

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF IDAHO POWER COMPANY FOR A ) CASE NO. IPC-E-10-47**  
**DETERMINATION REGARDING A FIRM )**  
**ENERGY SALES AGREEMENT WITH )**  
**DEEP CREEK WIND PARK, LLC FOR ) ORDER NO. 32182**  
**THE SALE AND PURCHASE OF )**  
**ELECTRIC ENERGY. )**

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On December 10, 2010, Idaho Power Company filed an Application with the Commission requesting acceptance or rejection of a 20-year Firm Energy Sales Agreement (the “Agreement”) between Idaho Power and Deep Creek Wind Park, LLC (the “Facility”). The Application states that Deep Creek would sell and Idaho Power would purchase electric energy generated by the Facility located near Rogerson, Idaho. The Application further states that the Facility will be a “qualifying facility” (QF) under the applicable provisions of the federal Public Utility Regulatory Policies Act of 1978 (PURPA). The Company requested that its Application be processed by Modified Procedure.

On January 10, 2011, the Commission issued a Notice of Application and Notice of Modified Procedure setting a 21-day comment deadline. By this Order, the Commission approves the Agreement between Idaho Power and Deep Creek without change or condition and declares that all payments made by Idaho Power to Deep Creek be allowed as prudently incurred expenses for ratemaking purposes.

**THE AGREEMENT**

On December 10, 2010, Idaho Power and Deep Creek entered into an Agreement for a 20-year term using the current non-levelized published avoided cost rates as established by the Commission in Order No. 31025 for energy deliveries of less than 10 aMW. The nameplate rating of the Facility is 20 MW.<sup>1</sup> Idaho Power warrants that the Agreement comports with the terms and conditions of the various Commission Orders applicable to PURPA agreements for a wind resource. Order Nos. 30415, 30488, 30738 and 31025.

The Facility has selected May 30, 2012, as its Scheduled First Energy Date and June 30, 2012, as its Scheduled Operation Date. Agreement, Appendix B. Idaho Power asserts that

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<sup>1</sup> Under normal and/or average conditions, the Facility will not exceed 10 aMW on a monthly basis.

various requirements have been placed upon the Facility in order for Idaho Power to accept the Facility's energy deliveries. Idaho Power states that it will monitor the Facility's compliance with initial and ongoing requirements through the term of the Agreement. The parties have agreed to liquidated damages and security provisions of \$45 per kW of nameplate capacity. Agreement, ¶¶ 5.3.2, 5.8.1.

By its own terms, the Agreement will not become effective until the Commission has approved all of the terms and conditions and declares that all payments made by Idaho Power to Deep Creek for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreement ¶ 21.1.

Idaho Power's Application specifically notes the Joint Petition it filed with the Commission on November 5, 2010, requesting an immediate reduction in the published avoided cost rate eligibility cap from 10 aMW to 100 kW. Application at 2. Idaho Power states that it is aware of and in compliance with its ongoing obligation under federal law, FERC regulations, and Idaho Public Utilities Commission Orders to enter into power purchase agreements with PURPA QFs. *Id.* at 3. However, Idaho Power asserts in its Application that "the request in this Application . . . is made with the specific reservation of rights and incorporation of the averments set forth in the Joint Petition regarding the possible negative effects to the [sic] both the utility and its customers of additional and unfettered PURPA QF generation on system reliability, utility operations, and costs of incorporating and integrating such a large penetration level of PURPA QF generation into the utility's system." *Id.*

## THE COMMENTS

### *Staff Comments*

Staff has reviewed the Agreement and confirms that it comports with all of the terms and conditions of the various Commission Orders applicable to PURPA agreements. The Agreement contains the same rates, terms and conditions as other recently-approved contracts. However, while not new, the Agreement does contain a couple of provisions that are worthy of mention because of the relatively recent approval of numerous contracts for purchase of wind generation by Idaho Power.

The Agreement specifies a Scheduled Operation Date of June 30, 2012. Idaho Power asserts that it has advised the Facility of the Facility's responsibility to work with Idaho Power's delivery business unit to ensure that sufficient time and resources will be available to construct

the interconnection facilities, and transmission upgrades if required, in time to allow the Facility to achieve its Scheduled Operation Date. The Application states that the Facility has been advised that delays in the interconnection or transmission process do not constitute excusable delays, and if the Facility fails to achieve its Scheduled Operation Date, delay damages will be assessed. Application at 6. The Application further maintains that the Facility has acknowledged and accepted the risk inherent in proceeding with its Agreement without knowledge of the requirements of interconnection and possible transmission upgrades. *Id.* at 7. Although the risk of delay and uncertain costs associated with interconnection and transmission upgrades has been addressed in the Agreement, Staff has some concerns that this risk is not being mitigated *prior* to the parties signing the power sales agreement. One way to mitigate this risk would be to require that a Generation Interconnection Agreement (GIA), in which interconnection and transmission upgrade costs are specified with certainty, be submitted concurrently with the power sales agreement. If disputes arise in the future over delays or costs related to interconnection and transmission, the Commission may wish to consider concurrent filings.

