BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

ROSEBUD ENTERPRISES, INC.,	)	
	)	**CASE NO. IPC-E-92-31**
Complainant,	)	
	)	**ORDER NO. 25454**
v.	)	
	)	
IDAHO POWER COMPANY,	)	
	)	
Respondent.	)	
	)	

SUMMARY

The underlying complaint in Case No. IPC-E-92-31 was filed by Rosebud Enterprises, Inc. (Rosebud) on December 14, 1992. Rosebud is the developer of a proposed 40 megawatt electric generating facility to be located in the vicinity of Mountain Home, Idaho. The facility will burn high sulphur, waste petroleum coke. The waste nature of the fuel enables the developer to qualify and self-certify the project as a PURPA small power production facility (QF). Rosebud proposes to sell the electrical output of the facility to Idaho Power Company (Idaho Power; IPCo; Company).

In its complaint, Rosebud states that it is ready, willing and able to sign a contract. Its attempts to negotiate, it states, have been frustrated by Idaho Power's refusal to offer it avoided cost rates calculated under Commission-approved methodology for the purchase of project capacity and energy. Rosebud seeks an avoided cost rate to ascertain project viability. Rosebud is demanding unlevelized rates for a 35 year contract. Rosebud has rejected three sets of rates which it contends do not conform with Commission approved methodology. Pursuant to a Company request for rates and terms acceptable to the QF, Rosebud by letter dated May 25, 1993 offered to provide firm power under essentially the same rates, terms

and conditions of the Commission-approved Meridian generating contract. Rosebud's offer was rejected. Rosebud contends that it has provided Idaho Power with all the information the utility needs to calculate rates (e.g., site, fuel, technology, operating characteristics, etc.).

Idaho Power in response notes that Commission-established rates are not available for projects greater than 10 megawatts. Idaho Power points out that individual negotiation is required for QFs greater than 10 megawatts. Idaho Power contends that Rosebud has refused to engage in substantive good faith negotiation and has not satisfied the Commission's "ready, willing and able" standard for entitlement to a power purchase contract and rates. Tr. pp. 549, 550. The value of energy and capacity from a project of this size, the Company maintains, must be determined as part of the Company's Integrated Resource Plan (IRP) and not the Commission established methodology for QFs less than 10 megawatts. Furthermore, resources of Rosebud's size, the Company argues, should not be acquired prior to need; the timing of such an acquisition is critical. The Company has presented Rosebud with three sets of rates that have been rejected. The Company maintains that Rosebud must secure or demonstrate an ability to obtain all necessary federal, state and local environmental and siting permits, (Tr. p. 587); and in the give and take of negotiation must itself propose rates and terms for Company consideration. Furthermore, a contract term greater than 20 years, the Company maintains, is non-standard and requires justification.

Public hearing in Case No. IPC-E-92-31 was held on December 15 and 16, 1993 and January 11, 1994. The following parties appeared by and through their respective counsel:

Rosebud Enterprises, Inc.	Owen H. Orndorff
Idaho Power Company	Barton L. Kline Larry D. Ripley
PacifiCorp	John M. Eriksson

Boise Kuna Irrigation District, the Nampa and Meridian Irrigation Districts, the New York Irrigation District, the Wilder Irrigation District, and the Big Bend Irrigation District	Richard B. Burleigh
Independent Energy Producers of Idaho	Peter J. Richardson
Commission Staff	Scott D. Woodbury

Pursuant to PURPA and the implementing rules and regulations of the Federal Energy Regulatory Commission, electric utilities must purchase in accordance with 18 C.F.R. § 292.304, any energy and capacity which is made available from a qualifying facility (QF). Reference 18 C.F.R. § 292.303(a). The Idaho Public Utilities Commission has taken this obligation seriously and has established a process for determining rates for projects smaller than 10 MW. We have required that rates for projects greater than 10 MW be individually negotiated. At issue in this complaint is what the requirement for individual negotiation means and whether negotiated rate calculations must begin at the rates established for smaller projects using the the surrogate avoided resource (SAR) methodology. In this Order, the Commission finds that Idaho Power did not negotiate with Rosebud in accordance with established avoided cost methodology and rules for negotiation with QFs greater than 10 MW. The Commission directs Idaho Power to follow the established methodology and to calculate and provide Rosebud with avoided cost rates using as a "starting point" the firm rates in existence on December 14, 1992, the complaint filing date.

