

DECISION MEMORANDUM

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

**FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL**

DATE: DECEMBER 28, 2010

**SUBJECT: IDAHO POWER'S FOUR APPLICATIONS FOR APPROVAL OF
POWER PURCHASE AGREEMENTS WITH WIND PARK
DEVELOPERS: DEEP CREEK, COTTONWOOD, ROGERSON FLATS,
AND SALMON CREEK; CASE NOS. IPC-E-10-47, IPC-E-10-48, IPC-E-
10-49 AND IPC-E-10-50, RESPECTIVELY**

On December 10, 2010, Idaho Power Company filed Applications requesting approval of four 20-year Firm Energy Sales Agreements (Agreements) between Idaho Power and Deep Creek Wind Park, LLC; Cottonwood Wind Park, LLC; Rogerson Flats Wind Park, LLC; and Salmon Creek Wind Park, LLC. The four projects (Facilities) are all located near Rogerson, Idaho. The identical Applications recite that each wind generating project will have a maximum capacity amount of 20 MW. The projects will all be “qualifying facilities” (QFs) under the applicable provisions of the federal PURPA.

THE AGREEMENTS

On December 10, 2010, Idaho Power and each of the four wind projects entered into their respective Agreements. Under the terms of the Agreements, the wind projects each agree to sell electric energy to Idaho Power for a 20-year term using the current non-levelized published avoided cost rates as currently established by the Commission in Order No. 31025 for energy deliveries of less than 10 aMW. Idaho Power warrants that the Agreements comport 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.

Each 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 various requirements have been placed upon the Facilities in order for Idaho Power to accept the

Facilities' energy deliveries. Idaho Power states that it will monitor the Facilities' compliance with initial and ongoing requirements through the term of the Agreements. The parties have each agreed to liquidated damages and security provisions of \$45 per kW of nameplate capacity. Agreement, ¶¶ 5.3.2, 5.8.1.

Idaho Power asserts that it has advised each 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 for delivery to construct the interconnection facilities, and transmission upgrades if required, in time to allow each Facility to achieve its June 30, 2012, Scheduled Operation Date. The Application states that each Facility has been advised that delays in the interconnection or transmission process do not constitute excusable delays and if a Facility fails to achieve its Scheduled Operation Date delay damages will be assessed. Application at 6. The Application further maintains that each 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.

Idaho Power states that each Facility has also been made aware of and accepted the provisions in each Agreement and Idaho Power's approved Schedule 72 regarding non-compensated curtailment or disconnection of its 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.*

By their own terms, the Agreements 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 the Facilities 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. The Commission is processing the case by Modified Procedure with a date scheduled for oral argument. Order No.

32131. 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 each of its wind park Applications 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.”

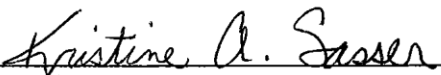
Idaho Power requests that its Application be processed by Modified Procedure pursuant to Commission Rules of Procedure 201-204. IDAPA 31.01.01.201-.204.

STAFF RECOMMENDATION

Staff recommends that each Application be processed by Modified Procedure with a 21-day comment period.

COMMISSION DECISION

Does the Commission agree with the recommendation that each of these four Power Purchase Agreements be processed under Modified Procedure with a 21-day comment period?



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