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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF ROCKY MOUNTAIN POWER FOR AN ORDER REVISING CERTAIN OBLIGATIONS TO ENTER INTO CONTRACTS TO PURCHASE ENERGY GENERATED BY WIND-POWERED SMALL POWER GENERATION QUALIFYING FACILITIES.	**CASE NO. PAC-E-07-7** **COMMENTS OF THE COMMISSION STAFF**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on June 27, 2007 in Case No. PAC-E-07-7, submits the following comments.

BACKGROUND

On April 23, 2007, PacifiCorp dba Rocky Mountain Power (PacifiCorp; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting a change in the Company's PURPA obligations for wind QFs. PacifiCorp proposes restoring the cap on entitlement to published avoided cost rates for wind-powered small power generation facilities that are qualifying facilities (QFs) under Sections 201 and 210 of the Public Utility Regulatory

Policies Act of 1978 (PURPA) from the current level of 100 kW to 10 average megawatts per month (10 aMW), subject to the following condition, among others:

> 5. Clarifying the rules governing the entitlement to published rates to prevent all QFs, whether wind or non-wind, capable of delivering more than 10 aMW per month from structuring or restructuring into smaller projects for the purpose of qualifying for the published avoided cost rates.

Published Rate Eligibility – Disaggregation

Idaho Power and Avista have recommended adoption of a rule nearly the same as that adopted by the Oregon Public Utility Commission preventing multiple projects owned by the same person from receiving the published avoided cost rates, if located at the same site. PacifiCorp recommends that the approach recommended by Idaho Power in Case No. IPC-E-07-04 be applied to PacifiCorp purchases as well.

PacifiCorp contends that wind projects are uniquely able to reconfigure themselves into various legal ownerships solely for economic reasons, without disturbing or affecting in any way the project site or structural design. In some circumstances, other generating technologies, it notes, may have similar capabilities. Such projects under common ownership that reconfigure themselves into multiple projects of a smaller capacity, PacifiCorp contends, should not qualify for published avoided costs in Idaho. Rather, these projects, it contends, should negotiate directly with the Company to determine the appropriate avoided cost price to be paid for energy delivered to PacifiCorp taking into account the specific attributes of the project.

Additionally, while fundamental economic differences in the avoided costs and wind integration costs exist for different utilities, PacifiCorp contends a uniform approach among Idaho jurisdictional utilities is particularly useful to avoid unneeded incentives favoring one utility over another solely due to different QF rules that might apply to different utilities.

STAFF ANALYSIS

The disaggregation issue was first raised by Idaho Power in Case No. IPC-E-07-04. Because the issue and proposed resolution in this case is identical, Staff's comments in the Idaho Power case are repeated below:

> Wind projects are unique from other generation technologies because they normally consist of multiple turbines, each with its own generator, often scattered over large areas. Because of this characteristic, wind projects capable of generating more than 10 aMW per month can choose to create multiple legal

entities to reconfigure themselves into multiple smaller projects in order to qualify for the historically higher published avoided cost rates. To address this concern, Idaho Power proposes to clarify its rules for published rate eligibility to preclude disaggregation. Idaho Power states that the disaggregation issue was recently addressed in the PURPA avoided cost rate proceedings before the Public Utility Commission of Oregon (Docket No. UM-1129). The parties to that proceeding, the Company states, settled the disaggregation issue by negotiating a stipulation, which was approved by the parties and by the Oregon PUC. Idaho Power submits a proposed rule set forth in Petition Attachment 2 proposing language similar to that approved in Oregon. The proposed rule effectively would limit QFs with common ownership from being located closer than five miles of each other[1].

Staff agrees in principle with the disaggregation rule proposed by Idaho Power for published rate eligibility. Large projects should, Staff believes, have project specific rates that recognize the generation characteristics of each project individually. However, Staff is concerned that projects will simply find even more creative ownership arrangements in the future that will render the proposed rule ineffective. In a production request, Staff inquired about the likely effect on existing projects if the definition had been in place, since many wind projects are clustered in the same area. The Company responded that it "... cannot not say for certain that some existing wind developments might have been precluded from obtaining contracts under the proposed definition." Idaho Power also went on to say "Of course, if the definition had been in place before the 18 wind FESAs [Firm Energy Sales Agreements] were signed, Idaho Power expects that the wind QFs could have been restructured to avoid any problem with the definition."

