

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S PETITION TO MODIFY)	CASE NO. IPC-E-15-01
TERMS AND CONDITIONS OF)	
PROSPECTIVE PURPA ENERGY SALES)	NOTICE OF PETITION
AGREEMENTS)	
)	NOTICE OF
)	INTERVENTION DEADLINE
)	
)	ORDER NO. 33222

On January 30, 2015, Idaho Power Company filed a Petition with the Commission to modify the terms and conditions by which Idaho Power must purchase energy generated by qualifying facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA). Specifically, Idaho Power asks that the Commission issue an Order reducing the Commission-established maximum required term for the Company's prospective PURPA contracts from 20 years to two years. Idaho Power asserts the change is necessary to ensure system reliability and to ensure its customers' rates are just, reasonable, and in the public interest. With its Petition, the Company filed supporting testimony by William H. Hieronymus, Randy Allphin, and Lisa Grow.

BACKGROUND

PURPA was passed as part of the National Energy Act of 1978. The Act's goals include the encouragement of electric energy conservation, efficient use of resources by electric utilities, and equitable retail rates for electric consumers, as well as the improvement of electric service reliability. 16 U.S.C. § 2601 (Findings). Under the Act, the Federal Energy Regulatory Commission (FERC) prescribes rules for PURPA's implementation. 16 U.S.C. § 824a-3(a), (b). State regulatory authorities such as the Idaho Public Utilities Commission implement FERC rules, but have "discretion in determining the manner in which the rules will be implemented." *Idaho Power Company v. Idaho Pub. Util. Comm.*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013) (citing *F.E.R.C v. Mississippi*, 456 U.S. 742, 751 (1982)).

PURPA requires electric utilities, unless otherwise exempted, to purchase electric energy from qualifying facilities (QFs). 16 U.S.C. § 824a-3; *see also* 18 C.F.R. §§ 292.101 (defining qualifying facilities), 292.303(a). In Idaho, the purchase rate for a utility's contract to

purchase QF energy under PURPA must be approved by this Commission. *Idaho Power*, 155 Idaho at 789, 316 P.3d at 1287. The purchase rate for PURPA contracts must be “just and reasonable to the electric consumers . . . and in the public interest” and “shall not discriminate against [QFs].” 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304. Also, the purchase rate shall not exceed the “incremental cost” to the utility, defined as the cost of energy which, “but for the purchase from [the QF], such utility would generate or purchase from another source.” 16 U.S.C. § 824a-3(d); 18 C.F.R. § 292.101(6) (defining avoided costs).

PURPA and FERC’s implementing regulations are silent as to contract length; consequently, the issue is in the Commission’s discretion. *See Afton Energy, Inc. v. Idaho Power*, 107 Idaho 781, 785-86, 693 P.2d 427, 431-32 (1984); *Idaho Power*, 155 Idaho at 782, 316 P.3d at 1280. Since PURPA was first implemented in Idaho, this Commission has periodically modified the length for PURPA contracts. *See Order No. 29029*. Initially, the Commission established a maximum contract term of 35 years, which it shortened to 20 years in 1987. Order Nos. 21018, 21630. The term was reduced to five years in 1996, and raised back to 20 years in 2002. Order Nos. 26576, 29029. In its Petition, Idaho Power asks the Commission to again modify the maximum term of its QF contracts.

NOTICE OF PETITION

YOU ARE HEREBY NOTIFIED that Idaho Power’s Petition states the Company has entered into PURPA QF projects since 1982. Petition at 17 (*citing* Allphin Direct, Exh. 1). Although its first contracts were for relatively small amounts of PURPA generation, Idaho Power has seen a “dramatic increase in the number and size of PURPA projects . . . coming on-line and under contract.” *Id.* at 18.

