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

|  |  |  |
| --- | --- | --- |
| APPLICATION FOR APPROVAL OF POWER PURCHASE AGREEMENT BETWEEN PACIFICORP AND EARTH POWER RESOURCES, INC. AND FOR DECLARATORY ORDER | )))))) | CASE NO. UPL-E-96-3ORDER NO.  26595 |

On July 12, 1996, PacifiCorp dba Utah Power & Light Company (Utah Power; Company) filed an executed Power Purchase Agreement between PacifiCorp and Earth Power Resources, Inc. and a Petition for Declaratory Ruling with the Idaho Public Utilities Commission (Commission).

Earth Power Resources, Inc. (Earth Power) is a Nevada corporation and is the developer (individually or through separate subsidiaries or affiliates) of six proposed 1 MW geothermal generation projects, three generation projects to be located at Allen Springs and three generation projects to be located at Lee Hot Springs in Churchill County, Nevada.  Earth Power proposes to develop and sell the output of its generation projects to PacifiCorp dba Utah Power, Idaho Power and Washington Water Power.  As proposed Earth Power would sell and each utility would purchase a total of 2 megawatts, 1 MW each from Allen Springs and Lee Hot Springs.

PacifiCorp in this case has filed a negotiated Power Purchase Agreement with Earth Power dated June 28, 1996 for the Lee Generation Project I.  The proposed project is a 999 kW geothermal facility with an estimated annual net delivered output of 8,018,000 kWh.

PacifiCorp, arguing that the Commission’s prior Orders limiting the availability of published avoided cost rates to projects less than 1 MW would be circumvented were it to allow a developer, such as Earth Power, to develop three projects at each site (Allen Springs and Lee Hot Springs) or to install six generation projects at a single geothermal field, also requests a declaratory order from the Commission declaring that

(i)additional generation by Earth Power or any of its affiliates, from the same geothermal field supplying geothermal fluid to the facility, will not be entitled to published rates applicable to projects smaller than 1 MW;

(ii)if Earth Power or any affiliated entity seeks to contract with Utah Power for  the purchase of additional power and energy from a generator at the same geothermal field supplying geothermal fluid to the facility, the rates under this Agreement shall be taken into account in order to arrive at a rate for the cumulative generation which reflects Utah Power’s avoided costs.

On August 1, 1996, Earth Power filed an Answer, Motion to Bifurcate and Motion for Expedited Schedule.  Earth Power contends that the submitted Power Purchase Agreement is a stand-alone document that should be individually processed and not needlessly delayed.

Earth Power further contends that PacifiCorp’s Application is an inappropriate vehicle for declaratory rulings and that the matter is more appropriately brought before the Commission in a separate and distinct docket by way of a petition pursuant to Rules 101 and 102 of the Commission’s Rules of Procedure.  Earth Power contends that the six proposed projects are “independent” and notes that the Commission has never required that each project be built to its fullest possible potential.  Nor has the Commission, it states, ever required all projects that use the same motive force be grouped together for purposes of entitlement to published rates.

Earth Power agrees that the issue raised by PacifiCorp is appropriately resolved in a declaratory hearing proceeding.  Earth Power notes that pursuant to Commission Rules of Procedure, all potentially affected parties must receive notice of the petition.  Earth Power reserves its right to reply to comments received.  Earth Power requests that an expedited schedule be adopted, that the required notices be promptly issued and a briefing schedule adopted.

In Idaho Power Case No. IPC-E-96-14 Earth Power on August 1, 1996 filed a Motion to Stay indicating that the Commission’s decision in PacifiCorp’s Petition for Declaratory Ruling in Case No. UPL-E-96-3 has the potential to render Earth Power’s Complaint against Idaho Power moot.  On August 7, 1996, Idaho Power Company filed a Petition to Intervene and participate in Case No. UPL-E-96-3.

In Washington Water Power Case No. WWP-E-96-6 Earth Power on August 1, 1996 filed a Motion to Stay indicating that the Commission’s decision in PacifiCorp’s Petition for Declaratory Ruling in Case No. UPL-E-96-3 has the potential to render Earth Power’s Complaint against Water Power moot.  On August 14, 1996, Water Power filed an answer to Earth Power’s Motion to Stay recommending that the case not be stayed pending resolution of PacifiCorp’s Application for Declaratory Ruling but rather that the two cases be consolidated.

COMMISSION FINDINGS

The Commission has reviewed and considered the filings of record in Case No. UPL-E-96-3 and related Case Nos. IPC-E-96-14 and WWP-E-96-6.

Based upon the established record, we find it reasonable to grant Earth Power’s Motion to Bifurcate and to establish a new docket Case No. UPL-E-96-5 for Utah Power’s Petition for Declaratory Ruling. (Reference Utah Power Application ¶¶ 6-10.)  The Commission Secretary accordingly shall copy the filed pleadings in this case including this Order and cause them to be filed in Case No. UPL-E-96-5.  The new case caption shall be “In the Matter of the Petition of PacifiCorp dba Utah Power & Light Company for a Declaratory Ruling.”  The Commission Secretary is further directed to change the caption in Case No. UPL-E-96-3 for all future filings to “Application for Approval of Power Purchase Agreement Between PacifiCorp and Earth Power Resources, Inc.”

Because we interpret Idaho Power’s Motion to Intervene in the Case No. UPL-E-96-3 as a request to participate in the declaratory ruling proceedings, we find it reasonable to give Idaho Power intervenor party status in Case No. UPL-E-96-5.  We further find it reasonable to provide intervenor status in Case No. UPL-E-96-5 to The Washington Water Power Company and Earth Power Resources, Inc.

Because the Commission believes that Water Power Case No. WWP-E-96-6 presents a unique set of facts and chronology and because we have by this Order granted to Water Power intervenor party status in Case No. UPL-E-96-5, the Commission finds it reasonable to deny Water Power’s Petition to Consolidate Case Nos. UPL-E-96-3 and WWP-E-96-6.

We further find it reasonable within the bounds of due process and pursuant to agreement of the parties to provide Earth Power with expedited scheduling in Case No. UPL-E-96-5.

We will consider the submitted Power Purchase Agreement in Case No. UPL-E-96-3 when provided with Commission Staff analysis and therefore find it reasonable to defer any decision in this regard until such time.

O R D E R

In consideration of the foregoing and as more particularly described above IT IS HEREBY ORDERED that the Motion of Earth Power Resources, Inc. to Bifurcate is granted and the Commission Secretary is directed to establish a new docket Case No. UPL-E-96-5 captioned “In the Matter of Petition of PacifiCorp dba Utah Power & Light Company for a Declaratory Ruling.”  The Commission Secretary is further directed to change the caption in Case No. UPL-E-96-3 for all future filings to “Application for Approval of Power Purchase Agreement Between PacifiCorp and Earth Power Resources, Inc.”

IT IS FURTHER ORDERED that Idaho Power Company, The Washington Water Power Company and Earth Power Resources, Inc. are granted intervenor party status in Case No. UPL-E-96-5.

IT IS FURTHER ORDERED that the Petition of The Washington Water Power Company to Consolidate Case Nos. UPL-E-96-3 and WWP-E-96-6 is denied.

IT IS FURTHER ORDERED that the Motion of Earth Power Resources, Inc. to expedite proceedings is granted.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of  August  1996.

RALPH NELSON, PRESIDENT

                                                                                       MARSHA H. SMITH, COMMISSIONER

                                                                                       DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean Jewell

Assistant Commission Secretary

bls/O-uple963.sw

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

August 30, 1996