DISCUSSION

Active contract negotiation between the parties in this case has really advanced little further than a discussion of power purchase rates. Tr. p. 567. Simply put, Rosebud requested avoided cost rates calculated consistent with Commission-approved methodology to ascertain project viability. Rosebud believes that Idaho Power has failed to provide such rates. This failure Rosebud interprets as a refusal by the Company to negotiate in good faith. Tr. pp. 191, 192. Idaho Power contends that its rate proposals (Exhibits 207, 208, 209) were summarily rejected without any

counter proposals being offered. The Company maintains that Rosebud is sophisticated enough to calculate the Company's avoided cost rates. Indeed, Idaho Power contends that Rosebud has an obligation to suggest rates. If that is not what is intended through negotiation, then Idaho Power suggests that the Commission drop its charade that there should be negotiations. Tr. pp. 601, 602.

As perceived by Rosebud, IPCo desires to apply its current IRP and Resource Management Report and in-house load estimates to the proposed Rosebud Mountain Home facility. The Company, Rosebud states, has long believed that its true avoided cost can be determined only by the Company and not by the Commission. Tr. p. 240. The Commission, Rosebud states has addressed this utility position previously, citing the following Commission language:

> The utility is in a unique position when negotiating with CSPPs. It controls the resources and data by which a determination can be made as to whether its scheduled avoided costs are in sync with its perceived "true" avoided costs. If it perceives a significant change, then it is incumbent upon the utility to initiate an appropriate filing with the Commission.

Case No. P-300-12, Order No. 15746, p. 5; Tr. p. 243.

To put the negotiation in this case in context, prior to filing of the Complaint, Idaho Power on March 26, 1992 offered Rosebud a schedule of purchase prices for a Wyoming sited QF project for a 20-year period. IPCo Post-Hearing Brief. The proposed siting presented transmission problems for IPCo. By letter dated September 30, 1992 the proposed rates were rejected by Rosebud and the QF project was resited to Mountain Home. Rosebud states that all necessary project information was provided to the Company for calculation of rates and that it provided IPCo a proposed reliability standard equal to IPCo's plants, a notice of QF status, a description of plant technology similar to an existing plant, IPCo's interconnect form with all relevant information requested, letters demonstrating availability of fuel, a plant electrical diagram prepared by an independent engineer, a site map and a study by an independent consultant describing petroleum coke. Rosebud Supplemental Comments.

By letter of December 10, 1992 the Company informed Rosebud:

> IPCo has carefully evaluated its projected need for additional resources . . . Idaho Power has determined that it will not need to acquire any additional resources prior to the year 2000. . . . It would be imprudent for IPCo to contractually commit at this time. Tr. pp. 573, 574.

Rosebud interpreted the Company's letter as a unilateral suspension of its obligation to purchase. A Complaint was filed on December 14, 1992. The Complaint alleging bad faith, Idaho Power contends, has had a chilling effect on further negotiations. Tr. p. 531. Rosebud requested that IPCo recalculate the March 26, 1992 rates for commencement of commercial deliveries on January 1, 1998 at unlevelized rates for 35 years.

Following the Complaint and at a prehearing conference of the parties on February 3, 1993, the Commission indicated its unwillingness to suspend or defer the obligation of Idaho Power Company to negotiate in good faith with Rosebud. Reference Notice of Case Status (February 19, 1993). The parties agreed to continue negotiating.

On April 1, 1993, in the only formal or face-to-face negotiating session of the parties (Tr. p. 535) Idaho Power presented Rosebud with two sets of calculated rates. Tr. pp. 529, 530. The first set (Exhibit 207) provides zero capacity for a dispatchable facility through 2005 and shows dispatchable rates for only 8% of the project's output. The second set (Exhibit 208) for a non-dispatchable plant provides Tariff Schedule 86 non-firm rates through 2005. Tr. p. 299. The Company's offers are based on a natural gas proxy plant and the Company's IRP. Neither set of rates was a firm offer or commitment. Rosebud rejected IPCo's proposed rates. The negotiating session lasted 15 minutes.

