

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER RAPER
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: DAPHNE HUANG
DEPUTY ATTORNEY GENERAL**

DATE: MARCH 31, 2015

**SUBJECT: CLEARWATER PAPER AND SIMPLOT COMPANY'S JOINT PETITION
TO CLARIFY; CASE NOS. IPC-E-15-01, AVU-E-15-01, AND PAC-E-15-03**

On February 25, 2015, Clearwater Paper Corporation and J.R. Simplot Company filed a Joint Petition to clarify the scope of interim relief granted to Idaho Power in Order No. 33222. The Commission adopted a comment schedule on the Joint Petition, as agreed by the parties at the informal scheduling conference held March 10, 2015. Order No. 33253 at 7. The Commission received answers from Renewable Energy Coalition (REC), Rocky Mountain Power Company, Idaho Power Company, and Commission Staff, as well as a joint reply from Clearwater and Simplot.

BACKGROUND

On January 30, 2015, Idaho Power filed a Petition asking the Commission to reduce the length of its PURPA contracts from 20 years to two years (Case No. IPC-E-15-01). The Commission granted Idaho Power interim relief, reducing the term for the utility's new PURPA contracts to five years while the Commission investigates the matter. Order No. 33222 at 6. Shortly thereafter, Avista Corporation and Rocky Mountain each filed petitions seeking the same or similar permanent and interim relief (Case Nos. AVU-E-15-01, PAC-E-15-03). On March 13, 2015, the Commission consolidated the three cases and granted Avista and Rocky Mountain the same interim relief granted Idaho Power. Order No. 33250.

On February 1, 2015, Intermountain Energy Partners (IEP) petitioned the Commission to clarify the scope of the consolidated proceeding. In particular, IEP asked the Commission to clarify that the interim relief granted in Order Nos. 33222 and 33250 "applies only to the Utilities' new

PURPA contracts that exceed the published rate eligibility cap.” Order No. 33253 at 6-7.¹ The Commission granted IEP’s Petition and clarified its Order Nos. 33222 and 33250 such that the interim relief granted to the Utilities “applies to new PURPA contracts in excess of the published rate eligibility cap.” Order No. 33253 at 4.

THE JOINT PETITION

Clearwater and Simplot also sought to clarify the scope of the five-year interim relief granted to the Utilities. In their Joint Petition, they “recommend the Commission’s ordering paragraph . . . be amended” as follows:

IT IS HEREBY ORDERED that effective February 5, 2015 . . . the maximum contractual term for [the Utilities’] new intermittent (solar and wind powered) PURPA contracts shall be five years.

Joint Petition at 4 (proposed language underlined).

Clearwater and Simplot did not oppose the Petition to Clarify by REC, which the Commission granted. However, they argue that the scope of interim (as well as permanent) relief should be further narrowed to only “wind and solar intermittent resources that exceed the published rate eligibility cap of 100 kW.” Joint Petition at 2. The Joint Petition asserts this narrowed relief is warranted by way of clarification because proceedings “will likely continue for several months or a year,” during which Simplot’s ability to negotiate a new PURPA contract will be unduly limited. *Id.* at 4. In further support, the Joint Petition notes, “None of Idaho Power’s [underlying] arguments [supporting shorter contracts] apply to base-load facilities utilizing waste heat, biomass, or industrial cogeneration such as” the Clearwater and Simplot facilities. *Id.* at 3.

RESPONSES AND REPLY COMMENTS

1. REC

REC supports the Joint Petition to Clarify. REC states that “Idaho Power has not submitted sufficient evidence that any baseload [qualifying facilities or “QFs”] are contributing to its potential problems associated with the acquisition of large amounts of unneeded variable wind and solar generation.” REC Response at 3. REC thus agrees with the Joint Petition that the Commission should “limit any interim relief to only new intermittent wind and solar QFs above the rate eligibility cap.” *Id.* at 3.

¹ Renewable Energy Coalition (REC), AgPower DCD, and AgPower Jerome also supported IEP’s Petition to Clarify Order No. 33222.

