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IDAHO PUBLIC  
UTILITIES COMMISSION

DONOVAN E. WALKER  
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March 24, 2011

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
P.O. Box 83720  
Boise, Idaho 83720-0074

Re: **Case Nos. IPC-E-10-51 – Alpha Wind LLC**  
IPC-E-10-52 – Bravo Wind LLC  
IPC-E-10-53 – Charlie Wind LLC  
IPC-E-10-54 – Delta Wind LLC  
IPC-E-10-55 – Echo Wind LLC

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Reply Comments in the above matters.

Very truly yours,

Donovan E. Walker

DEW:csb  
Enclosures

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Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|                                    |                       |
|------------------------------------|-----------------------|
| IN THE MATTER OF THE APPLICATION ) |                       |
| OF IDAHO POWER COMPANY FOR A )     | CASE NO. IPC-E-10-51  |
| DETERMINATION REGARDING A FIRM )   |                       |
| ENERGY SALES AGREEMENT )           | IDAHO POWER COMPANY'S |
| BETWEEN IDAHO POWER AND ALPHA )    | REPLY COMMENTS        |
| WIND, LLC )                        |                       |
| )                                  |                       |
| -----                              |                       |
| IN THE MATTER OF THE APPLICATION ) |                       |
| OF IDAHO POWER COMPANY FOR A )     | CASE NO. IPC-E-10-52  |
| DETERMINATION REGARDING A FIRM )   |                       |
| ENERGY SALES AGREEMENT )           | IDAHO POWER COMPANY'S |
| BETWEEN IDAHO POWER AND BRAVO )    | REPLY COMMENTS        |
| WIND, LLC )                        |                       |
| )                                  |                       |
| -----                              |                       |
| IN THE MATTER OF THE APPLICATION ) |                       |
| OF IDAHO POWER COMPANY FOR A )     | CASE NO. IPC-E-10-53  |
| DETERMINATION REGARDING A FIRM )   |                       |
| ENERGY SALES AGREEMENT )           | IDAHO POWER COMPANY'S |
| BETWEEN IDAHO POWER AND )          | REPLY COMMENTS        |
| CHARLIE WIND, LLC )                |                       |
| )                                  |                       |
| -----                              |                       |
| IN THE MATTER OF THE APPLICATION ) |                       |
| OF IDAHO POWER COMPANY FOR A )     | CASE NO. IPC-E-10-54  |
| DETERMINATION REGARDING A FIRM )   |                       |
| ENERGY SALES AGREEMENT )           | IDAHO POWER COMPANY'S |
| BETWEEN IDAHO POWER AND DELTA )    | REPLY COMMENTS        |
| WIND, LLC )                        |                       |
| )                                  |                       |

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| IN THE MATTER OF THE APPLICATION | ) |                       |
| OF IDAHO POWER COMPANY FOR A     | ) | CASE NO. IPC-E-10-55  |
| DETERMINATION REGARDING A FIRM   | ) |                       |
| ENERGY SALES AGREEMENT           | ) | IDAHO POWER COMPANY'S |
| BETWEEN IDAHO POWER AND ECHO     | ) | REPLY COMMENTS        |
| WIND, LLC                        | ) |                       |
|                                  | ) |                       |

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Idaho Power Company ("Idaho Power"), in response to Order No. 32188, the Comments of the Idaho Public Utilities Commission ("IPUC" or "Commission") Staff, and the Comments of Alpha, Bravo, Charlie, Delta, and Echo Wind, LLC ("Cotterel" or "Projects"), hereby submits the following Reply Comments:

**I. INTRODUCTION**

On December 16, 2010, Idaho Power filed with the Commission an Application for a determination regarding the Firm Energy Sales Agreements ("Agreements") between Idaho Power and the various Projects. On February 24, 2011, the Commission issued Notice of those Applications and Notice of Modified Procedure, Order No. 32188, setting forth a comment deadline of March 17, 2011, and a reply comment deadline of March 24, 2011.

Commission Staff filed Comments on March 17, 2011, recommending that the Commission not approve any of the five Agreements between Idaho Power and the Projects because Staff does not consider any of the Agreements to be effective prior to the December 14, 2011, effective date of the Commission's Order No. 32176, which lowered the published avoided cost rate eligibility cap for wind and solar Qualifying Facilities ("QF") from 10 average megawatts ("aMW") to 100 kilowatts ("kW").

The Projects filed Comments on March 17, 2011, requesting that the Commission approve the Agreements. In their Comments, the Projects make

arguments advocating that they are entitled to be grandfathered at the published avoided cost rates for projects up to 10 aMW which were in effect prior to December 14, 2011.