Because the effectiveness of the proposed rule is so much in question, Staff recommends that it not be approved. Staff believes it would be bad policy to adopt a new rule if there are serious doubts from the beginning about whether it will actually achieve its intended objective.

U.S. Geothermal, the developer of several geothermal projects in Idaho, also submitted extensive comments in the Idaho Power case. U. S. Geothermal contended that Idaho Power's proposal is impermissible under federal law because it conflicts with PURPA rules that restrict QFs within a one-mile radius. In its reply to comments, Idaho Power contends that U. S. Geothermal's assumption that the Company's proposal is impermissible under federal law is incorrect. Idaho Power stated that it is not proposing to change the test for QF status. PURPA's one-mile radius standard would still apply for the determination of QF status. However, under PURPA, it is the Idaho Commission, not FERC, Idaho Power contends, that determines which projects are entitled to the published rates. The five mile radius test Idaho Power proposes, the Company contends, deals solely with entitlement to published rates and is in no way, it states, contrary to federal law.

[1] Compare FERC "same site" approach 18CFR § 292.204 (a)(2)..."within one mile".

In addressing Staff's argument that the five mile radius approach proposed by the Company is desirable in principle but should be rejected because QF project developers will always find ways to circumvent Commission-imposed rules, Idaho Power stated in its reply that Staff's reasoning in part misinterprets Idaho Power's response to a Staff production request. In the production request, Staff inquired about the likely effect on existing projects if Idaho Power proposed five-mile radius definition had been in place earlier. The Company responded that because it is not privy to ownership information concerning QF projects, it "cannot say for certain that some existing wind developments might have been precluded from obtaining contracts under the proposed definition." The Company went on to say however "of course, if the definition had been in place before the 18 wind Firm Energy Sales Agreements were signed, Idaho Power expects that the wind QFs could have been restructured to avoid any problem with the definition." Obviously, Idaho Power states it should have been more clear in its response. Idaho Power's response, it states, was only intended to indicate that if QF developers know what the rules are ahead of time, they can comply with them.

Idaho Power further states in its reply that it is not its intent that the proposed five-mile radius rule place undue burdens on the development of new QF generation projects. At the same time, the Company believes that it is important for the Commission to honor its longstanding policy that it is in the public interest for small QFs to receive the published rates and large QFs to have their avoided costs determined using the IRP methodology. Idaho Power believes that its proposed five-mile radius rule is consistent with the Commission's policy by requiring each small QF to demonstrate a separation of ownership and control. Idaho Power does not believe that the current policy of setting avoided cost rates based on the size of the QF project is inequitable or inappropriate.

U.S. Geothermal also cites in its comments three instances where pairs of relatively large QF hydroelectric projects are located in close proximity to each other. U.S. Geothermal contends that application of Idaho Power's proposed five-mile radius rule may require the application of the IRP methodology to set their avoided cost for a contract renewal. Idaho Power replied that the public good is served by having the avoided cost rates for these large QF projects determined using the more sophisticated and precise IRP methodology. Idaho Power anticipates that when these contracts expire, regardless of what methodology is used to compute avoided costs, the owners of the projects will shop the generation from the projects to the highest bidder.

Speculation as to what will happen with these contracts far in the future, Idaho Power contends is not particularly productive. Idaho Power maintains that its proposal is prospective and potential QF developers will have ample notice and opportunity to develop their projects in a way that complies with the rule.

Staff has reviewed all of the disaggregation comments submitted in the Idaho Power case, including Idaho Power's response to the filed comments. Staff is still not convinced that adoption of the proposed disaggregation rule will have its intended effect. Staff still believes that project developers will find ways to circumvent the proposed rule through creative ownership arrangements. PacifiCorp, in this case, is proposing the same disaggregation rule that Idaho Power proposed in its case. The Company has not provided any additional support for the proposed rule than was proposed in the Idaho Power case; therefore, Staff continues to oppose adoption of the proposed disaggregation rule.

RECOMMENDATIONS

Staff recommends disapproval of PacifiCorp's Petition to revise its rules for published rate eligibility to preclude disaggregation. Staff believes that the proposed rules will be ineffective in accomplishing their intended objective.

Respectfully submitted this 27th day of July 2007.

Scott Woodbury
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 27TH DAY OF JULY 2007, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF,** IN CASE NO. PAC-E-07-07, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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