2. Rocky Mountain

Rocky Mountain opposes the Joint Petition to Clarify. Rocky Mountain notes that the Joint Petition was filed before Rocky Mountain's Petition to modify PURPA contracts was consolidated with Idaho Power's (and Avista's). Rocky Mountain Answer at 2. According to Rocky Mountain, "[t]here is nothing in [its] Petition that differentiates between an intermittent (solar or wind) QF resource and a non-intermittent resource." *Id.* at 3. "[T]he arguments and evidence [in Rocky Mountain's] Petition apply to all resource types and not only to intermittent resources." *Id.* Rocky Mountain thus asks the Commission to deny the Joint Petition.

3. Idaho Power

Idaho Power also opposes the Joint Petition to Clarify. Idaho Power states that, contrary to the Joint Petition, the problems and risks to customers identified in Idaho Power's Petition are caused by "all PURPA QF projects no matter what resource type they utilize and no matter what size they happen to be." Idaho Power Answer at 2. However, the utility asserts that large QF projects that exceed the published rate eligibility cap have a more significant financial impact upon Idaho Power customers because of the 20-year contracts. *Id.* at 2-3. Also, "the harmful impacts identified in Idaho Power's Petition are amplified [as opposed to absent] for a large cogeneration QF because it will deliver unneeded energy to the utility on a more consistent and regular basis than an intermittent wind or solar QF would be expected to deliver." *Id.* at 3. Finally, Idaho Power notes that the Joint Petition "attempt[s] to make new substantive arguments, which may be relevant to their substantive positions in the case as a whole but have little to do with a *clarification* of the Commission's initial interlocutory order." *Id.* at 5 (emphasis added). "The only relevant question should be: What did the Commission intend to do/say in its Order No. 33222 wherein it limited the maximum contract for all new PURPA QF contracts to five years." *Id.* Idaho Power therefore asks that the Joint Petition be denied.

4. Commission Staff

Commission Staff filed an answer opposing the Joint Petition. Staff initially noted that Clearwater and Simplot did not have the benefit of knowing the agreed case schedule at the time they submitted their Joint Petition. Staff Answer at 4. The case schedule, to which the joint petitioners agreed, sets a technical hearing to commence on June 29, 2015. Order No. 33253 at 5. Staff believes that, under this expedited schedule, the case "will be completed in sufficient time so that the five-year term for interim relief will not be an issue." Staff Answer at 4.

Citing expert testimonies presented with the Utilities’ Petitions, Staff next asserted there was sufficient evidence to support the Orders granting interim relief. *Id.* at 4-6. Staff argued that both Idaho Power and Rocky Mountain provided prefiled testimony that supported granting interim relief. “[L]ong-term PURPA contracts transfer the risk of not accurately forecasting long-term avoided cost rates to ratepayers. *Id.* at 5. Finally, Staff asserted that “the better place to address the joint petitioners’ argument regarding the scope of relief and whether to shorten contracts for cogen projects is in the technical phase of this case,” rather than in a Petition to Clarify which might prematurely limit the scope of the evidentiary hearing. *Id.* at 4, 6. Staff recommended that the Commission deny the Joint Petition. *Id.* at 6.

5. Clearwater and Simplot’s Joint Reply

In their reply, the joint petitioners generally request a variation of their proposed clarification: that the Commission limit the interim relief to “new PURPA projects and not existing projects.” Reply at 2-3. They assert that “Simplot and Clearwater are the only existing (on-line) projects in the State of Idaho that are affected by the Commission’s interim order.” *Id.* at 3 (emphasis original). They contend that, unless exempted from the application of the interim relief, they are effectively singled out for “unfair treatment.” *Id.* The joint petitioners reiterate that, although conditions may warrant a reduction in contract term for wind and solar QF projects, the same “cannot be said of base-load cogeneration QFs.” *Id.* at 5. “Reducing the possible contract term from twenty years to five years or three years or two years will certainly limit the financing potential for Simplot’s [proposed] cogeneration project (or any new projects coming on line for that matter). . . .” *Id.* at 3. Finally, Clearwater and Simplot argue that the proposed clarification – narrowing the interim relief to apply to only intermittent solar and wind QFs – is warranted because “[d]iscouraging cogeneration is simply not in the public interest.” *Id.* at 4.

COMMISSION DECISION

What does the Commission decide about the Clearwater and Simplot Joint Petition to Clarify? The parties’ comments are contained in your booklets.

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