

Idaho Public Utilities Commission

Case No. ~~PAC-E-10-56, -57 and -58~~, Order No. 32664

Case No. PAC-E-10-08, Order No. 32657

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Petitions from wind projects denied by Idaho commission

The Idaho Public Utilities Commission has declined to modify its June 2011 order that denied power purchase agreements between three Murphy Flats wind projects and Idaho Power Company. Earlier last week, the commission denied complaints from the XRG wind project developers regarding its failed attempt to reach sales agreements with PacifiCorp.

The developer of the projects that were to have been built near Murphy said that two declaratory orders issued by the Federal Energy Regulatory Commission issued subsequent to the Idaho commission's order "constitute new facts or information justifying modification of the (Idaho) commission's order."

But because Murphy Flats did not timely appeal the Idaho commission order, the commission is prohibited by Idaho code to re-litigate an already decided issue, the commission said. Parties to commission orders may file petitions for reconsideration within 21 days after a commission order and then may appeal to the state Supreme Court. Murphy Flat's request came more than 14 months after the reconsideration deadline and 10 months after the FERC order.

"The commission's ability to amend an order cannot be used to create a right of appeal or other remedy lost by a party's lack of diligence," the commission said.

The FERC order, issued in October 2011, said the commission's denial of a power purchase agreement between Idaho Power and the Cedar Creek wind projects in eastern Idaho were inconsistent with the federal Public Utility Regulatory Policies Act (PURPA). Because the circumstances surrounding the Cedar Creek agreement and the Murphy Flats agreement are similar, Murphy Flats sought a modification of the order that denied its sales agreements. However, Cedar Creek petitioned for reconsideration and appealed to the Idaho Supreme Court. Eventually a modified version of the Cedar Creek sales agreement was approved.

The commission also denied a complaint by XRG, developer of four wind projects in Cassia County, against PacifiCorp, which does business as Rocky Mountain Power in eastern Idaho.

XRG maintained its yet-to-be-constructed wind projects should have been eligible to be paid a higher rate by Rocky Mountain Power because it requested a proposed power purchase agreement with the utility in January 2009, well before the commission's March 2010 decrease to the published rate wind developers were allowed at the time.

Under PURPA, regulated utilities must buy from qualifying small-power producers at a rate published by state public utility commissions or negotiated between the utility and the project. The rate, called an avoided-cost rate, is based on the cost the utility avoids by not having to generate the power itself or buying it elsewhere. Idaho's avoided cost rate is based on the cost

to generate power at a combined-cycle natural gas plant. When the Northwest Power and Conservation Council issues a new price forecast for wholesale natural gas prices, the commission adjusts its published avoided cost rate accordingly. In March 2010, the commission lowered the rate after a council forecast reflected lower natural gas prices.

Rocky Mountain Power alleged that transmission in the area XRG was requesting to interconnect was constrained and XRG did not have the interconnection and wheeling agreements with Raft River Electric Cooperative and the Bonneville Power Administration needed to deliver the proposed wind projects' output to Rocky Mountain's territory. XRG said securing firm transmission and interconnection rights before creating a legally enforceable power purchase agreement is not a requirement in Idaho. Rocky Mountain Power claimed that when power must be delivered from off its system through other entities, some of which are not regulated by the Idaho commission – such as Raft River Electric – advance agreements are necessary.

XRG filed a complaint with the commission, alleging that Rocky Mountain Power's actions unnecessarily delayed contract signing. The commission agreed to hear oral arguments.

The commission ruled that XRG failed to establish that allowing its interconnection agreement with BPA to lapse was due to bad conduct by Rocky Mountain Power. "XRG made a choice at that time allow its interconnection request with BPA to lapse because BPA was requiring \$80,000 for an additional interconnection study," the commission said.

Further, XRG did not prove it took sufficient steps to ensure it could deliver energy to Rocky Mountain Power. Communications waned between XRG and Rocky Mountain Power during 2009 and early 2010, the commission said. "It was not until March 2010, when XRG received notice of the commission's intent to revise its published avoided cost rates that XRG attempted in earnest to establish its entitlement to contracts."

XRG did not file its complaint requesting grandfathered rates to pre-March 2010 rates until July 29, four months after the rate change. Following issuance of its final order, while the commission was reconsidering the XRG complaint, XRG modified its proposal asking the commission to approve the post-March 2010 rate if it cannot find in favor of the earlier higher rate.

"It is wholly inappropriate and patently unfair for XRG to request an amendment 12 months after its original complaint was filed and more than four months after a final order has been issues on its complaint," the commission said.

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