Another significant feature of the Agreement relates to provisions regarding non-compensated curtailment or disconnection of the Facility should certain operating conditions develop on Idaho Power's system. The Application notes that the parties' intent and understanding is that "non-compensated curtailment would be exercised when the generation being provided by the Facility in certain operating conditions exceeds or approaches the minimum load levels of [Idaho Power's] system such that it may have a detrimental effect upon [Idaho Power's] ability to manage its thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system." *Id.* Staff has no objection to the contract provisions, but believes that if non-compensated curtailment becomes a frequent event, the economic viability of numerous QFs could be adversely affected.

Idaho Power's Application specifically notes the Joint Petition filed with the Commission on November 5, 2010, requesting an immediate reduction in the published avoided cost rate eligibility cap from 10 aMW to 100 kW. Application at 2, Reference Case No. GNR-E-10-04. The Commission indicated that any decisions it makes in the GNR-E-10-04 case will be effective December 14, 2010. The Agreement submitted for approval was executed by Deep Creek on December 9, 2010, and by Idaho Power on December 10, 2010. The Agreement was

filed for Commission approval on December 10, 2010. Because the Agreement was executed prior to December 14, 2010, Staff does not believe it should be impacted by any decisions the Commission issues in the GNR-E-10-04 case. Staff was sympathetic to the concerns expressed by Idaho Power in its Application, but does not believe there are sufficient grounds for the Commission to provide any relief due to the fact that the Agreement was fully executed and submitted prior to the December 14, 2010, effective date of the Commission's Order in Case No. GNR-E-10-04. Consequently, Staff recommended that the Commission approve all of the terms and conditions of the Agreement and declare that all payments made by Idaho Power to Deep Creek for purchases of energy be allowed as prudently incurred expenses for ratemaking purposes.

### ***Public Comments***

Northern Power Systems (NPS) of Barre, Vermont, filed comments in support of a temporary reduction of Idaho's PURPA avoided cost rate eligibility cap from 10 aMW to 100 kW "until such time it can be proven that current and future wind development under PURPA will not have a negative impact on ratepayers." NPS encourages Idaho Power to make concerted efforts through its Integrated Resource Planning process to allow for greater wind integration on its system.

J.R. Simplot Company (Simplot) filed comments in support of the approval of the Deep Creek Agreement. Simplot explained that it owns the land upon which the project will be constructed. Simplot maintains that the Agreement is in full compliance "with all of the of the [sic] provisions previously deemed reasonable and/or necessary by this Commission in a PURPA QF contract with Idaho Power." Comments at 3. Simplot takes exception to Idaho Power's characterization of its Application with the Commission.<sup>2</sup> Simplot emphasizes that the GNR-E-10-04 case currently before the Commission should have no bearing on the Commission's determination regarding this Agreement.

### **FINDINGS AND CONCLUSIONS**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power, an electric utility, and the issues raised in this matter pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing regulations of the Federal

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<sup>2</sup> Idaho Power asked that the Commission "accept or reject" the Agreement, instead of requesting approval.

Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities (QFs) and to implement FERC rules.

The Commission has reviewed the record in this case, including the Application, the December 10, 2010, Agreement, the comments and recommendations of Commission Staff, and public comments. As represented and pursuant to contract, under normal and/or average conditions the Facility will not exceed 10 aMW on a monthly basis. Based on the foregoing, we find that the proposed Agreement submitted in this case contains acceptable contract provisions including the non-levelized published avoided cost rates approved by the Commission in Order No. 31025. We specifically note that the Agreement between Idaho Power and Deep Creek was executed on December 10, 2010, prior to the December 14, 2010 effective date established in Case No. GNR-E-10-04. As such, a determination in the GNR-E-10-04 case does not affect the terms of this Agreement. We further find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

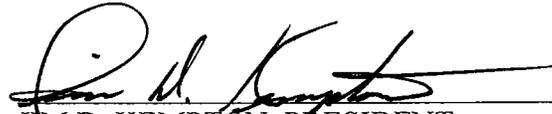
#### **ORDER**

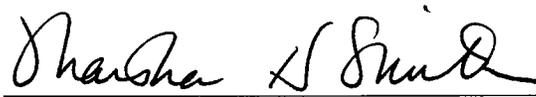
IT IS HEREBY ORDERED that the December 10, 2010, Firm Energy Sales Agreement between Idaho Power and Deep Creek Wind Park is approved without change or condition.

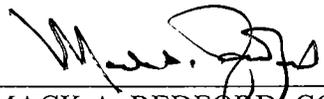
IT IS HEREBY CERTIFIED that if the energy project identified in this Order is constructed as specified above, the completed facility will generate at least twenty-five (25) kilowatts of electricity and may be eligible for a tax rebate pursuant to *Idaho Code* §63-3622QQ.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

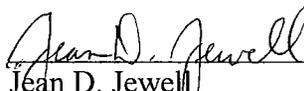
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 11<sup>th</sup>  
day of February 2011.

  
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JIM D. KEMPTON, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
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MACK A. REDFORD, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

O:IPC-E-10-47\_ks2