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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR APPROVAL) CASE NO. IPC-E-06-36
OF A POWER PURCHASE AGREEMENT)
WITH IDAHO WINDS, LLC.) COMMENTS OF THE
) COMMISSION STAFF
)
_____)**

The Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Cecelia A. Gassner, Deputy Attorney General, in response to the Notice of Application and Notice of Modified Procedure in Order No. 30221 issued on January 19, 2007, submits the following comments.

BACKGROUND

On December 26, 2006, Idaho Power Company ("Idaho Power" or "Company") filed an Application with the Commission requesting approval of a 20-year Firm Energy Sales Agreement between Idaho Power and Idaho Winds LLC ("Idaho Winds") for the Alkali Wind Generation Facility ("Facility") dated December 12, 2006 ("Agreement").

The Facility will be located approximately 6 miles northwest of Glens Ferry, Idaho. Idaho Winds warrants the Facility will be a qualified small power production facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). The Facility

will consist of 12 GE wind turbines with individual nameplate ratings of 1.5 MW for each unit, for a total facility nameplate generator rating of 18 MW.

The Agreement contains the non-levelized, published avoided cost rates set forth in Order No. 29391. Under normal and/or average operating conditions, the Facility will not generate more than 10 aMW on a monthly basis. Energy delivered in excess of this monthly amount is Inadvertent Energy. Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount (20 MW) but will not purchase or pay for Inadvertent Energy. Agreement ¶ 7.3.2. Idaho Winds has selected December 30, 2007 as the Scheduled First Energy Date and December 31, 2007 as the Scheduled Operation Date.

ANALYSIS

On August 4, 2005, the Idaho Public Utilities Commission (Commission) in Case No. IPC-E-05-22, Order No. 29839, reduced the eligibility cap for avoided cost published rates for non-firm wind projects from 10 aMW to 100 kW, required individual negotiation for larger wind qualifying facilities (QFs), and established criteria for assessing QF contract entitlement. By Commission Order No. 29872 the date for grandfathering eligibility was changed from July 1, 2004, the Notice of Petition date, to August 4, 2005, the date of Interlocutory Order No. 29839.

In Order No. 29839, the Commission also identified several criteria that it would consider to determine whether a particular QF wind generation facility, that had been in the negotiation queue when Order No. 29839 was issued, was sufficiently mature so as to justify "grandfathering" the wind generation facility to entitlement to the published rates. These criteria are as follows:

- (1) Submittal of a signed power purchase agreement to the utility, or
- (2) Submittal to the utility of completed Application for Interconnection Study and payment of fee.

In addition to a finding of existence of one or both of the preceding threshold criteria, the QF must also be able to demonstrate other indicia of substantial progress and project maturity, e.g.,

- (1) A wind study demonstrating a viable site for the project,
- (2) A signed contract for wind turbines,
- (3) Arranged financing for the project, and/or
- (4) Related progress on the Facility permitting and licensing path.

Order No. 29839 at 10.

Staff has reviewed the information provided by the project developer to Idaho Power to support its claim that it should be grandfathered. Staff notes the following with respect to primary and secondary grandfathering criteria:

Primary criteria:

Submittal of a signed power purchase agreement to the utility

Prior to Idaho Power filing its petition on June 17, 2005 in Case No. IPC-E-05-22, ("Suspension Petition"), Idaho Power and the Facility developer had completed contract negotiations and were prepared to sign a Firm Energy Sales Agreement for this Facility. At the time Idaho Power filed the Suspension Petition, Idaho Power advised the developer that Idaho Power would not sign the Firm Energy Sales Agreement until the Commission had considered the Suspension Petition. Idaho Power believes that in light of the fact that the parties had fully negotiated and were ready to sign the FESA prior to August 5, 2005, the first primary criteria should be deemed to have been met. Staff agrees.

