

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<b>IN THE MATTER OF THE APPLICATION OF BYPASS LIMITED PARTNERSHIP FOR AN ORDER APPROVING A FIRM ENERGY SALES AGREEMENT WITH IDAHO POWER COMPANY</b>	) ) ) ) ) ) )	<b>CASE NO. IPC-E-89-2</b>      <b>ORDER NO. 32037</b>
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### Term Extension Letter Agreement

On June 21, 2010, the Commission was informed by Idaho Power that it had by Letter Agreement dated June 11, 2010, agreed to extend the termination date of the Hazelton A Firm Energy Sales Agreement from June 20, 2010 to December 31, 2010, in order to provide the parties time to negotiate a new Power Purchase Agreement. See Attachment A. Hazelton A is a 9.9 MW hydroelectric project located in Jerome County, Idaho. Hazelton A is a qualifying small power production facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA). The original Agreement was approved by the Commission on February 9, 1989, in Order No. 22326. The Agreement has a term of 20 years from the Operation Date of June 20, 1989. There are no provisions in the Agreement for extension.

Idaho Power states that in early June 2010 it notified the Hazelton A project of the pending contract expiration. At that time, the project expressed the desire to continue to sell energy to Idaho Power under terms and conditions of the existing Agreement until December 31, 2010, with the intention of executing a new agreement with Idaho Power prior to December 31, 2010.

Idaho Power states that the project is current on all requirements of the Agreement and that the energy prices within the existing Agreement are more favorable than a new PURPA agreement. The Company believes that it is reasonable to extend the term of the Agreement under its existing terms and conditions. The energy prices in the existing Agreement are levelized and are as follows:

Season 1	3.489 cents per kWh
Season 2	5.603 cents per kWh
Season 3	4.669 cents per kWh

## Staff Analysis

Commission Staff has two primary concerns with the parties' Letter Agreement to extend the termination date. First, the contract parties did not appear to even begin discussions about the expiring Agreement until early June. The original termination date was June 20, 2010. The Letter Agreement to extend the original contract was not signed until June 11, and the Commission did not receive notification of the Letter Agreement until June 21, the day following the original contract termination date. Both parties, Staff believes, share responsibility for managing the Agreement and clearly should have acted sooner to execute a new contract. Staff contends the Commission should not be asked to approve contract extensions after the original agreements have expired.

Staff discusses several options for how this expired contract could be handled. Extending the contract for an additional six months is one option, and is the preference of the contract parties. A second option is to simply allow the Agreement to expire, and for Idaho Power not to purchase any more energy from Hazelton A until a new contract is in place. This option is not likely attractive to either party because it would deny Idaho Power energy at a reasonable price and cause Hazelton A to lose all revenue from a project that is otherwise capable of operating.

A third option is to allow the original Agreement to expire, but to require additional energy purchases to be made by Idaho Power under its Schedule 86 non-firm tariff until a new purchase contract is in place. Under Schedule 86, Idaho Power purchases energy from PURPA generators on a month-to-month basis at rates equal to 85 percent of the monthly Avoided Energy Cost.<sup>1</sup> Obviously, Mid-C prices, Staff notes, vary on a daily and monthly basis and cannot be known with certainty in advance. Nevertheless, forward market prices, Staff states, are available from brokers and are a reasonable approximation of what spot market prices are likely to be in the coming months.

Staff made a comparison between the existing rates in the Agreement and the most recent three-month average of 85 percent of Mid-C market prices for deliveries of power in July – December 2010. The comparison shows that the existing contract rates exceed the Mid-C prices in every month. On average, over the next six months, energy payments under the

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<sup>1</sup> Avoided Energy Cost is the weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Electricity Price Index (Dow Jones Mid-C Index) prices for non-firm energy published in the Wall Street Journal.

existing contract rates would exceed estimated Schedule 86 rates by approximately 16.5 percent. Idaho Power (and its ratepayers) would thus appear to be financially better off to allow the existing Agreement to expire and to continue any additional energy purchases from Hazelton A at Schedule 86 rates until a new contract is negotiated. This option, however, Staff contends, might incent Hazelton A to quickly negotiate a new contract prior to year-end under current published rates.

A fourth option is to negotiate a new contract immediately to replace the expired one. Under a new 20-year levelized contract, the energy prices under present published rates would be as follows:

Season 1	5.820 cents per kWh
Season 2	9.502 cents per kWh
Season 3	7.919 cents per kWh

Clearly, these rates are much higher than the rates in the expired contract.

Although Staff states it does not condone extension of expiring agreements as common practice, the fact remains, Staff contends, that Idaho Power and ratepayers will be better off financially by extending the expiring Agreement to December 31, 2010, and locking in rates for that period of time, than if a new replacement contract was signed immediately. Staff recommends that Idaho Power be permitted to extend the existing Agreement (terms, conditions and rates) until December 31, 2010. Continuing the Agreement, Staff contends, will take Hazelton A through the generation (irrigation) season and permit the reasoned consideration of new contract terms and conditions.

### **COMMISSION FINDINGS**

On February 9, 1989, the Commission approved a Firm Energy Sales Agreement for the Hazelton A hydroelectric project in Jerome County. Order No. 22326. By its terms the contract expired June 20, 2010.