On April 2, 1993, in a letter from IPCo to Staff (with copy to Rosebud) (Exhibit 110) the Company laments Rosebud's unwillingness to make a counter-proposal. The Company states:

> IPCo is hopeful that Rosebud will reconsider its position and make a good faith effort to continue negotiations by proposing purchase prices and purchase arrangements that Rosebud would find acceptable. It is unreasonable to expect that negotiations

> will be successful if they are totally unilateral. It is unfair to require IPCo to "bid against itself." Tr. pp. 519, 520.

On April 16, 1993, IPCo presented Rosebud with a third set of rates for a dispatchable plant (Exhibit 209) with capacity payments beginning in 1998. By letter dated April 19, 1993, Rosebud rejected the rates as not conforming with Commission approved methodology.

On May 25, 1993, Rosebud by letter (Exhibit 109) presented the following offer to IPCo:

> Rosebud hereby offers to provide IPCo firm capacity and energy based on the identical contract Meridian Energy signed (Reference Order No. 24805, IPC-E-92-4) including rates, terms and conditions excepting only the site, fuel, initial date of operations changed to January 1, 1998 and sizing of the project.

On May 28, 1993, Rosebud provided IPCo with a tabular clarification of the offer. The Company in a letter to Commission Staff dated June 1, 1993 interprets Rosebud's May 25th offer as "consistent with its continuing refusal to negotiate rates, terms and conditions based on the specific characteristics and values of the Mountain Home project."

The primary source of impasse, IPCo states, is Rosebud's position that published rates are to form the "starting point" for negotiations. Tr. pp. 533, 582. IPCo has provided Rosebud with several rate alternatives. The rate alternatives, IPCo states, were developed on the basis of the project-specific value of the Mountain Home project using tools developed by IPCo in response to the Commission's least-cost resource planning process. Tr. p. 550.

Rosebud's contention that the basis for negotiated rates should be the published avoided cost rates based on the SAR is based on Commission pronouncements beginning with the P-300-12 case and continuing through Order No. 25160 in this case. Rosebud's Supplemental Comments. This position was joined by intervenor IEPI representing a loose association of cogenerators (Tr. p. 160). IEPI believes that the administratively established rates for QFs less than 10 megawatts are to be used as a starting point for negotiations for QFs greater than 10 megawatts with adjustments for time of need, cost of integration, etc. Tr. pp. 166-168.

Idaho Power states that the applicable standard for determining rates for QFs greater than 10 megawatts, individual negotiation, is not well understood. Tr. p. 556. The Company believes that "there is no explicitly approved process for adjusting published avoided costs for QFs greater than 10 megawatts" (Tr. p. 563) and that it was left to the Company to develop how adjustments should be made. The Commission recognized the lack of experience with larger projects in Order No. 25227.

As reflected in its testimony and final comments, Staff contends that there is an established methodology for calculating avoided costs for QFs greater than 10 megawatts. At the time large QFs are "ready, willing and able" to obligate themselves to deliver capacity and energy to the utility, Staff asserts that they are entitled to receive the published avoided cost rates, adjusted for the specific effects that the QF has on the utility's distribution system and on the load/resource balance used to determine the published avoided cost rates. Tr. p. 423.

IPCo and Rosebud fundamentally disagree on the adjustments that must be made to the "starting point" coal-SAR methodology to develop project-specific purchase prices for QF projects greater than 10 megawatts. The adjustments IPCo applied to the starting point methodology are generally referred to by the Company as the "IRP methodology." The Company's Integrated Resource Plan (IRP) is a biennial assessment of future power supply requirements and probable resources the Company expects to acquire under least cost planning. Tr. pp. 686, 687. The IRP is viewed by the Company as the source of best available information regarding load/resource needs. Tr. p. 711. In developing rates for Rosebud IPCo utilized its IRP planning or computer modeling tools to determine a project-specific value. Tr. pp. 528, 539. The analytical tools enable the Company to determine a load forecast, resource need (amount/type) and to engage in system simulation analysis. Tr. pp. 711, 714, 715. The IRP can be amended to include the purchase or acquisition of any proposed resource with a specified starting date, contract term and capacity and energy characteristics. Tr. p. 689.

Acquisition of the Rosebud project the Company contends will only enable it to avoid the capacity and energy costs of dispatchable resources expected to operate

at relatively low capacity factors to meet system load requirements, primarily during times of high loads or low water conditions. Tr. p. 529. The analysis used by the Company, it states, is the same analysis that it uses to assess the value of any other resource considered for inclusion in its least-cost resource portfolio. Tr. p. 689.