YOU ARE FURTHER NOTIFIED that Idaho Power asserts it currently has a total of 1,302 megawatts (MW) of PURPA QF projects under contract. *Id.* at 2 (*citing* Allphin Direct, Exh. 2). Also, Idaho Power has “an additional 885 MW of PURPA solar capacity in the queue actively seeking PURPA energy sales agreements to be on-line in 2016.” *Id.* (*citing* Allphin Direct, Exh. 1, 2). Idaho Power estimates that the addition of these proposed solar projects would represent a “long-term financial obligation to customers of approximately \$2.1 billion,” in addition to the existing \$2.6 billion obligation over the life of the Company’s projects already on-line and operational. *Id.* at 3 (*citing* Allphin Direct, Exh. 4).

YOU ARE FURTHER NOTIFIED that Idaho Power contends it is reaching a point at which the capacity of proposed projects will exceed its operational need. *Id.* at 20 (*citing* Allphin Direct, Exh. 3, 4, 9). Idaho Power states that “the continued creation of 20-year term [PURPA] contracts places undue risk on customers at a time when Idaho Power has sufficient resources to meet customer demands.” *Id.* at 2. According to Idaho Power, if it is obligated to continue its acquisition of large amounts of unneeded intermittent PURPA generation, it will result in inflation of its power supply costs and the degrading of its system’s reliability. *Id.* at 20-27. Idaho Power further asserts that the 20-year lock-in of contractual rates without proper consideration of the Company’s need for proposed contracts’ energy is unreasonable and contrary to the public interest. *Id.* at 27-34. In further support, Idaho Power cites this Commission’s recent decisions expressing concern about the consequences of the continued addition of extremely large amounts of intermittent QF generation onto Idaho Power’s system. *Id.* at 3, 21 (*see* Order Nos. 33198-33202, 33204-33209).

YOU ARE FURTHER NOTIFIED that Idaho Power’s Petition identifies several issues concerning PURPA implementation that this Commission could examine and possibly revise. *Id.* at 4-5. However, the Company requests only that “the maximum required term for any Idaho Power PURPA energy sales agreement be reduced from 20 years to two years.” *Id.* at 36.

DISCUSSION AND FINDINGS

In several recent decisions, we expressed concern that, “in less than four months’ time, 13 QFs have contracted with Idaho Power for nearly 400 MW of solar generation – all expected to be on-line and producing power by the end of 2016.” Order No. 33209 at 7 (*see* Errata; *see also* Order Nos. 33198-33202, 33204-33208). We further noted, “The combined 20-year contractual obligation of these 13 projects is approximately \$1.4 billion,” of which 100% is passed on to ratepayers. *Id.* Despite adjustments to the IRP methodology to improve the accuracy of avoided cost rates, QFs continue to request contracts for increasing capacities. *Id.* at 8; Petition at 2, 18. Thus, even before Idaho Power’s current Petition, we were troubled by the potential negative impact of “the substantial amount of must-take intermittent generation” on Idaho Power’s ability to reliably serve customers. Order No. 33209 at 8 (*see also* Order Nos. 33198-33202, 33204-33208).

Upon reviewing this Petition, the attached testimonies, and exhibits, our concerns are unabated. We find that Idaho Power's Petition presents issues requiring further proceedings before this Commission. To date, the Commission has received four Petitions to Intervene. One of the prospective intervenors has filed requests for production. Given the complexity of issues and the level of interest reflected in the filings thus far, we believe formal proceedings are necessary.

However, formal proceedings are often protracted. We find there is sufficient evidence that the predicted influx of high-capacity PURPA contracts could significantly and detrimentally impact customer rates and system reliability before this matter is fully resolved. We therefore find that action pending resolution of this matter is warranted.

We have previously ordered five-year terms for PURPA contracts from 1996 to 2002. Order No. 26576. In 2002, we raised the term to 20 years. Order No. 29029. Since then, we have considered but rejected a reduction in contract length. *See* Order No. 32697 at 24. We now find that circumstances have changed.

