DECISION MEMORANDUM

TO:COMMISSIONER NELSON

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COMMISSIONER HANSEN

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WORKING FILE

FROM:SCOTT WOODBURY

DATE:MARCH 11, 1997

RE:CASE NO.  UPL-E-96-5

DECLARATORY RULING — ORDER NO. 26772

PETITIONS FOR RECONSIDERATION

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 (Commission) in Case No. UPL-E-96-3 (later moved to Case No. UPL-E-96-5).  Commission Rules of Procedure, IDAPA 31.01.01.101.  The Company sought a ruling related to the purchase of energy from an independent power producer, Earth Power Resources, Inc.  (Earth Power), and the applicable rates.  Based on related filings, Idaho Power Company and The Washington Water Power Company were granted intervenor party status.

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.

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.

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.

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.

On January 30, 1997, the Commission issued final Order No. 26772 and declaratory ruling in Case No. UPL-E-96-5.  (Attached).  In its Order the Commission made the following findings:

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. . . .

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.

Timely Petitions for Reconsideration were filed by Idaho Power, PacifiCorp and Water Power.  (Attached) Reference IDAPA 31.01.01.331.  Earth Power filed an answer to the three Petitions and opposes reconsideration.  (Attached).  The positions of the parties can be summarized as follows:

It is the common contention of the utilities that the Commission should reconsider its determination that the term “project” is synonymous with “qualifying facility.”  The utilities suggest that a more acceptable rule would be to define “project” for purposes of eligibility for published rates available to Qfs less than 1 MW in size along the same lines that the FERC uses to define “same site” for the qualification criteria 80 megawatt size limitation, (18 C.F.R. § 292.203; 18 C.F.R. § 292.204(a)(2))  e.g., as proposed by PacifiCorp—by equating “project” for purposes of eligibility for published rates, with “all cogeneration and small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located within one mile of each other, or, for hydroelectric facilities, facilities using water from the same impoundment for power generation”—with/reserved right to modify the application of its definition of “project” for good cause shown.  18 C.F.R. § 292.204(a)(3).   It is not just and reasonable to the electric consumer or in the public interest (18 C.F.R. § 292.304(a)(1)(I)), the utilities contend, to allow developers through creative self-certifications to reconfigure what is in reality a greater than 1 MW capacity project into multiple 1 MW projects so as to obtain published (and ostensibly higher) rates.  The utilities request reconsideration by written briefs or comments.

Earth Power by way of answer contends that the utilities in their Petitions for Reconsideration propose the same arguments that were considered and rejected by the Commission in its Order.  Earth Power characterizes the utility filings as collateral attacks on the Commission’s avoided cost ratemaking Orders and the reasonableness of the posted rates available to small QFs.  Earth Power additionally refutes the utility claim that the posted rates are higher than those which result from the IRP methodology.

The Federal Energy Regulatory Commission (FERC), Earth Power states, has defined facility as “electrical generation equipment.”  18 C.F.R. § 292.204(a)(2)(ii).  That definition, Earth Power states, does not include common facilities.  It is not the Commission’s responsibility under PURPA, Earth Power contends, to define or certify qualifying facilities.  That is FERC’s responsibility.  By declaring that all QFs under 1 MW are eligible for avoided cost rates of a certain level, Earth Power contends, that the Commission has fulfilled its responsibility under PURPA.

Commission Decision

The decision date regarding whether to grant or deny reconsideration is March 20, 1997.  Having reviewed the utility Petitions and answer of Earth Power, is the Commission inclined to grant or deny reconsideration?  What are the Commission’s thoughts in this regard?

Scott Woodbury

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