Avoided cost rates for QFs greater than 10MW, the Company contends, must reflect both resource need and the cost of alternative resource options, and should be based on the best available data. Tr. p. 688. Idaho Power recommends continuing to move toward the use of the IRP as the primary vehicle for assessing the value of all potential resource acquisitions. Use of the IRP to evaluate resources, it states, will tend to reduce, if not eliminate, premature long-term financial commitments to resources. Tr. p. 539. The Company perceives substantial risk and exposure in acquiring large long-term supply side resources prior to need, a risk which it sees as being exacerbated by the potential for increased competition. Tr. p. 540, 542, 630, 631, 642, 561. Addressing this risk the Company argues that it needs to remain as flexible and cost-competitive as possible. Tr. p. 543, 652. Spot market purchases provide the Company with flexibility. Tr. pp. 704, 705. A long-term QF resource the Company contends provides no such flexibility. Tr. p. 705. Any contract in excess of one year triggers the point at which the Company begins to look at the risks of inflexibility. Tr. p. 658.

The Appendix A load/resource schedule, the Company maintains, is inadequate for looking at the value of a large resource on IPCo's system. Appendix A looks only at energy requirements in one month of the year, August. Tr. p. 710. The IRP based method, the Company maintains, enables a more detailed load/resource analysis. Tr. p. 701.

IPCo's load forecast in its '93 IRP shows long-term load growth averaging 1.4% per year, 2.1% per year between '92 and '98, while the Commission has adopted a load growth assumption of 3.25%. Tr. pp. 244, 245. Over a long period of time, the parties agree that point estimates are almost always wrong. Rosebud contends that during the near term between '92 and '98, the Commission growth estimate of 3.25% appears to be reasonable and more likely than the IPCo projection of 2.1% growth.

Tr. p. 254. The accuracy or reasonableness of point forecasts beyond 1998 Rosebud maintains are not at issue.

The year 1998 is the Appendix A date of first need with Rosebud. Tr. pp. 272, 305. The procedure followed in Appendix A (Order No. 24911, IPC-E-93-4), Rosebud contends, is appropriate for all PURPA planning. The meaningful difference, it states, between QFs under 10 megawatts in size and those greater than 10 megawatts is the effect on the surplus period. This, Rosebud contends, is accounted for by adjusting the surplus period as capacity is added. Tr. pp. 255, 293. In the context of this proceeding, however, Rosebud maintains that the accuracy of the economic or load forecast to 2014 is not at issue, nor is it relevant—what is relevant are the risks facing ratepayers of excess generation capacity on the one hand and insufficient capacity on the other. The Company, it states, does not examine the risks and costs of insufficient capacity. Tr. pp. 268, 269.

Dispatchability is generally an added value available from a QF. Tr. p. 426 "Whether the . . . dispatchable rate is more or less than the non-dispatchable rate . . . will depend on the value of dispatchability to the utility, the sharing of future variable cost risks, etc." Order No. 22636, p. 56. IPCo acknowledges that it cannot require dispatchability. However, this is a factor that can be accounted for in rates. A nondispatchable resource is clearly less valuable than a dispatchable resource. This is especially true as the size of the project increases.

Idaho Power concedes that the IRP method of calculation that it used to produce rates for negotiation with Rosebud is not an approved methodology for QFs less than 10 megawatts. Tr. p. 717. The differences between the two methodologies the Company admits are relatively large. Tr. p. 736. Published rates are not used in the IRP-based analysis nor was any of the current model that is used for avoided cost determination for QFs less than 10 megawatts. Tr. p. 716.

The Company's desire to use the IRP methodology rests on the fact that large QF projects are likely to have a material effect on utilities and their customers on a planning, operating and revenue requirement basis. Tr. p. 527. The Company maintains that the IRP is the best available source of information regarding load/resource needs and that ratepayer neutrality cannot be maintained if the

starting point methodology for developing project-specific values cannot be adjusted to apply the most recent data for large QFs and the effect that such a project or projects would have on a utility's load-resource balance. IPCo Post-hearing Brief. If the IRP is determined to be the appropriate means to determine the value of QF resources, IPCo suggests that the Commission would probably have to do more than simply acknowledge the filing of the IRP. Tr. p. 593.