In these Reply Comments, Idaho Power submits factual information regarding the Company's processes for receiving requests, negotiating, and executing power purchase agreements pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"); factual information regarding the processing of the Projects' PURPA power purchase agreements; and contextual information regarding the review of the Projects' power purchase agreements by the Commission.

## **II. SUMMARY OF IDAHO POWER'S PROCESSES FOR PURPA AGREEMENTS**

### **A. Initial Project Inquiries.**

Idaho Power continuously receives numerous inquiries from various potential generation projects. Upon this initial contact, typically, a general discussion is had with each of the potential projects to explain the Power Purchase Agreement ("PPA") and Generation Interconnection Agreement ("GIA") process, which are two separate and required processes that must be completed in order to sell generation to Idaho Power. The potential project is advised that to begin the official process of either the PPA or the GIA, that written documents and information will be required from the project.

In the case of the GIA process, a completed Generation Interconnection Application is required. In the case of a PURPA PPA, a document specifying information such as the location, contracting party, resource type, estimated nameplate rating, general description of the project, estimated on-line date, and other pertinent information is required so that a draft PPA may be created.

**B. Generator Interconnection and Transmission Availability.**

The GIA process is conducted by Idaho Power's Delivery business unit. Federal Energy Regulatory Commission ("FERC") regulations require Idaho Power to maintain separations between certain Idaho Power business units, in this case between Delivery, or the Company's Transmission Provider function, and Power Supply, or the Company's Merchant function. The first step in the interconnection process is the submission of a Generator Interconnection Application. Submittal by the project and acceptance of this application as complete establishes the proposed project's position in the interconnection queue and begins the engineering process of determining the feasibility and costs of interconnecting the proposed project to Idaho Power's electrical system. Additionally, the potential upgrades and/or availability of transmission capacity to move the project's energy from the point of interconnection within Idaho Power's system to Idaho Power's customer loads must also be determined.

After receipt and acceptance of the Generator Interconnection Application from the potential generation project, Idaho Power Delivery works through a process of inquires and meetings to obtain the required information to perform a Feasibility Study, a System Impact Study, and a Facility Study. The interconnection and transmission process is governed by Idaho Power's Tariff Schedule 72, filed with and approved by the Commission, and provisions of its Open Access Transmission Tariff ("OATT"), filed with and approved by FERC. The potential project is informed of the progress of each step in this process. In addition, the potential project has various decision points and financial deposit requirements throughout this process. Failure by the potential generation project to make these decisions or make the deposit payments in a timely

manner can lead to delays or termination of the interconnection process pursuant to Idaho Power's Tariff Schedule 72 and OATT.

**C. PURPA Power Purchase Agreement.**

Once a potential generation project has submitted written information on their proposed project that demonstrates the project is eligible for a PURPA purchase power agreement and wishes to move forward with the development of the proposed project, Idaho Power begins the process of drafting a PPA for the proposed project. Quite often a proposed project will send in incomplete and/or non-definitive information, which requires inquiries and exchanges between the Company and the project in order to obtain the information necessary to prepare a draft agreement. In many cases the potential projects never provide definitive information and never move forward with draft purchase power agreement discussions.

The schedule for processing a PPA can be affected by multiple factors, including the proposed project's responsiveness to information requests, the proposed project's provision of key decisions at key decision points, and the quantity of proposed projects being processed by the Company. In the case of multiple PPA requests received by the Company, Idaho Power processes the requests on a "first-come, first-served" basis. This does not mean that multiple projects are not being processed at the same time. Multiple requests and draft contracts are often being processed simultaneously and are in various stages of the contract process.

Once the proposed project's draft PPA is agreed upon by the parties and in final draft form, an internal Idaho Power Sarbanes Oxley ("SOX") review is required. This review is required to achieve compliance with the SOX regulatory requirements. It

involves a review and approval of the draft agreement by Idaho Power management, accounting, financial reporting (FAS133, Fin 46, etc), legal, and confirmation of the appropriate Idaho Power executive authorized to execute the agreement. As this review requires the involvement of numerous areas within the Company an expected completion time of this review is approximately 10 business days. Very rarely does this review result in any material changes to the draft PPA. Instead, the review process provides confirmation from all the necessary divisions within the Company that the contract meets each area's SOX requirements and enables Idaho Power to execute the PPA.

Upon completion of the internal SOX review, three executable copies of the PPA are prepared and sent to the project for signature and execution. The project is notified that the PURPA agreement must be executed within 10 days. In addition, the project is also notified that if any rules or regulations applicable to the agreement are modified or changed prior to both parties executing the agreement that Idaho Power will be required to modify the agreement accordingly.

Upon return of the three agreements, signed and executed by the project, Idaho Power then schedules a time with the appropriate Idaho Power executive to sign and execute the agreement. Generally this is accomplished within one to two business days of when the executed agreement is received back from the project, but is dependent on the limited availability of the required Company executive with the requisite authority to execute contracts containing such large monetary obligations as those contained in the typical 20-year PURPA PPA.

