DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

GARY RICHARDSON

WORKING FILE

FROM:SCOTT WOODBURY

DATE:November 17, 1995

RE:IPC-E-95-

RUPERT & GLENNS FERRY COGENERATION PROJECTS VS. IDAHO POWER COMPANY

PETITION FOR A DECLARATORY RULING

On November 17, 1995, Rupert Cogeneration Partners Ltd. and Glenns Ferry Cogeneration Partners Ltd. (collectively, the “petitioners”) filed a Petition with the Idaho Public Utilities Commission (Commission) seeking a Commission ruling regarding the equivalence of security offered by petitioners and the related applicability of the “K” factor under Firm Energy Sales Agreements (Agreement(s)) with Idaho Power Company.

Rupert Cogeneration Partners Ltd. is the developer of a natural gas cogeneration project (approximately 10 MW) adjacent to the Magic Valley Foods, Inc. potato processing facility in Rupert, Idaho.  The estimated annual net firm energy production is 83,220,000 kWh.  The Agreement dated June 25, 1993 provides for levelized rates over a 20-year contract term.  Reference Case No. IPC-E-93-15, Order No. 25050.  The scheduled operation date is January 1, 1996.

Glenns Ferry Cogeneration Partners Ltd. is the developer of a natural gas cogeneration project (approximately 10 MW) at the Magic West Potato processing facility in Glenns Ferry, Idaho.  The estimated annual net firm energy production is 83,220,000 kWh.  The Agreement dated December 9, 1992 provides for levelized rates over a 20-year contract term.  Reference Case No. IPC-E-92-32, Order No. 24674.  The scheduled operation date pursuant to first amendment is January 1, 1996.  Reference Case No. IPC-E-94-7, Order No. 25505.

The respective Agreements each contain provisions (¶ 4.1.9) that provide in material part as follows:

Seller will demonstrate to Idaho Power’s reasonable satisfaction that Seller has entered into fuel supply and fuel transportation contracts which will provide a firm supply of fuel and fuel transportation in amounts sufficient to allow the facility to generate the annual new firm energy amount each contract year for the full term of this Agreement.  The respective Firm Fuel Supply and Fuel Transportation Agreements will include provisions that recognize that (1) Idaho Power is an intended third-party beneficiary of the Fuel Supply and Transportation Agreements; and (2) that Seller and the fuel supplier and fuel transporter will be jointly and severely liable to Idaho Power under their respective Agreements for payments to Idaho Power of damages arising out of Seller’s permanent curtailment as described in § 21.3 herein if such permanent curtailment by Seller arises out of an uncured breach of the Fuel and/or Fuel Transportation Agreements by the fuel supplier or fuel transporter resulting in a curtailment or termination of fuel supply or fuel transportation . . . .

Each of the Agreements also contain an Appendix F setting forth sample contract language to be included in the fuel supply and transportation contracts.  The proposed language recites that the developer’s satisfaction of ¶ 4.1.9 requirements was a factor in the Company’s willingness to purchase the firm energy at levelized rates.

The Petitioners contend that after diligent investigation they have been unable to find a fuel supplier that would agree to confer third party beneficiary status upon Idaho Power or to incorporate the language required Appendix F to the Agreements.

Agreement ¶ 21.4.8 “K” and estoppel certificates sets forth material language as follows:

In reliance upon Seller’s compliance with ¶ 4.1.10 . . . application of the “K” factor as described in Order No 21690 was suspended

If Seller fails to provide the required estoppel certificates and the parties are unable to agree on alternative security, the parties agree to submit to the jurisdiction of the Commission for determination of whether the “K” factor and the obligation to post a liquid security, as described in this Agreement and Order No. 21690, should be applied to the facility.

The Petitioners contend that the requirements of the Agreement set forth in ¶ 4 and Appendix F are impossible to fulfill and are not commercially available in the natural gas market place.  Petitioners have negotiated with the fuel supplier a provision contained in the Gas Supply Agreement that provides Idaho Power substantially similar protection as that contained in the Appendix F.  Rights of indemnification given to the developer by the fuel supplier would be assigned to Idaho Power.  Idaho Power has contended that this path of security is unacceptable.  Petitioners contend that Idaho Power and its ratepayers are, to the extent reasonable and commercially possible and the circumstances, fully and adequately protected against damages resulting from permanent curtailment due to loss of fuel supply.

Petitioners request that the Commission (1) establish a prehearing conference; (2) enter an Order determining that the security provided by the Agreements and the proposed substitute provisions is adequate in this circumstance and that the “K” factor is not applicable in this  circumstance; and (3) for such other and further relief as is appropriate in this circumstance.

Scott Woodbury

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