Rosebud contends that the IRP upon which IPCo based its proposed rates did not even exist in December of '92 when Rosebud filed its complaint. Rosebud contends that use of the IRP methodology in this case allows the unilateral right to reduce rates, terms and conditions. Rosebud Supplemental Comments. If the appropriate starting point is found to be the Company's IRP, then the Commission, Rosebud contends, needs to reconcile various conflicts between the Company's IRP and established Commission policy. Utilization of integrated resource plans for the calculation of avoided cost rates, Rosebud cautions, has yet to be evaluated in a public hearing process. Tr. p. 343. The assumptions and conclusions have not been scrutinized. Tr. pp. 286, 294. Prior to such a hearing, Rosebud contends that IPCo should be directed to use the current SAR as a basis of avoided cost rates offered to QFs. Tr. p. 363.

Staff also argues that if IPCo has a different methodology that it wants to follow for acquisition of QF power from large QFs, it should file a formal case. The Company should not be allowed to unilaterally change the rules. The methodology proposed by IPCo, Staff states, "may prove to be superior to the existing methodology, but it is not the approved methodology. The Company has not presented the Commission with a formal Application. The proposed methodology has not been subjected to public and administrative scrutiny. IPCO is still a regulated utility. It is the Commission that sets policy, not the Company. If policy is established and allowed to be opening violated then Commission regulation becomes a meaningless exercise." Final Comments of Commission Staff.

PacifiCorp contends that SAR based avoided costs no longer represent the Company's resource alternatives. The concern is not with the SAR method itself, PCP states, but that administratively determined avoided costs cannot keep pace

with the changes in the current electric power supply market. Tr. p. 391. Actual, market-based alternative costs, the Company contends, must be used as the basis for negotiation for QFs greater than 10 megawatts. Tr. pp. 390, 398.

Existing SAR policy PacifiCorp maintains has not evolved to the point of explaining all the types of adjustments that may be made in negotiation with large QFs, nor has it been reconciled with current integrated resource planning or the authorization of EWGs under EPAct 92. If the SAR methodology is retained as the starting point for negotiations, the Commission, PacifiCorp recommends should make clear that departures from the SAR methodology are authorized for the purpose of more accurately reflecting avoided costs. The party seeking a departure from the SAR methodology would, presumably, have the burden of demonstrating that the departure is reasonable and necessary to more accurately reflect true avoided costs. Because the objective is full avoided cost, PacifiCorp further contends that negotiations should focus on contemporaneous market based resource costs and information on the utility's resource needs and plans as set forth and made available in the utility's Integrated Resource Plan and resource management report. A utility's IRP is superior to the SAR methodology as a starting point for negotiating with large QFs; it is the standard, PacifiCorp contends, against which the utility's own resources will be judged for ratemaking purposes and has strong indicia of objectivity and reliability. PacifiCorp Closing Statement.

IEPI stresses the importance of have stability and predictability in the rates, terms and conditions associated with power purchase contracts. Tr. p. 150. For IEPI the relevant issue in this case is one of procedure, whether IPCo (or any utility) should be permitted to change the ground rules for avoided cost contract rates and negotiations without going through the PUC and public hearing process. Tr. pp. 153, 156. Allowing utilities to unilaterally change Commission avoided cost orders and rates, IEPI contends, is intolerable from a financing and planning perspective and also injects substantial uncertainty in the implementation and administration of avoided cost rates and contracts. Tr. p. 154.

COMMISSION FINDINGS

Based on our review of the record, testimony and post-hearing position papers filed in this case and based on our further review and consideration of the prior Commission Orders specifically identified in this case, the Commission finds that an established methodology and set of rules exist to guide utility negotiations with QFs for projects greater than 10 megawatts.

