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

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| IN THE MATTER OF THE PETITION OF PACIFICORP DBA UTAH POWER & LIGHT COMPANY FOR A DECLARATORY RULING. | )  )  )  )  )  ) | CASE NO. UPL-E-96-5  DECLARATORY RULING  ORDER NO. 26772 |

On July 12, 1996, PacifiCorp dba Utah Power & Light Company (Utah Power; Company) filed a Petition for Declaratory Ruling with the Idaho Public Utilities Commission in Case No. UPL-E-96-3.  Commission Rules of Procedure, IDAPA 31.01.01.101.  As discussed in greater detail below, the Company sought a ruling related to the purchase of energy from an independent power producer.  In Order No. 26595 the Commission directed that PacifiCorp’s Petition be moved to this case.

BACKGROUND AND PROCEDURAL HISTORY

Earth Power Resources, Inc. is a Nevada corporation and the developer (individually and/or through separate subsidiaries or affiliates) of six proposed 1 megawatt (MW) geothermal generation projects—three to be located at Allen Springs and three 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, Idaho Power Company and The Washington Water Power Company.  As proposed, Earth Power would sell and each utility would purchase a total of 2 MW, one MW each from Allen Springs and Lee Hot Springs.  Earth Power represents that the generation projects will qualify as small power production facilities as defined under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), and the implementing rules and regulations of the Federal Energy Regulatory Commission (FERC).

PacifiCorp argues that the Commission’s prior Orders limiting the availability of published avoided cost rates to projects less than 1 MW would be circumvented were a developer such as Earth Power allowed to develop three projects at a site or to install six generation projects at a single geothermal field.  It requests a declaratory ruling 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 to PacifiCorp’s Petition for Declaratory Ruling.  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.

Based on filings in Case Nos. UPL-E-96-3, IPC-E-96-14, and WWP-E-96-6, the Commission determined in Order No. 26595 that Water Power, Idaho Power and Earth Power should be granted intervenor party status in this case.  IDAPA 31.01.01.071-.075.

A public hearing in Case No. UPL-E-96-5 was held on December 17, 1996, in Boise Idaho.  The following parties appeared and participated by and through their respective counsel:

PacifiCorp dba Utah Power John M. Eriksson

Earth PowerPeter J. Richardson

Idaho PowerBruce C. Jones

Barton L. Kline

Water PowerR. Blair Strong

Commission StaffScott D. Woodbury

As a preliminary matter at hearing the Commission heard oral argument on the November 1, 1996 Motion to Strike filed by Earth Power.  Although granted intervenor status, Idaho Power elected to file no direct testimony in Case No. UPL-E-96-5.  Instead, on October 31, 1996, Idaho Power filed a document entitled “Concurrence of Idaho Power Company.”  In its Motion, Earth Power sought to strike from the record Idaho Power’s Concurrence on the ground that the Concurrence contained factual assertions not supported by the record.  Pursuant to agreement of Earth Power, Idaho Power and the Commission, the written Concurrence was treated as “withdrawn” by Idaho Power.  It was accepted that Idaho Power would not be presenting a direct case, but instead would be relying on the testimony and exhibits filed by Commission Staff, Water Power and Utah Power.  Tr. pp. 8, 9.

THE HEARING RECORD

The testimony, exhibits and hearing record in Case No. UPL-E-96-5 can be summarized as follows:

Earth Power is the owner and operator of two separately qualified small production facilities (QFs) located in Churchill County, Nevada: (1) The Lee Hot Springs Project (QF-95-1-001) and (2) the Allen Springs Project (QF-96-15-000).  Tr. p. 13; Exh. 202, 203, 301.  Both projects are located within Known Geothermal Resource Area (KGRA) No. 12 in Churchill County, Nevada, an area encompassing in excess of 225,000 acres.  Tr. p. 17; Exh. 207.  The QFs are self-certified.  18 C.F.R. § 292.207(a)(1) and (2).  The facilities will generate power using geothermal energy, hot fluids from the earth.

The location of the Lee Hot Springs Project is Churchill County, Nevada, approximately 18 miles south of Fallon in Section 33, Township 16 North, Range 29 East, MDM.  Exh. 202.  As reflected in the FERC filing, “the plant will begin operations at the 3 megawatt to 5 megawatt level, however, there will be expansions which may go up to 75 megawatts and beyond.”  Exh. 301.

The location of the Allen Springs Project is also in Churchill County, Nevada, approximately 17 miles south of Fallon in all or parts of Section 28, Township 16 North, Range 29 East, MDM.  Exh. 203.  As reflected in the FERC filing, the project site “has locations for 10-20,000 kW power plants which will be built in modules of 1 megawatt or more each. . . .  The project will begin operations at the 1 megawatt to 5 megawatt level, however, there may be expansions which may go up to, but not exceed, 80 megawatts.”  Exh. 203.

