DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVID SCHUNKE

RANDY LOBB

RICK STERLING

GARY RICHARDSON

WORKING FILE

FROM:SCOTT WOODBURY

DATE:AUGUST 23, 1996

RE:EARTH POWER RESOURCES, INC.

CASE NOS. UPL-E-96-3 CONTRACT/[PETITION FOR] DECLARATORY RULING

                      IPC-E-96-14 COMPLAINT

                      WWP-E-96-6 COMPLAINT

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 PURPA qualifying facilities, three generation units to be located at Allen Springs and three generation units to be located at Lee Hot Springs in Churchill County, Nevada.  Earth Power proposes to develop and sell the output of its generation units 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.

Each case presents a different set of facts and chronology but they share a commonality and interrelatedness which at this stage of proceedings merits discussion together.

RE:  Case No. UPL-E-96-3  Application filed July 12, 1996

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 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 generators 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 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.

RE:  Case No. IPC-E-96-14  Complaint filed July 3, 1996

Earth Power in this case contends that it has offered to sell Idaho Power the output of two 1 MW geothermal PURPA qualifying facilities located at Allen Springs and Lee Hot Springs in Churchill County, Nevada, and that Idaho Power has refused to purchase at rates, terms and conditions that Earth Power believes it is otherwise entitled to.

On July 26, 1996, Idaho Power filed a Motion to Stay proceedings pending resolution of a contract dispute between Idaho Power and Earth Power in an Idaho district court proceeding.  Idaho Power contends that the District Court action bears on Idaho Power’s obligation to purchase and may be dispositive of proceedings before the Commission.  Reference February 10, 1994 $60,000 Option Agreement.

On August 1, 1996, Earth Power filed a Motion for Stay pending resolution of PacifiCorp’s Application for Declaratory Ruling in Case No. UPL-E-96-3.  Earth Power requests the right to respond to Idaho Power’s Motion to Stay in the event the declaratory ruling docket is concluded prior to the conclusion of Idaho Power’s suit against Earth Power in District Court.

On August 7, 1996, Idaho Power in a response to Earth Power’s Motion recommends that the Commission stay further proceedings in Case No. IPC-E-96-14 until both the PacifiCorp proceeding and the District Court proceeding have been completed.

RE:  Case No. WWP-E-96-6  Complaint filed July 3, 1996

Earth Power in this case contends that it has offered to sell Water Power the output of two 1 MW geothermal PURPA qualifying facilities located at Allen Springs and Lee Hot Springs in Churchill County, Nevada, and that Water Power has refused to purchase at rates, terms and conditions that Earth Power believes it is otherwise entitled to.

On July 26, 1996, Water Power filed a response and a Motion for Order Allowing Representation by Out of State Counsel.  Water Power denies that its actions reflect a refusal to negotiate with Earth Power and contends that it has acted in accordance with Commission Orders and policy.  Water Power denies that Earth Power is entitled to receive payment for its power at the requested rates.  Water Power contends that Earth Power is not entitled to posted rates available for QFs less than 1 MW.  Water Power contends that Earth Power failed to disclose material facts and has failed to demonstrate that it was ready, willing and able to enter into a contract for the sale of power.

On August 1, 1996, Earth Power filed a Motion in Case No. WWP-E-96-6 requesting a stay of proceedings pending Commission resolution of a related application by PacifiCorp for declaratory ruling in Case No. UPL-E-96-3.  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.  Water Power contends that there are issues arising out of its docket which may have application to the PacifiCorp proceeding but which have not been presently framed in the PacifiCorp proceeding.  In particular, Water Power cites issues of nondisclosure of material facts and grandfathering.  The Commission Water Power contends may want to consider these issues before establishing a policy to guide utilities and QF developers.

Commission Decision:

RE:  Case No. UPL-E-96-3

Power Purchase Agreement (Staff has not completed its analysis of the contract)

Earth Power Motion to Bifurcate

Idaho Power Petition to Intervene

Water Power Petition to Consolidate Case Nos. UPL-E-96-3 and WWP-E-96-6

Earth Power Motion to Expedite

RE:  Case No. IPC-E-96-14

Idaho Power Motion to Stay

Earth Power Motion to Stay

RE:  Case No. WWP-E-96-6

Water Power Motion for Order Allowing Representation by Out of State Counsel

Earth Power Motion to Stay

Water Power Petition to Consolidate Case Nos. WWP-E-96-6 and UPL-E-96-3

Scott D. Woodbury

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