The methodology previously established by the Commission is best articulated in the following cases:

> Case No. P-300-12, Order No. 17546, p. 34 Standard Rates,
>
> > . . . For facilities with a design capacity in excess of 10,000 kW [WWP] proposes to negotiate separate, individualized contracts.
> >
> > > —Published rates [are to] form the starting point for negotiations, but individualized consideration [is to] be given to issues such as losses, reliability, ability to schedule, etc.
>
> Case No. U-1008-244, Order No. 20859, (Potlatch)
>
> > In Case No. P-300-12, the genesis case for CSPPs [i.e., QFs], we articulate the concept of individual negotiated contracts for facilities greater than 10 megawatts. In that case we indicated that for such facilities the published or filed avoided cost rates would form a starting point for meaningful negotiations. . . .
> >
> > "And so forth" cannot equate with "perceived changes" in avoided costs. If [the utility] perceived its avoided costs to be changing significantly then it was incumbent upon it to file an Application requesting that they be changed by the Commission. pp. 2-3.
> >
> > We agree that filed rates should be the basis for negotiation. p. 3.
> >
> > It is the responsibility of the utility and the CSPP through individual negotiation to determine the appropriateness of adjustments for "losses, reliability, ability to schedule,

> etc." If there is no required balancing or adjustment for those or related factors, then the CSPP is entitled to the scheduled or filed avoided cost rates. p. 4.

Case No. U-1500-170, Order No. 22636

> Large projects shall be subject to adjustments to the published rates to reflect their effect on the utility's load-resource balance.
>
> QF Size
>
> Under the declaratory ruling issued in Potlatch v. WWP, U-1008-244, Order No. 20859, published or filed avoided cost rates are to form a starting point for meaningful negotiations for facilities greater than 10 megawatts. p. 49.

These previous Commission Orders have found that established rates that are now determined using the SAR methodology for projects under 10 MW are the starting point for individual negotiation on larger projects with adjustments for project specifics.

We find that Idaho Power did not negotiate in accordance with the established methodology with Rosebud. Even if, as claimed by Company, it used the established rates as a starting point, it is clear that it quickly abandoned the SAR methodology in favor of its preferred Integrated Resource Plan methodology.

Notwithstanding this, during the past several years, the Company, with the encouragement of the Commission has acquired increasing sophistication in the IRP process. Case Nos. U-1500-165; IPC-E-91-19; IPC-E-93-14. When that methodology is fully developed and mature, it may achieve the goal of insuring that all resource acquisition by the Company is on a consistent, competitively neutral basis, aimed at producing the lowest cost resource plan and acquisition action for ratepayers. With this in mind, we understand the Company's desire to use the IRP methodology. However, the IRP methodology is fundamentally different from the SAR methodology; rates developed under the former cannot be said to be consistent with the latter.

Thus, the issue facing the Commission is whether we should require negotiations in accordance with an existing method or whether we should permit

rates for negotiation to be developed under the newer IRP methodology. For the purpose of this case, we conclude that the existing method must be followed. Several reasons compel this result.

First, the Commission has not previously approved the IRP method as a basis for QF negotiations. In fact, the Commission has been careful to retain its authority over the pricing for purchases of QF power, recognizing that too much discretion in the hand of a utility can result in the situations that led to PURPA in the first instance. If the Company desires to demonstrate a need to integrate the SAR and IRP processes, the appropriate vehicle is its avoided cost docket, Case No. IPC-E-93-28, or a similar docket. The Commission will welcome the opportunity to consider such a proposal. Until, however, the method is approved as the basis for QF negotiations, any attempt to insert the method into a specific project negotiation proceeding is premature.

We also believe that an attempted unilateral deviation from established Commission policy ignores a fundamental element of the relationship between a regulatory Commission and a regulated utility. The Commission establishes its polices after appropriate public process with an opportunity for appeal. Once, though, a policy becomes final, it is the obligation of the regulated utility to act in accord with the policy until such time as changed circumstances lead the Commission to adopt new policy. The regulated utility does not have the prerogative to substitute its own judgment as to the wisdom of the policy or to unilaterally adopt new policy. This Commission has been vigilant in enforcing this fundamental principle of the regulatory relationship. (See Order No. 23773, imposing a fine of $13,000 upon Union Pacific Railroad upon a finding that UPPR ignored a Commission policy). Whatever the ultimate merits of IRP may be, we cannot allow its use in this case, when to do so would require us to overlook an even more important fundamental principle.

A related reason for our conclusion is the matter of third party reliance. The Commission does not slavishly adhere to existing policies just for the sake of resisting change. Rather, we recognize that other utilities or parties rely on policies as they are adopted by the Commission. Parties who have a reliance interest in

existing policy have a corresponding right to participate in appropriate proceedings if change to existing policy is contemplated or proposed.

