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

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| IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA UTAH POWER & LIGHT COM­PANY FOR AN ORDER LIMITING THE LENGTH OF CONTRACTS WITH QUALI­FYING FACILITIES SMALLER THAN 1 MW TO FIVE YEARS. | )  )  )  )  )  )  ) | CASE NO. UPL-E-97-4  ORDER NO. 27213 |

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), electric utilities are required to purchase power produced by cogenerators or small power producers that obtain qualifying (QF) status.  On August 28, 1997, the Commission issued Order No. 27111 in Idaho Power Case No. IPC-E-97-9 reducing the standard maximum contract length that Idaho Power is required to offer in power purchase contracts with PURPA qualifying facilities (QFs) smaller than 1 megawatt to five (5) years.  In so doing, the Commission extended the five year limitation on QF contract length existing for large QFs to small QFs.  Reference Order No. 26576, Case No. IPC-E-95-9.  As expressed by the Commission in its Order limiting the standard contract length for large QFs:

Significant changes have swept through the electric industry since we last examined the issue of contract length.  The FERC has mandated open access to the transmission system, thermal technologies have improved, gas prices are low, there is a considerable surplus of energy available in this region resulting in very low spot market prices for electricity and, finally, even the continued existence of PURPA is being called into question.  We find that as the industry as a whole continues to transform to a more free market model, we cannot justify obligating utilities to 20-year contracts for PURPA power.  As the utilities in this case note, such an obligation does not reflect the manner in which they are currently acquiring power to meet new load; through short-term (five years or less) purchases.  Consequently, it would be nothing more than an artificial shelter to the QF industry to provide those projects with contract terms not otherwise available in the free market.  We can find no justification for insisting that Idaho’s investor-owned utilities and their ratepayers assume such an obligation simply to foster one particular segment of an increasingly competitive industry.  We find, therefore, that Idaho’s investor-owned utilities shall not be required to offer contracts to QFs in excess of five years until further action is taken by this Commission.  This ruling, however, does not prevent utilities from offering for approval QF contracts with terms that exceed five years should the utilities believe that such contracts are in the best interests of their ratepayers.

Order No. 26576, pp. 6, 7.

In its Order regarding small QFs the Commission stated:

We find the logic supporting the contract length limitation for large QFs to be equally compelling when applied to smaller QF projects and find no reason in this regard to accord small QFs preferential treatment.  Reference Order No. 26576, Case No. IPC-E-95-9.  In this period of change within the electric industry, utilities are acquiring power to meet new load through short term (5 years or less) purchases.  To provide small QFs with more favorable contract lengths than otherwise available in the marketplace, we find, is not in the public interest and cannot be justified.

Order No. 27111, p. 4

On September 8, 1997, PacifiCorp dba Utah Power & Light Company (Utah Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) in Case No.  UPL-E-97-4 requesting an Order limiting the length of all PURPA contracts between Utah Power and qualifying cogeneration and small power production facilities (QFs) smaller than 1 MW (small QFs) to five years or less.

Utah Power in its filing requests a similar reduction in contract term for small QFs as permitted to Idaho Power Company to avoid the disparate treatment and competitive disadvantage that the Company alleges would result if Utah Power were required to continue offering 20 year contracts to small QFs.  Reference Order No. 27111, Case No. IPC-E-97-9.

On September 23, 1997, the Commission issued Notices of Application and Modified Procedure in Case No. UPL-E-97-4.  The deadline for filing comments was October 15, 1997.  Timely comments were filed by Sorenson Engineering, P.A. and Commission Staff.  The comments can be summarized as follows:

Sorenson Engineering

Sorenson Engineering recognizes the changes occurring in the electric industry but protests the Application of Utah Power contending that PURPA is still the law of the land, and that it is unreasonable to expect a PURPA small hydro producer, or a utility for that matter, to amortize its plant investment in five years.  By way of further comment, Sorenson Engineering assuming that distribution and transmission lines will continue to be owned by utilities, states that it can only support a free market transition that is coupled with free and open access to wheel power at a reasonable rate for transmission.

Commission Staff

Staff supports the Company’s Application for reasons expressed by the Commission in Order No. 27111, Case No. IPC-E-97-9, and believes that rules regarding contract length for PURPA contracts should be the same for all regulated electric utilities in Idaho to avoid disparate treatment.

Commission Findings

The Commission has reviewed and considered the filings of record in Case No. UPL-E-97-4 including the filed comments of Commission Staff and the comments and objection of Sorenson Engineering.  We have also reviewed and considered our prior Order No. 27111 in Case No. IPC-E-97-9 and Order No. 26576 in Case No. IPC-E-95-9.  We continue to find it appropriate and reasonable to process this Application pursuant to Modified Procedure, i.e., by written submission rather than by hearing.  Reference IDAPA  31.01.01.201-204.

Regarding the comments of Sorenson Engineering on deregulation and an independent producer’s right to access transmission lines and wheel power to market, the Commission notes that its concerns are issues that have been and/or are presently being addressed by the Federal Energy Regulatory Commission (Reference FERC Order Nos. 888 and 889), Congress and some state legislatures within the context of electric deregulation and/or electric restructuring proposals.  Regarding an independent producer’s access rights to local distribution lines, we apprise Sorenson Engineering that this is not a matter that has yet been addressed by this Commission.  If and when the issue is taken up, we encourage Sorenson Engineering to participate.

Regarding Sorenson Engineering’s comments related to “representation” of Mr. Jerry Pancheri of Howe, Idaho, a QF developer, and the developer’s proposal to increase the output of its QF facility from 80 kW to 275 kW, we simply note that there are procedures to be followed by Mr. Pancheri or his authorized representative in filing applications or complaints with the Commission.  Reference IDAPA 31.01.01.043 (Representation of Parties at Hearing); .052 (Applications — Defined — Form and Contents); and .054 (Formal Complaints — Defined — Form and Contents).

For reasons previously expressed by the Commission in Order Nos. 26576 and 27111 and set forth above, we find it reasonable to reduce the standard maximum contract length that Utah Power is required to offer in power purchase contracts with PURPA qualifying facilities smaller than 1 megawatt to five years.  As with large QFs, however, this ruling does not prevent Utah Power from offering for approval QF contracts with terms that exceed five years, should the Company be able to demonstrate that such contracts are in the best interest of its customers.

CONCLUSIONS OF LAW

The Commission has jurisdiction over PacifiCorp dba Utah Power & Light Company and the issues raised in this Application pursuant to Idaho Code, Title 61, the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq., and the Public Utility Regulatory Policies Act of 1978 and the related implementing rules and regulations of the Federal Energy Regulatory Commission.

O R D E R

In consideration of the foregoing and as more particularly described and qualified above,  IT IS HEREBY ORDERED that standard maximum contract length that PacifiCorp dba Utah Power & Light Company is hereafter required to offer in power purchase contracts with PURPA qualifying facilities smaller than 1 megawatt is five (5) years.

THIS IS A FINAL ORDER.  Any person interested in 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 November 1997.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

November 14, 1997