BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER COMPANY AND VAAGEN BROS. LUMBER, INC. | )  )  )  )  )  )  ) | CASE NO. IPC-E-95-10  ORDER NO.  26134 |

On July 25, 1994, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a Firm Energy Sales Agreement (Agreement) between Idaho Power and Vaagen Bros. Lumber, Inc. (Vaagen Bros.).

Vaagen Bros. is the developer, owner and operator of a 4 megawatt (MW) electric generation facility located at 565 West 5th, Colville, Stevens County, Washington.  Vaagen Bros. has sold the project’s output to The Washington Water Power Company for the previous ten years.  Water Power will be transmitting and scheduling the power from the project to Idaho Power.  Vaagen Bros. estimates that its annual net firm energy production will be 32,236.8 MWh.  Vaagen Bros. represents that its project is a PURPA “qualifying facility.”  The Agreement, dated July 24, 1995, provides for unlevelized rates over a 15-year contract term.

Of significance, the Commission notes the following non-standard and/or unique features:

Conditions to Acceptance of Energy

As a condition to acceptance of energy, Vaagen Bros. in part must secure an acceptable transmission (wheeling) agreement with Washington Water Power Company (Agreement ¶ 4.1.5; Article IX) and it must demonstrate a firm supply of fuel (Agreement ¶ 4.1.6).

Early Termination

Agreement ¶ 5.2 establishes termination rights if Idaho or Washington law is modified to allow “retail wheeling.”  This type of clause is a regulatory out provision.

Purchase Price and Method of Payment

Agreement Article VII provides a method of pricing that is based on the interim procedure established for QFs greater than 1 MW as defined in Order No. 25884.  The published rates for small QFs is the starting point for negotiation.  The negotiated rates differentiate between heavy (6:00 a.m. - 11:00 p.m.) and light load periods.

Continuing Jurisdiction of the Commission

Agreement ¶ 7.3 states that the Agreement is a “special contract” and as such the rates, terms and conditions contained in the Agreement will be construed in accordance with identified Idaho Supreme Court decisions, Section 210 of PURPA, and 18 C.F.R. § 292.303-308.

Agreement ¶ 17.1 states that “all disputes related to or arising under this Agreement, including, but not limited to, the interpretation of the terms and conditions of this Agreement, will be submitted to the Commission for resolution.”

Agreement Appendix D states that if the parties cannot agree on a pricing formula for light load hour energy beyond year five, the dispute will be submitted to the Commission for resolution.  The Agreement expresses the intent that the replacement formula will be based on regularly published stock market price data for electricity in the western states.

Commission findings

The Commission has reviewed the submitted Agreement and finds the contract rates to be generally consistent and in conformity with avoided cost methodology and 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 ¶ 17.1, Disputes;  Appendix D).

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 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.

O R D E R

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

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                  day of August  1995.

RALPH NELSON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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