DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

STEPHANIE MILLER

DAVID SCHUNKE

RANDY LOBB

DON HOWELL

GARY RICHARDSON

WORKING FILE

FROM:SCOTT WOODBURY

DATE:AUGUST 8, 1995

RE:CASE NO. IPC-E-95-10

FIRM ENERGY SALES AGREEMENT

VAAGEN BROS. LUMBER, INC.

COLVILLE, WASHINGTON

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 hours (MWh) electric generation facility located at 565 West 5th, Colville, Stevens County, Washington.  The estimated annual net firm energy production is 32,236.8 MWh.  As represented, the project will be a PURPA “qualifying facility” prior to the operation date.  The Agreement, dated July 24, 1995 provides for unlevelized rates over a 15-year contract term.

Of significance, the Commission’s attention is directed to 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 MWh 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.

Staff Analysis

Staff has reviewed the contract pricing in the submitted Agreement.  Based on its analysis (attached), Staff concludes that the contract rates are generally consistent with avoided cost methodology.  Staff notes, however, that because of the adjustable rate formula it is not possible to calculate with certainty the overall value of the contract.  Fluctuations in fuel and actual market prices may significantly affect the contract value.  Staff notes with approval the hour differential pricing method as a means of providing characteristics of dispatchability.

Commission Decision

●Idaho Power requests that the Commission issue its Order

1.  approving the Agreement;

2.  finding that the purchase of power from the project will be in the public interest;

3.  ordering that all costs of purchasing power under the Agreement will be allowed to Idaho Power as prudently incurred expenses for ratemaking purposes.

●Disputes (Agreement ¶ 17.1);

●Continuing jurisdiction of the Commission (Agreement ¶ 7.3).

The Commission is reminded that it was the contention of Rosebud in the Cogeneration, Inc. (Auger Falls) that the two paragraphs which now in various forms routinely appear in the PURPA contracts of Idaho Power are in conflict.  The Commission did not address Rosebud’s contention in the Auger Falls case.  It has been the custom of the Commission to include qualifying language in its Orders regarding the attempt to confer jurisdiction on the Commission by stipulation.

●Pricing?

●Regulatory out (early termination-retail wheeling)?

●Approve Agreement?

Scott Woodbury

vld/M-IPC-E-95-10.sw