

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER HANSEN  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: CECELIA GASSNER**

**DATE: FEBRUARY 13, 2007**

**SUBJECT: FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER  
COMPANY AND IDAHO WINDS LLC, CASE NO. IPC-E-06-36**

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 dated December 12, 2006 (“Agreement”). On January 19, 2007, the Commission issued a Notice of Application and Modified Procedure, and solicited comments from interested parties. Staff timely filed comments, as well as two members of the public. Idaho Winds LLC filed comments in response on February 12, 2007.

### BACKGROUND

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. Reference Public Utility Regulatory Policies Act of 1978 (PURPA). 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.

### AGREEMENT

The wind generating facility is known as the Alkali Wind Farm Facility and will be located approximately six miles northwest of Glens Ferry in Elmore County, Idaho (“Facility”). 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 generator 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, Idaho Winds 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 (18 MW) but will not purchase or pay for Inadvertent Energy. Agreement ¶ 7.3.2.

Based on Idaho Power'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 has determined that it would be reasonable to grandfather the Facility based on satisfaction of the criteria identified by the Commission in Order No. 29839, Case No. IPC-E-05-22. In Order No. 29839, the Commission stated that the primary criteria it would consider are either: (1) submittal of a signed power purchase agreement prior to August 5, 2005, or (2) submittal to the utility of a completed Application for Interconnection Study and payment of a fee. Order No 29839 at 10. According to the subject Application, Idaho Winds submitted a signed Firm Energy Sales Agreement to Idaho Power for the Facility. In addition, Idaho Winds submitted a generation interconnection study for the Facility on January 31, 2005 for a 10 MW project along with a \$2,000 initial feasibility analysis fee. Idaho Power asserts that this threshold criteria is, therefore, satisfied.

The secondary criteria is that the QF demonstrate other indicia of substantial progress or maturity, usually by showing: (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 license path. *Id.* The Application states that Idaho Winds wrote a letter to Idaho Power on August 15, 2005 describing the status of the Facility. As of August 4, 2005, Idaho Winds had obtained firm commitments to finance the Facility. Idaho Winds also had made substantial progress on the other criteria, except for the acquisition of turbines. At this time, Idaho Winds has obtained a firm commitment for turbines for the Facility.

According to the Application, there are three provisions the Commission should be aware of in its consideration of the Agreement:

1. In the negotiations of this project, Idaho Power and Idaho Winds agreed that an on-line date of December 2007 is crucial. This Agreement contains delay damage provisions that require the project 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.
2. The Agreement reflects the changes to Idaho Power's Schedule 72 [Uniform Interconnection Agreement] approved in Order No. 30179 issued on November 17, 2006 in Case No. IPC-E-06-18.

Idaho Winds has selected December 30, 2007 as the Scheduled First Energy Date and December 31, 2007 as the Scheduled Operation Date. Section 24 of the Agreement provides that the 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 Idaho Winds for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

## COMMENTS

### *Public Comments*

Two comments were filed by members of the public. One commenter supported the Application and the Company's purchase of wind-generated power. The other commenter expressed concern that wind farms may not receive the previously published prices, and noted her belief that the Company may be "sabotaging clean energy solutions."

### *Staff Comments*

Staff has reviewed the information provided by the project developer to Idaho Power to support its claim that it should be grandfathered. Based on Staff's own review of the Facility's progress with regard to the primary and secondary grandfathering criteria, Staff believes 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.

In addition, Staff noted 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. Staff notes that 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**

Staff also noted that the Agreement contains the methodology for computing shortfall energy payments that 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**

Lastly, Staff noted that 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 does not support payment of the full published avoided cost rates contained in the Agreement unless Idaho Winds

acquires firm transmission. Conversely, Staff suggested 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.

#### *Staff 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.

#### *Idaho Winds Reply Comments*

Idaho Winds noted that it is aware that most of the PURPA wind projects with approved PPAs are currently negotiating their interconnection arrangements. This has been complicated by a lack of existing policies related to the cost responsibilities associated with system upgrades. The various parties face many complex issues, such as:

- The lack of explicit system upgrade costs in the current avoided cost calculation.
- The Federal Energy Regulatory Commission ("FERC") requirement for reimbursement of system upgrade costs that produce network benefits.

- The quantification of network benefits.
- The reasonableness of the load and resource scenario used in the N-1 study.
- The reasonableness of the system upgrade plan.
- The appropriateness of various full or partial funding and reimbursement mechanisms.

It further understands that these issues are presently being addressed through discussions and negotiations between the various parties. It notes that while Idaho Winds' project is not in the transmission constrained area near Twin Falls, some of the issues faced by the other projects will, however, impact Idaho Winds' transmission negotiations. It asserts that there has been no information placed in the record of this proceeding that would allow for an informed Commission decision on any of these matters.

Idaho Winds believes that conditioning the approval of the Agreement on transmission matters in this proceeding would require the Commission to prejudge the outcome of the ongoing negotiations and make at least a partial policy decision. It asserts that such decisions should wait until a comprehensive proposal is submitted and a fully developed record is available.

Idaho Winds further states that regardless of the manner in which the issues noted above are resolved with regard to the project, they will almost certainly be brought to the Commission for approval. It emphasizes its belief that that will be the appropriate time to make decisions related to transmission services and to establish the Commission's policies on these matters.

Idaho Winds notes that this project has requested firm transmission service and the completed transmission Generator Interconnection Feasibility Study has preliminarily identified the costs associated with such service. It asserts that there is no reason, in the context of this case, to assume the project and Idaho Power will fail to achieve an appropriate agreement regarding transmission cost responsibility. Nor is there any reason in this proceeding to predetermine the substance of, or limits on, the interconnection agreement.

Idaho Winds notes that it has expended substantial resources to meet the grandfathering criteria, and asserts that it is unfair to force Idaho Winds to accept restrictions that

have not been applied to the rest of the PURPA projects as a condition of its PPA approval. It believes that doing so would be unreasonably prejudicial to Idaho Winds' upcoming interconnection negotiation.

It agreed with Staff's comment that this project and the recent Bennett Creek and Hot Springs projects are the first to separate transmission services and power purchasing obligations, in compliance with the Commission's Order No. 30179. Idaho Winds avers, though, that those changes were essentially ministerial and did not address any of the issues related to firm transmission services and cost responsibility. Idaho Winds does not believe that those changes provide the basis for restricting this project's transmission options before the establishment of the Commission's ultimate transmission policies.

### COMMISSION DECISION

Does the Commission desire to approve the Application? If so, does the Commission desire to make its approval contingent upon Idaho Winds requesting firm transmission service for the Facility and agreeing to participate in funding any necessary transmission upgrades, and does the Commission desire to 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?



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Cecelia Gassner

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