The Appendix A load/resource schedule and the Appendix B variables are the appropriate schedule and variables to be used in utility negotiation with QFs greater than 10 megawatts until they are changed. Under present methodology the Appendix A load/resource schedule determines "need" and first deficit year. A separate procedure has not been established for QFs greater than 10 megawatts. Consequently, "need" is not to be based on a utility's internal (IRP) definition of need.

In negotiating with QFs greater than 10 megawatts, a utility under present methodology may make adjustments for "losses, reliability, ability to schedule, etc." The load/resource balance should also be adjusted to reflect the addition of the proposed resource. We agree with PacifiCorp that existing SAR policy does not explain all the types of adjustments that may be made in negotiation with large QFs. That is why we have left the adjustments subject to negotiaton.

Proposed adjustments to the rates are to be made in line item fashion. Each adjustment must be clearly identified and individually justified. The related value (plus or minus) of the adjustment must also be clearly identified. All adjustments to the posted rate must be clearly identified down to a number. The Company should make adjustments for all relevant factors. Our listing is only a suggestion and may not include every adjustment that is appropriate. The adjustments made will vary depending on project characteristics.

As the Commission has previously indicated in its Orders, the standard authorized term for contracts is 20 years. Rosebud has requested 35 years. There is no automatic entitlement to such a term. Any departure from 20 years must be project justified and authorized. The relevant factor in any offer of proof is the attendant risks and benefits to the utility and ratepayers given the inherent inaccuracies in forecasting and the size of the QF, not the projected life of the QF facility or project economics.

Having concluded that Idaho Power Company has not followed existing guidelines for negotiation, we now specify procedures for further negotiations between the two parties. Idaho Power is directed to follow the established methodology in its

negotiation with Rosebud. Good faith negotiation is required on the part of both parties. The Company should now calculate rates for Rosebud in accordance with SAR methodology, and without undue delay. The rates to be used as the "starting point" in this case are the firm rates in existence at the time of complaint filing, those established in Case No. IPC-E-92-15, Order No. 24383. Adjustments should be outlined in the manner specified above. If a rate has not been successfully negotiated within 60 days, the Company is directed to present Rosebud with its proposed avoided cost rate with detailed justification as described above. The proposed rates must be rates at which the Company is willing to purchase Rosebud's capacity and energy. Upon receipt of the Company's proposal, Rosebud will then have 60 days to review the proposed rate and either accept same or present its own proposal. Rosebud's changes or objections to the Company's proposal must be specifically set out with detailed rationale and justification. If the parties are unable to reach agreement, both proposals should be presented to the Commission.

We note that Rosebud has offered to provide firm power under essentially the same rates, terms and conditions of the Commission approved Meridian contract. Given the nature of the Company's negotiation and rate proposals, we interpret Rosebud's offer as a demonstration of willingness and commitment to provide firm power. As we specifically indicated in our approval of the Meridian contract, however, that contract rate and those terms were not precedential. Use of similar rates and terms must therefore be otherwise justified.

CONCLUSIONS OF LAW

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 (PURPA).

The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act of 1978 and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric

utilities to enter fixed term obligations for the purchase of energy from qualified small power production facilities, and to implement FERC rules.

O R D E R

In consideration of the foregoing and as more particularly described above, Idaho Power Company IS HEREBY ORDERED to follow the established avoided cost methodology and rules in its negotiation with Rosebud Enterprises, Inc.

Idaho Power Company IS FURTHER ORDERED to calculate and provide Rosebud Enterprises, Inc. with avoided cost rates using as a "starting point" the firm rates established in Case No. IPC-E-92-15, Order No. 24383 with adjustments, as needed, outlined in the format specified.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-92-31 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 or in interlocutory Orders previously issued in this Case No. IPC-E-92-31. 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 20th day of April 1994.

MARSHA H. SMITH, PRESIDENT

DEAN J. MILLER, COMMISSIONER

Commissioner Nelson's Dissent Attached
RALPH NELSON, COMMISSIONER

ATTEST:

Myrna Walters
Commission Secretary

JR\O-IPC-E-92-31.SW3

DISSENT
COMMISSIONER RALPH NELSON
CASE NO. IPC-E-92-31

I respectfully dissent from the majority opinion in this case. I agree with the majority that a utility should not be allowed to unilaterally change Commission policy. I also believe, however, that there should be more flexibility in negotiating a contract than this order seems to allow.