Earth Power presently has an approved Power Purchase Agreement with Utah Power for a 999 kW project to be located at Lee Hot Springs.  See Order No. 26705 issued December 6, 1996, in Case No. UPL-E-96-3.  In its Order the Commission stated “Our approval of the Power Purchase Agreement in this case is not to be interpreted as establishing any precedent regarding the matters under consideration in Case No. UPL-E-96-5.”

Earth Power proposes to develop two additional under 1 MW projects at the Lee Hot Springs site and to sell the entire output of each through separate contracts to Water Power and Idaho Power.  Tr. p. 13.  Earth Power further proposes to develop three under 1 MW projects at the Allen Springs site and to sell the entire output of each through separate contracts to Utah Power, Water Power and Idaho Power.  Tr. p. 13.

The exact location of the wells and hence the exact location of the other projects, Earth Power states, cannot be known until actual drilling is completed.  Tr. p. 18.  Earth Power has developed the projects (test wells) to the point of ensuring that they are viable.  Engineering and site preparation work can only go so far, however, Earth Power states, without a Power Purchase Agreement.  Tr. pp. 19, 20.  It is estimated that each under 1 MW project will require 750 gpm.  One completed well with a 12" casing is capable of producing 1,800 gpm, an amount sufficient for 3 MW.  A smaller well with a 7" casing is capable of producing 750 gpm, which is sufficient for the already executed Utah Power contract.  Tr. pp. 19, 109.

Earth Power is planning to construct a common gathering system that will gather geothermal liquids from wells drilled at various locations and distribute those liquids to a common heat exchanger and then through separate pipelines to three separate turbine generators at each QF site.  Tr. pp. 20, 21.  Separate corporations will operate the wells, gathering systems, generators and transmission systems.  Tr. pp. 268, 269.  The generation will be separately metered at each generator at each project site for purpose of calculating gross kWh output for each utility.  Tr. p. 22.  A line will be run from each project to a common electric distribution system.  Tr. p. 22.

Earth Power recommends that the Commission in this case establish a set of qualifying criteria for QF eligibility for published avoided cost rates, rates available to QFs under 1 MW.  For purpose of Commission analysis in determining whether a project is under 1 MW or should be regarded as greater than 1 MW, Earth Power proposes a test of independence, i.e., whether one project (generator) can be shut down without impacting the other projects (generators).  If the under 1 MW generators operate independently of each other, Earth Power contends, then they are separate projects and should be entitled to published rates.  Tr. pp. 26, 133.  It is irrelevant, Earth Power contends, whether the generators share a common well or have a common source of motive power.  Tr. pp. 25, 31.  If the common gathering system fails, then the generating projects can, Earth Power contends, always access the geothermal reserves through separate wells.  Tr. pp. 26, 27.

Through the use of shared facilities (gathering, transmission, etc.), Earth Power maintains that it will be able to realize some shared economies of scale (O&M, etc.) similar to those realized by utilities.  Tr. p. 28.  The economics of the projects, however, Earth Power reminds the Commission, are beyond the scope of permissible Commission inquiry.  Tr. p. 32; 18 C.F.R. § 292.602(c).

In Commission Order Nos. 25882, 25883 and 25884 issued January 31, 1995, the Commission lowered the threshold availability for published avoided cost rates from 10 MW to 1 MW.  Tr. p. 70.  The Commission in its Orders stated:

Ratepayers should not be asked to subsidize the QF industry through the establishment of avoided cost rates that exceed utility costs that would result from an effective least cost planning process.  Reducing the threshold correspondingly reduces the risks associated with the published rates being set either too high or too low.

. . .

Lowering the threshold, along with adopting a least cost planning based methodology . . . will help to ensure that a greater number of QF projects are cost effective by market standards before they are acquired by our utilities.

Tr. pp. 168, 191-193, 294, 295.  Staff contends that if the under 1 MW methodology is used, resulting levelized rates will be in the range of about 40 mills/kWh.  If the greater than 1 MW IRP methodology is used, resulting levelized rates would likely be in the range of 25 mills/kWh or less.  Tr. p. 295.  Earth Power admits that it is proposing multiple under 1 MW units solely for the benefit of obtaining published prices.  Tr. p. 35.  Staff contends that the IRP methodology more accurately reflects true avoided costs.  Tr. p. 320.  Water Power contends that Earth Power’s proposals to divide a 3 MW project into three 1 MW projects, if approved, would “defeat the Commission’s policy” (Tr. p. 270); Utah Power contends that it would “violate the Commission’s intent” (Tr. p. 191); and Staff contends that it would “circumvent the Commission’s IRP methodology” (Tr. p. 300).  Tr. pp. 70, 71, 170.  Earth Power posits that the spirit and intent of the Commission in lowering the threshold from 10 MW to 1 MW “was to kill QFs totally, to discourage them.”  Tr. p. 170.  Earth Power contends that it is complying with the spirit and the letter of the Commission’s directive.  Tr. pp. 53, 54, 169.  Earth Power queries whether it should be denied published rates, simply because its proposed projects could have been designed to be larger.  Tr. p. 37.  If its proposal for separate generation units does not qualify for published rates, what changes in configuration are necessary?  Tr. pp. 49, 135.  Earth Power recommends that the Commission answer this question.