On June 21, 2010, Idaho Power submitted a Letter Agreement whereby the Hazelton A contract parties propose to extend the Agreement (terms, conditions, and rates) to December 31, 2010. It is the parties' stated intention to negotiate a new contract.

After reviewing the underlying Agreement, the contract rates, the currently effective published rates and the Company's non-firm tariff Schedule 86 rates, Staff concludes that the Company and its customers will benefit by a lock-in of the contract rates to the end of year 2010.

The Commission has reviewed the filings of record, has considered Staff's analysis and concurs in its conclusion. We find it reasonable to approve an extension of the Hazelton A contract termination date approved in Order No. 22326 to December 31, 2010.

We note that we have previously apprised Idaho Power of its obligation to monitor and administer its PURPA contracts for QF performance. The Commission expects as part of its monitoring, that a purchasing utility initiate discussions with the QF regarding the contract termination date sufficiently in advance of the impending termination to allow for the negotiation of a replacement contract if that is the parties' intent. It is certainly unacceptable practice, as in this case, to file with the Commission for a requested rate extension after the date of contract termination. We expect the Company hereafter to conform its contract administration practice so as to enable sufficient time for regulatory processing of the Company's application.

### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power, 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.

### **ORDER**

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby approve an extension of the termination date of the Hazelton A Firm Energy Sales Agreement from June 20, 2010 to December 31, 2010. Reference February 9, 1989, Order No. 22326.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of 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.

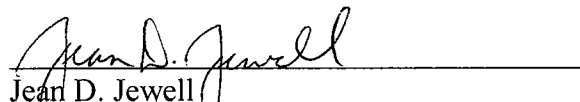
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27<sup>th</sup>  
day of July 2010.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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June 17, 2010

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IDAHO PUBLIC  
UTILITIES COMMISSION

**Randy C. Allphin**  
Senior Energy Contract Coordinator  
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Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074

RE: Hazelton A, Project Number 31715128

Dear Ms. Jewell:

Attached is a copy of a signed letter extending the termination date of the Hazelton A Firm Energy Sales Agreement dated January 18, 1989 (Agreement) to December 31, 2010. A copy has also been provided to Rick Sterling and Scott Woodbury. Please file this copy with the original Agreement.

This Agreement was approved in Commission Order 22326 on February 9, 1989. The Agreement has a Term of 20 years from the Operation Date of June 20, 1990. The current energy prices within the Agreement are:

Season 1	3.489 cents per kWh
Season 2	5.603 cents per kWh
Season 3	4.669 cents per kWh

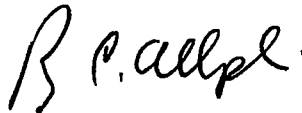
The attached letter agreement provides that the current Agreement be extended, including these energy prices until December 31, 2010.

In early June 2010, Idaho Power notified the project of the pending contract termination. At that time the project expressed the desire to continue to sell energy to Idaho Power under the existing agreement until December 31, 2010, with the intention of executing a new agreement with Idaho Power for energy sales prior to December 31, 2010.

The project is current on all requirements within the Agreement and the energy prices within the existing agreement are more favorable then a new PURPA agreement. Idaho Power agreed it was reasonable to extend the term of the Agreement. In this letter agreement Idaho Power advises the project that a copy of this letter will be filed with the Commission and if the Commission requires additional information or processes, the project will be notified of these requirements.

Please contact me if you have any questions or if you require any additional information.

Sincerely,



Randy C Allphin  
Idaho Power Company

RCA/cs  
Attachment

cc: Rick Sterling (IPUC)  
Scott Woodbury (IPUC)  
Donavan Walker (IPC)



June 11, 2010

**Randy C. Allphin**  
Senior Energy Contract Coordinator  
Tel: (208) 388-2614  
[rallphin@idahopower.com](mailto:rallphin@idahopower.com)

SE Hazelton A, L.P.  
C/O Enel North America Attn: Victor A Engel  
One Tech Drive, Suite 220  
Andover, MA 01810

Re: Hazelton A, Project Number: 31715128  
Firm Energy Sales Agreement - Term Extension Letter Agreement

The Firm Energy Sales Agreement (Agreement) for the above-referenced project dated January 18, 1988, is due to expire on June 20, 2010. Idaho Power and Enel North America have discussed and agree to extend the term of the existing Agreement to December 31, 2010 with no changes to the existing terms and conditions.

If you concur with extending the contract term as described above, please sign this letter in the designated space below and return to Idaho Power Company. Upon receipt of this signed document, I will file a copy with the Idaho Public Utilities Commission (IPUC), return a copy to you for your records and retain a copy for Idaho Power records.

In filing the copy with the IPUC I will include a cover letter advising them of our agreement to extend and ask that if they require any additional information or processes to notify Idaho Power.

Sincerely,

*R. C. Allphin*  
Randy C. Allphin  
Idaho Power Company

Agreed, Understood and Accepted

Enel North America  
Signature *Victor A Engel*  
Name / Title Victor A. Engel - Vice President, General  
Manager  
Date 6/11/10

P.O. Box 70 (83707)  
1221 W. Idaho St.  
Boise, ID 83702