Further, it is my belief that Rosebud never presented substantial, competent evidence in this case to convince me that it was ready, willing and able to commit itself to a specific contract with Idaho Power either before the filing of its complaint on December 14, 1992, the last day of hearing; January 11, 1994; or on January 14, 1994, the date on which this Commission issued Order No. 25361, essentially suspending the published avoided cost rates.

The method by which rates, terms and conditions for QF contracts larger than 10 MW are established, is unrefined. As the majority notes, this was necessary to allow for flexibility in negotiation between a utility and larger QF's whose projects can have a significant impact on a utility's operations. *See, Order No. 25454 at p. 15.* I concede that Idaho Power appears to have adopted a new methodology for calculating avoided cost rates for larger QF's (i.e., the IRP method).

In spite of this, I believe that this Commission should recognize, in this case, the changes that are taking place in the electric generation industry. Actual avoided costs appear to be substantially less than they were the last time this Commission reviewed them formally. The Energy Policy Act of 1992 opens a new world to non-utility generators allowing them to compete nationwide and assuring they can wheel their power. The size of non-utility plants has increased dramatically and the lead time necessary to bring one on line is a fraction of the time necessary to build the hypothetical, coal-fired surrogate avoided resource used by this Commission to establish avoided cost rates.

While I am confident that most, if not all, of these issues will be addressed in the pending avoided cost cases (See, e.g. Case No. IPC-E-93-28), adhering to rigid

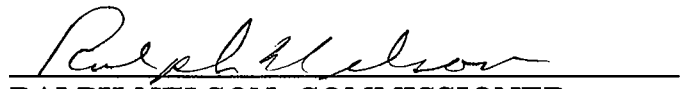
guidelines in the present case will cost Idaho Power's ratepayers considerably more than they should have to pay for the power generated by Rosebud. Idaho Power bears a certain share of the responsibility for not responding more quickly to changing market conditions by seeking Commission approval of a new QF pricing methodology.

I do not believe that Rosebud ever demonstrated that it was ready, willing and able to commit to a contract with Idaho Power prior to the date that this Commission essentially suspended the avoided cost rates in Order No 25361 (January 14, 1994). As the majority itself notes, good faith negotiation requires give and take from all participants. *Order No. 25454 at p. 16.* I agree with the majority that Idaho Power's negotiating technique in this case has been far from exemplary. Unlike the majority, however, I am equally convinced that the same observation applies to Rosebud. For example, Rosebud was offered several rates from Idaho Power including a rate for a proposed plant near the Idaho-Wyoming border. Rosebud, however, never countered with a rate that it considered acceptable. Rosebud is a sophisticated developer that apparently intends to invest a considerable sum of money in constructing a QF project. Clearly it possesses the savvy and financial wherewithal to calculate what it considers is an appropriate rate for its project. The inescapable conclusion that I reached after reviewing the evidence in this case, is that Rosebud was merely attempting to assess the financial viability of constructing a plant and that its conduct never rose to the level of serious contract negotiation. By summarily rejecting Idaho Power's offers, but still insisting that the Company calculate a rate, Rosebud apparently expected Idaho Power to bid against itself so that Rosebud could avoid leaving anything on the negotiating table. I do not consider this good faith negotiation.

Finally, while Rosebud ultimately indicated that it would accept the same terms and conditions as the Meridian Generating contract, this Commission was quite explicit that it approved that contract because of unique circumstances and that its approval of the contract should not be considered precedential. Rosebud was well

aware of this when it requested the Meridian Generating contract from Idaho Power. Again, this behavior does not rise to the level of good faith negotiation.

In conclusion, I believe that neither prior Commission orders nor sound policy justifies the majority's decision to limit the degree of flexibility allowed an electric utility and a larger than 10 MW QF when negotiating a contract. I also believe that Rosebud failed to negotiate in good faith with Idaho Power and never was ready, willing and able to commit to a contract. I believe, therefore, that although Idaho Power is obligated by federal law to purchase power from Rosebud, the terms and conditions under which it should have to purchase that power should be subject to Order No. 25361.



RALPH NELSON, COMMISSIONER