Submittal to the utility of completed Application for Interconnection Study and payment of fee

On January 31, 2005, Idaho Winds LLC submitted a generation interconnection study application for a 10 MW project accompanied by the required application fees. The developer withdrew the application on May 26, 2005 at the recommendation of Idaho Power Company's transmission group because the developer desired to increase the Facility size to 18 MW, consistent with its request for a Power Purchase Agreement. At that time Idaho Power Company's transmission group correctly advised the developer that the interconnection application could not be amended but instead, a new application had to be filed. The developer decided to defer submitting a revised generation interconnection application until the Power Purchase Agreement was signed, an event which both Idaho Power and the developer believed was imminent. Idaho Winds did not want to pay the required \$10,000 application fee deposit and risk losing it if the Power Purchase Agreement was not signed for some reason. As explained above, however, the filing of Idaho Power's Suspension Petition caused the signing of the Power Purchase Agreement to be delayed. A completed Interconnection Application was eventually submitted to Idaho Power on October 25, 2006.

Because the initial Interconnection Application was submitted prior to August 4, 2005, and because further delays were, for the most part, not the fault of the developer, Staff believes this threshold criteria should be considered satisfied.

Secondary criteria:

A wind study demonstrating a viable site for the project

On March 10, 2005, Idaho Winds LLC received a wind study for the Facility site prepared by WindLogics, Inc., a well-known firm with expertise and extensive experience in conducting wind studies. The study provided a detailed, comprehensive look at the overall wind regime of the entire Facility site, including long-term variability and statistical analysis of the wind resource. Energy estimates were made for the assumed wind turbine type, and an annual capacity factor was computed based on analysis of wind speed data. In addition to the study, Idaho Winds has a 50-meter meteorological tower installed at the project site collecting wind data. Staff believes that the wind study sufficiently demonstrates a viable site for the project.

A signed contract for wind turbines

As of August 4, 2005, Idaho Winds did not have a signed contract for turbines for the Facility. In an October 25, 2006 letter to Idaho Power, the developer states that it is customary to enter into a contract for the supply of wind turbines approximately one year before project startup, when issues that affect the details of the supply order have been addressed and resolved. The developer believes that it is not practical or reasonable to acquire a signed wind turbine supply contract two years in advance of startup.

Now however, as in the case of Cassia Wind, the developer has now obtained a firm commitment for turbines for the Facility. On November 10, 2006 GE Energy confirmed in a letter to Idaho Winds that turbines had been committed for the Facility project under previously negotiated terms.

Arranged financing for the project

On June 15, 2005, Idaho Winds received a letter from a reputable lender "...offering to provide the necessary construction and term financing, contingent upon the typical terms and

conditions in the wind industry for a financial closing of this size and type.” Later, in November 2006 when Idaho Winds decided to pursue a determination of grandfathering eligibility for the Facility project, Idaho Power asked for more definitive evidence that financing had been obtained for the project. In response, Idaho Winds provided another otherwise identical letter from the same lender, except this time using the language “commit to provide the necessary construction and term financing...” The letter also noted that the lender had already provided debt financing for four wind power projects built by an affiliate of Idaho Winds.

Staff views the second letter as clarification to the first, rather than as an indication that the lender’s commitment had somehow increased. There is no evidence that financing has yet closed; however, Staff believes it is reasonable to delay the closing until after the Power Sales Agreement has been approved. Based on the evidence, Staff believes that the requirement for financing prior to August 4, 2005 should be considered to have been met.

Related progress on the Facility permitting and licensing path

It appears that significant progress had been made on permitting and licensing for the project prior to August 4, 2005. Idaho Winds states that it had a series of meetings with the Elmore County Growth and Development Director and was informed that the necessary local permits could be obtained in about three months. On May 10, 2005, Idaho Winds submitted the following permit applications to Elmore County accompanied by the required application fees: 1) Zoning and Development Ordinance Amendment/Zoning Change Application, 2) Zoning Permit Application, 3) Application for Conditional Use Permit, and 4) Application for Variance. Because the project size was later increased from 10 MW to 18 MW, new applications were submitted on October 25, 2006. A public hearing on the applications was conducted on December 20, 2006.