Upon execution of the agreement by both parties, the executed agreement is forwarded to Idaho Power's legal department for preparation of an Application and filing of the agreement with the Commission for its review. Generally, this application is prepared and submitted within five business days of the date that the agreement is fully executed.

### **III. COTTEREL'S POWER PURCHASE AGREEMENT PROCESS**

These Projects initially bid into Idaho Power's 2009 request for proposals ("RFP") for a wind resource as one large wind project of 150 megawatts ("MW"). The Projects were selected in that RFP process to begin contract negotiations. However, after many months of negotiations, an agreement was unable to be reached and negotiations were terminated. Idaho Power's RFP was also terminated without selecting a resource for various reasons, some being that the Company received requests for and started placing a very large amount of QF wind under contract, which it was required to pursue pursuant to PURPA.

On October 28, 2010, the Projects sent into the Company contracts that they had obtained from the internet. However, these contracts were not the current agreement templates used by Idaho Power. These contracts were for the same project that Cotterel had proposed in the Company's RFP as a single 150 MW resource, but had now broken apart into five 10 aMW, approximately 30 MW nameplate, pieces with a corresponding request for five QF contracts at published, 10 aMW rates. Although Cotterel had stated to the Company at the close of the RFP that it intended to consider all options for its project, including PURPA, the first indication, communication, or notice that Idaho Power received from the Projects that they wished to pursue PURPA

agreements with the Company was by its transmittal of these contract templates that it obtained from the internet.

On November 4, 2010, Idaho Power responded to the Projects with a standard PURPA contract process letter requesting information to initiate the PURPA process. On November 8, 2010, the Projects filed a Complaint with the Commission claiming the Company was refusing to contract with them. The Projects responded to Idaho Power's November 4, 2010, letter with further information on November 16, 2010.

On December 9, 2010, the transmission capacity application questionnaire was received from the Projects with information required to begin the transmission review process.

On December 6, 2010, Idaho Power received confirmation back from the Projects' counsel that proposed changes in the draft PPAs were acceptable. On December 7, 2010, final draft agreements were provided to the Project's counsel for review. On December 10, 2010, final execution drafts were provided to the Projects for execution. (The Projects' counsel picked them up from Idaho Power's front desk on that day).

The contracts were executed by Shell, the owner of the Projects, (presumably in their offices in Houston) on December 13, 2010, and then mailed to Idaho Power. The contracts were received by Idaho Power on December 14, 2010, signed by the Company on December 15, 2010, and filed for review with the Commission on December 16, 2010. Idaho Power had no opportunity to execute the contracts prior to the December 14, 2010, effective date of Order No. 32176 because the contracts were not returned to Idaho Power by the Projects until December 14, 2010.

#### **IV. IDAHO POWER'S APPLICATION FOR REVIEW OF THE AGREEMENT**

As the Company did with all PURPA contracts that were executed subsequent to the filing of the Joint Petition of the three Idaho electric utilities in Case No. GNR-E-10-04, Idaho Power filed the Projects' PURPA contracts for review with the Commission specifically seeking the Commission's acceptance or rejection of the agreements. Idaho Power specifically did not ask for the Commission's approval, nor did the Company specifically ask for the Commission's rejection. Instead, the Company asked for and seeks the Commission's independent review of the agreement. The Commission's independent review of the agreement serves several functions including: (1) Commission approval as required by the terms of the contract in order for it be effective; (2) if accepted by the Commission, the Company seeks authorization that all payments for purchases of energy under the agreement be allowed as prudently incurred expenses for ratemaking purposes; and (3) a Commission determination as to whether such agreement(s) is/are in the public interest.

As stated in its Application, Idaho Power clearly understands its obligation under federal law, FERC regulations, and this Commission's Orders, that it has not been relieved of, to enter into power purchase agreements with PURPA QFs. As stated in the Joint Petition filing, Idaho Power has received a very large amount, in terms of both number of projects and volume of MWs, of requests from PURPA QF developers in a very short time frame demanding to enter into published avoided cost rate PURPA contracts. The Company diligently and in good faith processed these requests, in the ordinary course of business and on an expedited basis, and filed the same for review with this Commission, as is its legal obligation. The Company executed these contracts

in good faith and if those contracts are approved by the Commission, will honor and comply with the requirements therein.

However, the request for review of the Projects' agreements, as well as several other executed PURPA agreements that were filed subsequent to the November 5, 2010, Joint Petition in Case No. GNR-E-10-04, were made with the specific reservation of rights and incorporation of the averments set forth in that Joint Petition regarding the possible negative effects to the both the utility and its customers of additional and unfettered PURPA QF generation on system reliability, utility operations, the costs of incorporating and integrating such a large penetration level of PURPA QF generation into the utility's system, and, most importantly, the dramatic increase in costs that must be borne by the Company's customers because of the disaggregation of large projects into 10 aMW increments and the inflated avoided cost rates obtained thereby from the use of the Surrogate Avoided Resource methodology.

