(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|  |  |  |
| --- | --- | --- |
| IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AN ORDER LIMITING THE LENGTH OF CONTRACTS WITH QUALIFYING FACILITIES SMALLER THAN 1 MEGAWATT TO FIVE YEARS. | )))))) | CASE NO. IPC-E-97-9ORDER NO.  27111 |

Under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) electric utilities are required to purchase power produced by cogenerators or small power producers that obtain qualifying (QF) status.  On June 5, 1997, Idaho Power Company (Idaho Power; IPCo; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting an Order limiting the length of contracts between Idaho Power and QFs  smaller than 1 MW (“small QFs”) to five years or less.

As related by the Company, on September 4, 1996, in Order No. 26576 in Case No. IPC-E-95-9, the Commission approved a new methodology for avoided cost rate negotiations with QFs 1 MW and larger (“large QFs”).  In its Order the Commission found that in light of changes in the electric industry, obligating utilities to 20 year contracts for PURPA power was no longer in the public interest.  The Commission determined that Idaho Power would not be required to offer contracts to large QFs that are longer than five years until further action was taken by the Commission.

In its present Application Idaho Power is requesting that the Commission extend the current five year limitation on QF contract length established for large QFs to small QFs.  This request, the Company contends, is consistent with the rationale underlying the limitation on contract length expressed by the Commission in Order No. 26576:

Significant changes have swept through the electric industry since we last examined the issue of contract length.  The FERC [Federal Energy Regulatory Commission] has mandated open access to the transmission system, thermal technologies have improved, gas prices are low, there is a considerable surplus of energy available in this region resulting in very low spot market prices for electricity and, finally, even the continued existence of PURPA is being called into question.  We find that as the industry as a whole continues to transform to a more free market model, we cannot justify obligating utilities to 20-year contracts for PURPA power.  As the utilities in this case note, such an obligation does not reflect the manner in which they are currently acquiring power to meet new load; through short-term (five years or less) purchases.  Consequently, it would be nothing more than an artificial shelter to the QF industry to provide those projects with contract terms not otherwise available in the free market.  We can find no justification for insisting that Idaho’s investor-owned utilities and their ratepayers assume such an obligation simply to foster one particular segment of an increasingly competitive industry.  We find, therefore, that Idaho’s investor-owned utilities shall not be required to offer contracts to QFs in excess of five years until further action is taken by this Commission.  This ruling, however, does not prevent utilities from offering for approval QF contracts with terms that exceed five years should the utilities believe that such contracts are in the best interests of their ratepayers.

Order No. 26976, pp. 6, 7.

Idaho Power states that there is no reason to believe that the logic supporting the contract length limitation for large QFs is less compelling when applied to smaller QF projects.

Notices of Application and Modified Procedure were issued on June 13, 1997.  The deadline for filing comments was July 8, 1997.  Timely comments were filed by PacifiCorp dba Utah Power & Light Company, The Washington Water Power Company, Earth Power Resources, Inc., Rosebud Enterprises, Inc. and the Commission Staff.  Reply comments were filed by Idaho Power on July 22, 1997.  The comments of the parties can be summarized as follows:

The utilities, PacifiCorp and Water Power, note the uncertainties in a changing electric industry and market (transmission access rights; retail wheeling; bypass, etc.), the need for regulated utilities to be competitive, the need to mitigate risk (stranded investment, etc.)  and contend that long-term QF contracts with prices set by the SAR methodology will exceed market prices.  They urge approval of Idaho Power’s Application.  Washington Water Power also recommends generic and simultaneous and similar treatment for itself.

Staff believes that as to contract length, large and small QFs should be treated consistently.  Staff supports the Company’s Application but suggests that use of the different methodologies (Surrogate Avoided Resource (SAR); Integrated Resource Plan  (IRP)) to compute the avoided cost rate may result in a discrepancy in rates.  The SAR methodology, Staff contends, was not devised for short-term contracts to be fully executed during the period of a utility’s capacity surplus.  Inaccuracies in the model are exacerbated, Staff contends, if contract lengths are limited to five years.  Staff suggests moving to a more market-based rate  or index so as to more accurately reflect surplus/market energy rates and new resource acquisition time frames.

Earth Power and Rosbud recommend denial of the Company’s Application.  Earth Power contends, that since the inception of PURPA, significant differences have been found to exist between small and large QFs and those differences cannot now be ignored without developing a hearing record.  PURPA is still the law of the land and the Commission should recognize Idaho Power’s proposal for what it is, an attempt to put the final nail in the coffin of the QF industry.  Should the Commission be inclined to grant the requested relief, Earth Power suggests that the new policy not affect QFs already involved with utilities in the negotiation process.