Earth Power disputes Utah Power’s contention that “projects that use common facilities should be considered the same project.”  Tr. pp. 55, 56.  In this case, common facilities are proposed for motive force, distribution and ancillary support.  Tr. p. 57; see also Tr. pp. 148, 150, 210-212; see discussions re: common facilities—one project, Tr. pp. 245-253, 308-310.

Water Power in its prefiled testimony recommends or proposes a policy that all generat­ing units located at a single QF site be lumped together for purposes of entitlement to receive administratively determined avoided cost rates.  Tr. pp. 65, 258.  Water Power on cross-examination, however, limits suggested criteria to the facts presented in this case.  Tr. pp. 278, 282.  Earth Power contends that all six generators can be separately qualified as QFs.  Tr. pp. 65, 98.

Staff contends that the rates which a utility should be obligated to offer Earth Power in this case should be based on the greater than 1 MW IRP methodology, reasoning that the aggregate sizes of both the Lee and Allen QFs are larger than 1 MW, and that the three projects at each site are not truly independent.  Staff contends that the public interest would not be served by requiring utility customers to pay more than they would otherwise pay if only one contract for the full capacity to be developed at each QF site were proposed.  Tr. pp. 299, 300.  If there truly were three separate, independent projects at each of the two sites, Staff posits that Earth Power would have certified six different QFs and requested six different contracts from the one utility with the highest avoided cost rates.  Tr. p. 301.  Separate QF certification, Staff later argues, is not the only factor that should be considered.  Tr. p. 312.

COMMISSION FINDINGS

The Commission has reviewed and considered the filings of record and transcript in Case  No. UPL-E-96-5.  We have also reviewed and considered Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), together with the related implementing rules and regulations of the Federal Energy Regulatory Commission (FERC).

Under Section 210 of PURPA, electric utilities are required to purchase power (capacity and energy) from cogeneration or small power producers that obtain qualifying status under Section 201.  16 U.S.C. § 824a-3(a)-(d); 18 C.F.R. § 292.303(a).  Under the implementing regulations of FERC, the rate a qualifying facility (QF) is to receive for the sale of its power is generally referred to as the “avoided cost” rate.  Pursuant to 18 C.F.R. § 292.304(a)(2), electric utilities are not required to pay more than the avoided cost for purchases, i.e., the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the QF, such utility would generate itself or purchase from another source (18 C.F.R. § 292.101(b)(6)).  In 18 C.F.R. § 292.304(a)(1)(I), rates for purchases are required to be just and reasonable to the electric consumer of the electric utility, and in the public interest.  Utilizing a Surrogate Avoided Resource (SAR) methodology, we have approved and published an avoided cost rate available to QFs with a design capacity of less than 1 MW for each major electric utility that we regulate.  18 C.F.R. § 292-304(c).  The reasonableness of the published avoided cost rates has not been challenged and is not at issue in this case.

To be eligible for the Commission’s published rates, the cogeneration or small power production facility must satisfy the general requirements and criteria for qualification established by the FERC in 18 C.F.R. § 292.203, and obtain qualifying status pursuant to the procedures established in 18 C.F.R. § 292.207.  Earth Power is the owner and operator of two separately qualified small power production facilities: the (1) Lee Hot Springs Project (QF-95-1-001) and (2) the Allen Springs Project (QF-96-15-000).  Earth Power contends that all six proposed 1 MW generation projects can be separately qualified as QFs.

This Commission equates the term “project,” to the extent that we have used it alone in our rate orders and schedules, with “qualifying facility,” as that term is defined by FERC.  Based upon the record in this proceeding, we find that Earth Power currently has two QFs: 1) the Lee Hot Springs project and 2) the Allen Springs project.  If Earth Power desires to acquire QF status for the other projects, qualifying status is obtained from FERC.  FERC is also the appropriate forum for challenges and objections to qualifying status.

Qualifying Facilities less than 1 MW in size under present Commission Orders are eligible for published avoided cost rates.  If the total or aggregate generation of a QF is 1 MW or greater, the appropriate methodology for calculating avoided costs is the Integrated Resource Plan (IRP) methodology.  Earth Power presently has an approved Power Purchase Agreement with Utah Power for a 999 kW project at Lee Hot Springs.  In electing to contract with Utah Power for the published less than 1 MW rate, we find that Earth Power has elected to limit the size of its project at Lee Hot Springs to 999 kW.  Additional generation facilities at that site will have to separately qualify as a “qualifying facility” as defined at 18 CFR 292.207 in order to be eligible for a contract from Idaho regulated utilities.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over PacifiCorp dba Utah Power & Light Company, The Washington Water Power Company and Idaho Power Company, pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Idaho Public Utilities Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter fixed term obligations for the purchase of energy from qualified small power production facilities, and to implement FERC rules.

O R D E R

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the foregoing discussion be interpreted as a declaratory ruling and be used as an instructive guide to electric utilities and QFs.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by 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 January 1997.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:UPL-E-96-5.sw3

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

January 30, 1997