On January 21, 2005, site control was established via a land lease agreement with the property owner. On January 26, 2005, a Notice of Self-Certification as a Qualifying Small Power Production Facility was filed with the Federal Energy Regulatory Commission.

On May 10, 2005, Idaho Winds advised the Idaho Transportation Department, Division of Aeronautics, of the project plans and submitted a required Notice of Proposed Construction or Alteration to the Federal Aviation Administration. Additional notification letters and applications were submitted to the two agencies on October 23, 2006 to reflect the increase in project size from 10 MW to 18 MW.

The Commission noted in Order No. 29872 in Case No. IPC-E-05-22, that the degree of substantial progress and project maturity that it would look for is a demonstration that the QF project can be brought on-line in a timely manner and within a reasonable period following contract execution and approval. Order No. 29872 at 11. The Commission stated it would look at the totality of the facts presented.

Based on Idaho Power Company's review of the information provided by the developer and in light of the procedure the Commission accepted in Cassia Wind Order No. 29954, Case No. IPC-E-05-35, Idaho Power contends that it would be reasonable to grandfather the Facility. The Company believes that the Facility satisfies the grandfathering criteria identified by the Commission in Order No. 29839, Case No. IPC-E-05-22.

Based on Staff's own review of the Facility's progress with regard to the primary and secondary grandfathering criteria, Staff agrees with Idaho Power that the Facility should be grandfathered. Both of the two primary criteria had been satisfied prior to August 4, 2005 (a signed power purchase agreement and an Application for Interconnection), and at least three of the secondary criteria had been satisfied by that date (a wind study demonstrating a viable site for the proposed project, project financing, significant progress on permitting and licensing). Although not satisfying the remaining secondary criteria before August 4, 2005, the developer has now obtained a firm commitment for financing and turbines for the Facility.

Notable Contract Provisions

There are three provisions in the Agreement that distinguish it from other recent PURPA agreements:

1. Online Delay Damages

In the contract negotiations for this project, Idaho Power and Idaho Winds agreed that an on-line date of December 2007 is crucial to demonstrate that the project was a viable project in August of 2005. This Agreement contains delay damage provisions that require the project to pay Idaho Power damages if the project comes on-line after December 31, 2007. The delay damages will accrue for a period of up to 90 days. Staff supports this contract provision. At least six recent QF projects have failed to meet their contractual on-line dates; therefore, Staff believes it is reasonable for Idaho Power to begin inserting damage provisions into PURPA contracts to provide a mechanism for the Company to be made whole if it incurs higher costs to acquire replacement

power. Idaho Power included similar provision in recently filed agreements for the Bennett Creek and Hot Springs wind generation facilities.

2. Shortfall Energy Payments

The Agreement contains the methodology for computing shortfall energy payments the Commission approved in the Firm Energy Sales Agreement between Idaho Power and U.S. Geothermal (Case No. IPC-E-04-8, Order No. 29632). Idaho Winds has voluntarily selected the U.S. Geothermal method. Use of the U.S. Geothermal methodology is a negotiated term of the Agreement and is mutually acceptable to Idaho Power and Idaho Winds. Staff believes that both the Fossil Gulch method and the U.S. Geothermal method are acceptable alternatives for computing shortfall energy payments and has no objection to developers choosing their preferred method.

3. Separate Interconnection Agreement

The Agreement reflects the changes to Idaho Power's Schedule 72 approved in Order No. 30179 issued on November 17, 2006 in Case No. IPC-E-06-18. One of the significant changes in Schedule 72 was the creation of a standard interconnection agreement (Uniform Interconnection Agreement) that is separate from the power sales agreement.

Idaho Winds has not yet signed an interconnection agreement. In response to production requests, Idaho Power states that it has no reason to believe that a Uniform Interconnection Agreement will not be signed for this project, and further, that if there are no cluster or queue issues that arise requiring additional studies, it is anticipated that the Uniform Interconnection Agreement could be signed by year-end 2007 (December 31, 2007 is the Scheduled Operation Date for the project).