Even though Idaho Power was legally obligated to continue to negotiate, execute, and submit PURPA QF contracts for Commission review containing published rates for projects at and below 10 aMW, the Company is also obligated to reiterate that the continuing and unchecked requirement for the Company to acquire additional intermittent and other QF generation regardless of its need for additional energy or capacity on its system not only circumvents the Integrated Resource Plan ("IRP") planning process and creates system reliability and operational issues, but it also increases the price its customers must pay for their energy needs above the Company's actual avoided costs.

There was no effort or inquiry even made by the Projects with Idaho Power as to pursuing a large PURPA project priced at the required IRP avoided cost methodology for large projects, nor what the IRP pricing would be for their particular project. Rather than pursue a PURPA contract pursuant to the IRP pricing methodology as required by this Commission for large projects like this, the Projects, with no notice or inquiry, sent in contracts obtained from the internet on October 28, 2010, followed shortly thereafter by unnecessary Complaints filed with the Commission with no further inquiry as to whether Idaho Power would execute PURPA contracts with the Projects and no basis for alleging that Idaho Power was not proceeding, in the ordinary course of business, to negotiate contracts. Idaho Power executed and filed several contracts with different, similarly situated projects both before and after the Projects' initial submission of contracts and a Complaint without the Projects having to file a Complaint to do so. A simple inquiry would have informed the Projects that Idaho Power was not refusing to contract at published rates up to 10 aMW, as the eventual execution and filing with the Commission of over 20 such contracts can evidence.

The Commission, in its role as the regulatory authority for all investor-owned, public utilities in the state of Idaho, has an independent obligation and duty to assure that all contracts entered into by the public utilities it regulates are ultimately in the public interest. In the state of Idaho, contracts are afforded constitutional protection against interference from the State. Idaho Const. Art. I, § 16. However, despite this constitutional protection, the Commission may annul, supersede, or reform the contracts of the public utilities it regulates in the public interest. *Agricultural Products Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 29, 557 P.2d 617, 623 (1976) ("Interference with

private contracts by the state regulation of rates is a valid exercise of the police power, and such regulation is not a violation of the constitutional prohibition against impairment of contractual obligations.”); see also *Federal Power Comm’s v. Sierra Pac. Power Co.*, 350, U.S. 348, 76 S.Ct. 368, 100 L.Ed. 388 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373, 100 L.Ed. 373 (1956) (U.S. Supreme Court finding that rates fixed by contract could be modified only “when necessary in the public interest”). The Commission may interfere in such a way with the contracts of a public utility only to prevent an adverse affect to the public interest. *Agricultural Products*, 98 Idaho at 29. “Private contracts with utilities are regarded as entered into subject to reserved authority of the state to modify the contract in the public interest.” *Id.*

Idaho Power proceeded reasonably and in good faith in the negotiation and eventual signing and execution of a published rate, 10 aMW PURPA contracts with the Projects as required by the then current applicable law, rules, and regulations. Idaho Power will continue to meet its legal and regulatory requirements and obligations with regard to the Commission’s implementation of PURPA. However, as also required by the Commission, Idaho Power has an additional obligation when contracting with QF projects, recently reiterated to it by the Commission: “We intend for the Company to assist the Commission in its gatekeeper role of assuring that utility customers are not being asked to pay more than the Company’s avoided cost for QF contracts. We expect Idaho Power to rigorously review such contracts.” Order No. 32104.

## **V. CONCLUSION**

While meeting its legal obligations to contract with QF projects pursuant to the Commission's implementation of PURPA, the Company also asks that the Commission review such contracts to assure that they comport with the public interest. The public interest implications raised in the GNR-E-10-04 proceeding are of similar magnitude as those contemplated and required by the *Sierra-Mobile* doctrine and *Agricultural Products* and its progeny, as to invoke and authorize the Commission – in the exercise of its legislative, state police power and authority to protect the public in the contractual rates that it sets and the public utility contracts that it reviews for the purchase of energy from QF projects under PURPA. Idaho Power respectfully reiterates its request for the Commission to review the Projects' contracts as to whether they are in the public interest and issue its Order either accepting or rejecting the same.

DATED at Boise, Idaho, this 24<sup>th</sup> day of March 2011.



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DONOVAN E. WALKER  
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24<sup>th</sup> day of March 2011 I served a true and correct copy of the within and foregoing IDAHO POWER COMPANY'S REPLY COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

### Commission Staff

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