Rosebud states that Idaho Power and Idaho’s other regulated electric utilities have never been and are not today friends of competition, refusing to purchase generation from large QFs (specifically, greater than 15 MW) while successfully continuing to rate base their own large resources and maintain older high-cost rate base resources.  Limiting the contract length of QFs, Rosebud contends, will eliminate a potential QF’s ability to obtain long-term financing to build a project and will result in the elimination of a low-cost supply.  The Company’s Application, it states, should be recognized for what it really demonstrates, a monopolist seeking to protect its monopoly franchise from competition.  Rosebud suggests that the Commission inquire into and investigate whether Idaho Power is purchasing or selling non-QF resources on a long-term basis at rates in excess of avoided costs.  Without doing so, Rosebud contends that the Commission cannot make a factual determination that Idaho Power is not discriminating against competition and increasing ratepayer costs.  The Company, Rosebud contends, has a duty to mitigate stranded costs, to dispose of high-priced resources and to purchase existing low-cost competing resources.  In failing to reduce its generating costs, Rosebud contends, the Company foregoes any future right to recover stranded costs.  Restricting the supply of QF power at 2¢ per kilowatt hour when retail rates are nearly 5¢ per kilowatt hour, Rosebud contends, is bad public policy.

In reply, Idaho Power frames the question before the Commission in this case as follows:

In light of the potential for significant changes in the electric utility industry, is it still in the public interest to obligate Idaho investor-owned utilities to enter into long-term contracts to purchase power from small PURPA qualifying facilities (QFs)?

The Company contends, that no further record needs to be developed.  The Company states that it is simply requesting that the Commission adopt the same limitation on mandatory contract length for small QFs that it previously adopted for large QFs.  In Order No. 26576, the Company states, the Commission articulated its rationale for limiting the length of contracts for large QFs to five years.  The logic implicit in that portion of the Order, Idaho Power contends, remains compelling.  It is not in the public interest, Idaho Power contends,  to add more long-term purchase obligations during this time of uncertainty.  Reference Order No. 26576, Case No. IPC-E-95-9, pp. 6-7.

Idaho Power represents that current regional market-based power purchase contracts do not exceed five years in length.  What the QFs request, it states, is an artificial shelter, not otherwise available on the free market.  The Company further states that in its ten-year planning horizon it has no intention of constructing any generation resources.  Reference IPCo June 1997 IRP (1997-2006).  As represented in its IRP, the Company states that its only planned resources are market purchases or system efficiency improvements.

Idaho Power agrees with Staff that the current methodology for computing avoided costs for small QFs may no longer be appropriate, and concurs with Staff’s suggestion that the Commission consider adopting a market-based index as the basis for valuing energy to be provided by small QFs.

Commission Findings

The Commission has reviewed and considered the filings of record in Case No. IPC-E-97-9 and our prior Order No. 26576 in Case No. IPC-E-95-9.  We specifically note the requests of Rosebud and Earth Power for a hearing in this matter.  We find, however, that the record in this case needs no further development.  We continue to find it appropriate and reasonable to process this Application pursuant to Modified Procedure, i.e., by written submission rather than by hearing.  Reference IDAPA 31.01.01.201-204.

We find the logic supporting the contract length limitation for large QFs to be equally compelling when applied to smaller QF projects and find no reason in this regard to accord small QFs preferential treatment.  Reference Order No. 26576, Case No. IPC-E-97-9.  In this period of change within the electric industry, utilities are acquiring power to meet new load through short-term (five years or less) purchases.  To provide small QFs with more favorable contract lengths than otherwise available in the market place, we find, is not in the public interest and cannot be justified.  We find therefore, that Idaho Power should not be required to offer contracts to small QFs in excess of five years.  As with large QFs, however, this ruling does not prevent Idaho Power from offering for approval QF contracts with terms that exceed five years, should the Company be able to demonstrate that such contracts are in the best interest of its customers.

The Company’s underlying Application in this case and the Commission’s related Notices provided no public notice of intent to investigate the continued reasonableness of the SAR methodology for calculating avoided cost rates for small QFs.  Therefore, we decline to address Staff’s suggestion to move from the SAR methodology to a more market-based rate or index.

CONCLUSIONS OF LAW

The Commission has jurisdiction over Idaho Power Company and the issues raised in this Application pursuant to Idaho Code Title 61, the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq., the Public Utility Regulatory Policies Act of 1978 (PURPA) and the related implementing rules and regulations of the Federal Energy Regulatory Commission (FERC).

O R D E R

In consideration of the foregoing and as more particularly described and qualfied above, IT IS HEREBY ORDERED that the standard maximum contract length that Idaho Power Company is hereafter required to offer in power purchase contracts with PURPA qualifying facilities smaller than 1 megawatt is five (5) years.

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 1997.

                                                                                                                                       DENNIS S. HANSEN, PRESIDENT

                                                                                            RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:IPC-E-97-9.sw2

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

August 28, 1997