

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: SCOTT WOODBURY
DEPUTY ATTORNEY GENERAL

DATE: MAY 27, 2010

SUBJECT: CASE NO. IPC-E-10-17 (Idaho Power)
FIRM ENERGY SALES AGREEMENT
IDAHO POWER/NEW ENERGY TWO, LLC (SWAGER FARMS)

On May 25, 2010, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a 15-year Firm Energy Sales Agreement between Idaho Power and New Energy Two, LLC dated May 24, 2010 (Agreement).

Under the terms of the Agreement, New Energy will sell and Idaho Power purchase electric energy generated by the Swager Farms Dairy Anaerobic Digester Power Project (Facility) located near Buhl in Twin Falls County, Idaho. The location of the Facility is more particularly described as Section 21, Township 10 S, Range 15 E, Clover Quadrangle, Twin Falls County, Idaho. Appendix B-2. New Energy warrants that the Facility is a qualifying facility (QF) under applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). ¶ 3.2.

The nameplate rating of the Facility is 2 MW. Appendix B-1. The Maximum Capacity Amount is 2 MW. Appendix B-4. Under normal and/or average conditions, the Facility will not exceed 10 aMW on a monthly basis. Should the Facility exceed 10 aMW on a monthly basis, Idaho Power will accept the energy (Inadvertent Energy) that does not exceed the Maximum Capacity Amount; however, the Company will not purchase or pay for the Inadvertent Energy. ¶ 7.5.

The Agreement contains the non-levelized published avoided cost rates approved in Order No. 30744 and comports with the terms and conditions of Order Nos. 30738 (SAR non-fueled cost variables) and 30415 (daily load shape adjustment). ¶ 7.1. New Energy has selected a Scheduled Operation Date of October 1, 2012. Appendix B-3.

Idaho Power notes that the purchase rates set forth in the Agreement, Order No. 30744, had on the May 24, 2010, date of contract signing been replaced by the lower rates of Order No. 30125 approved by the Commission on March 16, 2010, in Case No. GNR-E-10-01. Idaho Power recites that the Commission has previously determined grandfathering eligibility for (older and higher) published avoided cost rates by requiring (1) a signed power sales agreement be executed prior to the change in rates; or (2) a meritorious complaint filed with the Commission demonstrating project maturity and that but for the actions of the utility a sales agreement would have been signed prior to the change in rates. Although not filing a complaint with the Commission, by signing the Agreement and voluntarily presenting it to the Commission, Idaho Power has nevertheless concluded that New Energy meets the second test of the Commission and should be entitled to the rates established by Order No. 30744.

In determining that New Energy was entitled to grandfathering under the higher rates of Order No. 30744, the Company concluded that New Energy satisfied the following grandfathering criteria prior to March 16, 2010:

- a. Interconnection and Transmission
 - i. Filed an interconnection application; and
 - ii. Received and accepted an interconnection feasibility study report for the project and paid any requested study deposits (or established credit) for the next phase of the interconnection process in accordance with Schedule 72; and
 - iii. Received confirmation from Idaho Power that transmission capacity is available for the project and/or received an accepted transmission capacity study results and cost estimates.
- b. Purchase Power Agreement
 - i. An agreement was materially complete and would have been executed by both parties prior to March 16, 2010, and except for routine Idaho Power final processing, an agreement would have been executed prior to March 16, 2010.

It is Idaho Power's opinion that the New Energy Facility meets all of the above-referenced criteria. The Interconnection and Transmission criteria were met at the time the B6 Facility was interconnected with Idaho Power to make sales of non-firm energy under the Schedule 86 Agreement.

With respect to the Power Purchase Agreement criteria, the Company contends that New Energy and Idaho Power had resolved all material outstanding contract issues. Both parties expected the final review to be a relatively straightforward process. However, in early February, the Company became aware of some new procedural requirements from the Federal Energy Regulatory Commission (FERC) that affected the way that the Facility would qualify for a network resource designation and thereby obtain the transmission needed to bring the power to be generated by the Facility from the interconnection to the Company load centers. The new procedure required some changes to the internal process at Idaho Power. Idaho Power embarked upon interpreting the regulations and implementing a process to be in compliance. In Idaho Power's opinion the Agreement would have been signed by both parties prior to March 16, 2010, except for the time required by Idaho Power to implement the new internal transmission and network resource process and, as a result, the Facility should qualify for a contract including the Order No. 30744 rates. New Energy is current in all its interconnection study payments and so long as New Energy continues to provide requested information in a timely manner and pay invoices on time, it appears that the interconnection can be completed in time for New Energy to achieve its Scheduled Operation Date for the Facility.

In further support of its request for grandfathering, Idaho Power states that the Facility Agreement contains the most recent contract terms and conditions, including the liquidated damages and security provisions previously approved by the Commission in the contracts for the Arena Drop hydro project and the Dry Creek anaerobic digester projects contracts, Order Nos. 31060 and 31034, respectively.

Agreement ¶ 21.1 provides that the New Energy Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to New Energy for purchases of energy from the Facility will be allowed as prudently incurred expenses for ratemaking purposes.

COMMISSION DECISION

Commission Staff and Idaho Power recommend that the Application in Case No. IPC-E-10-17 (Swager Farms) be processed pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference IDAPA 31.01.01.201-204. Does the Commission agree with the recommended procedure?



Scott Woodbury
Deputy Attorney General

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