The first phase of the transmission analysis, the Feasibility Study, was completed on February 5, 2007. The Feasibility Study indicates that upgrades to both the local distribution system and the nearby transmission system are necessary. A second phase study, the Transmission System Impact Study, has been started. That study will further identify transmission upgrades and associated costs necessary in order for Idaho Power to provide firm transmission service. The costs associated with the Network Transmission portion of this project could be reduced if other projects in the vicinity that will use some of the same transmission facilities proceed with construction, however, cost sharing arrangements have yet to be worked out. In any case, no interconnection

agreement yet exists. Moreover, a completed interconnection agreement seems unlikely at least for several months.

Ideally, Staff would prefer that transmission and interconnection issues be resolved, and that a signed interconnection agreement be submitted at the same time the power sales agreement is submitted for Commission approval. Staff recognizes, however, that the QF may have good reason to pursue each agreement separately, even consecutively. The power sales agreement and the interconnection agreement for this project are on separate tracks and their timing does not coincide. The risk to this approach, however, must remain with the project developer. In instances like this one in which firm transmission may not be available to accommodate the project without additional investment by the Company or consideration of non-firm transmission as an alternative, prices in the related power sales agreement may be affected.

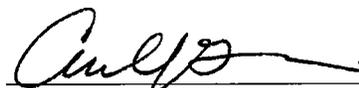
The published avoided cost rates contained in the Agreement, Staff believes, are based on an assumption that firm transmission would be available to deliver a project's output without additional Company investment. Consequently, Staff believes that firm transmission capacity is a prerequisite in order for the project's output to be deliverable on a firm basis. As long as Idaho Winds requests firm transmission and agrees to appropriate terms subsequently established for making the required transmission upgrades, the Firm Energy Sales Agreement can stand unaffected. However, if Idaho Winds requests non-firm transmission, Staff submits that the power product that it delivers must also be considered non-firm. Staff cannot support payment of the full published avoided cost rates contained in the Agreement unless Idaho Winds acquires firm transmission. Conversely, Staff suggests that some downward adjustment to the contract rates could be warranted if non-firm transmission service is requested by Idaho Winds. Staff believes that the product delivered by this project and the price ultimately paid for that product is necessarily determined by both the terms in the power purchase agreement and the interconnection agreement.

This project and the recent Bennett Creek and Hot Springs projects are the first for Idaho Power in which separate agreements will exist for power sales and for interconnection. Staff's concerns with regard to the avoided cost rates being paid to the QF and whether the project acquires firm or non-firm transmission are not unique, however, to these three projects. Staff has similar concerns for wind projects with previously signed contracts that are located in areas with transmission constraints.

RECOMMENDATION

Staff recommends that the Commission approve all of the Agreement's terms and conditions and declare that all payments Idaho Power makes to Idaho Winds for purchases of firm energy from the Facility will be allowed as prudently incurred expenses for ratemaking purposes. However, Staff further recommends that Commission approval of the Firm Energy Sales Agreement be contingent upon Idaho Winds requesting firm transmission service for the Facility and agreeing to participate in funding any necessary transmission upgrades. Should Idaho Winds request non-firm transmission service and decline to participate in funding any transmission upgrades, Staff recommends that the Commission reserve the ability to adjust the rates contained in the Agreement to fairly account for the reduced firmness of the energy delivered or any additional transmission cost incurred by Idaho Power.

Respectfully submitted this 9th day of February 2007.



Cecelia A. Gassner
Deputy Attorney General

Technical Staff: Rick Sterling

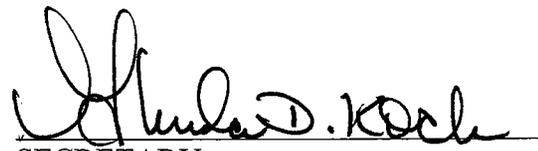
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 9TH DAY OF FEBRUARY 2007, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-06-36, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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