELSON, COMMISSIONER

ATTEST:



MYRNA J. WALTERS, SECRETARY

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