Changes in technology, load, resources, and federal tax incentives, among countless other factors, require the frequent – if not constant – re-examination of how we implement PURPA. We find that the evidence supports a temporary reduction of the maximum contract term for Idaho Power's QF contracts to five years. We believe this interim measure will enable the Commission to address the PURPA implementation issues raised in this case, without having to simultaneously manage a continued tide of new PURPA cases.

The five-year term for new PURPA contracts is effective as of February 5, 2015, and shall remain in effect unless and until otherwise ordered by the Commission. The Commission directs the parties to establish an expedited case schedule. The uncertainty caused by a lengthy technical hearing process would be unfair to project developers. Therefore, we will expect to resolve the issues raised in a timely manner.

NOTICE OF INTERVENTIONS AND PARTIES

YOU ARE FURTHER NOTIFIED that persons desiring to intervene in this matter must file a Petition to Intervene with the Commission pursuant to this Commission's Rules of Procedure 72 and 73, IAPA 31.01.01.072 and -.073. All Petitions to Intervene must be filed no later than February 20, 2015. Persons desiring to present their views without parties' rights

of participation and cross-examination are not required to intervene and may present their comments without prior notification to the Commission or the parties.

YOU ARE FURTHER NOTIFIED that the Commission has already received Petitions to Intervene by the following Petitioners: J.R. Simplot Company, Idaho Conservation League, Intermountain Energy Partners, and Snake River Alliance.

YOU ARE FURTHER NOTIFIED that the following person is designated as Idaho Power's representative in this matter:

Donovan E. Walker
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YOU ARE FURTHER NOTIFIED that, once the deadline for intervention has passed, the Commission Secretary shall prepare a Notice of Parties. As soon as possible thereafter, Staff counsel will convene an informal scheduling conference.

NOTICE OF PROCEDURE

YOU ARE FURTHER NOTIFIED that the Petition, exhibits, and testimonies have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices. The Application, exhibits, and testimonies are also available on the Commission's web site at www.puc.idaho.gov. Click on the "File Room" tab at the top of the page, scroll down to "Open Electric Cases," then click on the case number as shown on the front of this document.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The 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 into fixed-term obligations for the purchase of energy from qualified facilities and to implement FERC rules. The Commission may enter any final Order consistent with its authority under Title 61 and PURPA.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000, *et seq.*

YOU ARE FURTHER NOTIFIED that all hearings and oral arguments in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). Persons needing the help of a sign language interpreter or other assistance in order to participate in or to understand testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing. The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0338 (Telephone)
(208) 334-3762 (FAX)
E-Mail: secretary@puc.idaho.gov

ORDER

IT IS HEREBY ORDERED that effective February 5, 2015, and pending further order of the Commission, the maximum contractual term for Idaho Power's new PURPA contracts shall be five years.

IT IS FURTHER ORDERED that persons desiring to intervene in this matter shall file a Petition to Intervene by February 20, 2015. Once the deadline for Petitions to Intervene has passed, the Commission Secretary shall prepare and issue a Notice of Parties.

IT IS FURTHER ORDERED that, as soon as possible after the Notice of Parties has issued, Staff counsel shall convene an informal scheduling conference for the parties to discuss how to expedite proceedings in this case.

IT IS FURTHER ORDERED that the Petitions to Intervene filed by J.R. Simplot Company, Idaho Conservation League, Intermountain Energy Partners, and Snake River Alliance are granted.

IT IS FURTHER ORDERED that all parties in this proceeding serve all papers hereafter filed in this matter on all parties of record. These intervenors are represented by the following for purposes of service:

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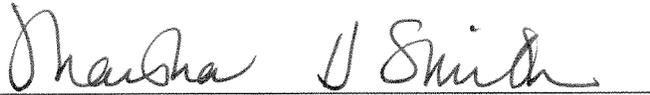
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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 6th
day of February 2015.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



MACK A. REDFORD, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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