

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF IDAHO POWER )**  
**COMPANY'S APPLICATION FOR APPROVAL )** **CASE NO. IPC-E-04-19**  
**OF A FIRM ENERGY SALES AGREEMENT )**  
**BETWEEN IDAHO POWER COMPANY AND )**  
**FOSSIL GULCH WIND PARK, LLC. )** **ORDER NO. 29630**  
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On September 14, 2004, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting an Order approving a Firm Energy Sales Agreement ("Agreement") dated September 9, 2004, between Idaho Power and Fossil Gulch Wind Park, LLC ("Fossil Gulch"). Under the Agreement, Fossil Gulch would sell and Idaho Power would purchase electric energy generated by wind-powered generating equipment. The Company asked the Commission to declare that all payments for energy purchases made under the Agreement be allowed as prudently incurred expenses for ratemaking purposes and to approve the Agreement without material change or condition.

On October 12, 2004, the Commission issued a Notice of Application, Modified Procedure and Comment Deadline and specifically solicited comments on which avoided cost rate should potentially apply to the Agreement. Order No. 29611. Three public comments were received in addition to those submitted by Commission Staff. Based on the comments, the law and the record, the Commission grants Idaho Power's Application.

**THE APPLICATION**

Fossil Gulch intends to construct, own, operate and maintain wind generating equipment in a wind park ("Project") at a site approximately 3.5 miles west-northwest of Hagerman, Idaho. The Project will be a qualified small power production facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Fossil Gulch has selected January 1, 2005, as the scheduled operation date and December 15, 2004, as the first energy date.

The term of the Agreement is 20 years from the operation date, and the Agreement provides for Idaho Power to pay the published non-levelized rates in accordance with Commission Order No. 29391 with seasonalization factors applied. Idaho Power's Application

describes the Agreement as being similar to the Tiber Hydro and United Materials wind project agreements previously approved by the Commission.

Fossil Gulch desires to utilize seven 1.5 MW wind turbine generators. To avoid pushing the Project above the 10 MW nameplate capacity, Fossil Gulch has agreed to adjust the controls on its turbine generators so that in aggregate, the electrical output of the seven wind turbines will not exceed 10,000 kWh in any hour. If energy in excess of this amount (“Inadvertent Energy”) is accidentally generated, Idaho Power will not purchase or pay for it.

Because Fossil Gulch has agreed to limit its generation below 10,000 kWh per hour, and in recognition of the benefits of encouraging the development of a wind energy project in its control area, Idaho Power requests the Commission approve the use of published Qualified Facility (QF) avoided cost rates for this Project, even though the Project’s nameplate capacity exceeds 10 MW. Idaho Power notes that the Commission recently approved a Firm Energy Sales Agreement with J.R. Simplot Company that included the same Inadvertent Energy provisions. Order No. 29577. This Agreement includes the 90-110% band provisions that were included in the Tiber, United Materials, Renewable Energy and J.R. Simplot Agreements (Case Nos. IPC-E-03-1, IPC-E-04-1, IPC-E-04-5, and IPC-E-04-16, respectively).

The Fossil Gulch Agreement includes the same Environmental Attributes provision (Section 8.1) approved by the Commission in Order No. 29577 for the J.R. Simplot Pocatello QF contract. The Agreement does not provide for any purchase of the Project’s Environmental Attributes by Idaho Power, and the Company is not seeking to recover any value for Environmental Attributes in this Agreement.

The Agreement contains non-levelized, non-fueled published avoided cost rates in conformity with applicable Commission Orders. All applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 will be assessed to Fossil Gulch.

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 Fossil Gulch for energy purchases be allowed as prudently incurred expenses for ratemaking purposes.

#### **PUBLIC COMMENTS**

In response to the Notice of Application, Modified Procedure and Comment Deadline issued in Order No. 29611, the Commission received three comments from Idaho Power

customers. One commenter indicated that the Application should be approved “if it means [a] reduction in rates for all customers.” The commenter also questioned why Idaho Power does not build the facility itself rather than buy the energy from Fossil Gulch.

A second customer from Boise noted that while he “applaud[s] the use of renewable power” and makes a voluntary contribution to its use on his electric bill, he was concerned that using an outside corporation to provide this energy to Idaho Power would add an unnecessary layer of administration. He believes Idaho Power should be “more involved in developing this for themselves” rather than buying this type of Idaho-produced energy from another entity.

After offering a detailed analysis of the contract provisions, a third Idaho Power customer supported approval of the Application. He also requested “the Commission state in no uncertain terms that this contract not be considered a precedent for future power sales agreements under the Public Utility Regulatory Policies Act laws in Idaho” as it did in Case Nos. IPC-E-04-1 and -5 (the United Materials and Renewable Energy Agreements, respectively).

#### STAFF COMMENTS

**Contract Rates:** Staff explained that the avoided cost rates contained in the Agreement are those that have been in effect since December 15, 2003 (Order No. 29391). However, Staff notes that three recent events have triggered the computation of new rates—the conclusion of general rate cases for Idaho Power and Avista, and the release on September 24, 2004 of a new natural gas price forecast by the Northwest Power and Conservation Council (NPCC)<sup>1</sup>. Although Staff has already computed new rates, they have yet to be adopted by the Commission.

The new rates computed by Staff using the Council’s September 24, 2004 natural gas price forecast and Idaho Power’s revised costs of capital are approximately 5 mills/kWh higher than the rates currently in effect and that are contained in the Agreement. On a present value basis over the life of the contract, the revenue from the Project if paid under the existing rates will be approximately \$1.4 million less than if the new rates were applied.

Staff contends that the Commission should limit consideration to the Agreement as presented to it and as signed by the parties. The rates currently in effect are the rates

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<sup>1</sup> The Northwest Power Planning Council (NWPPC) is now known as the Northwest Power and Conservation Council (NPCC).

incorporated in the Agreement and no other rates are yet available. Therefore, Staff believes the Commission should approve the Agreement as submitted.

**Contract Terms and Conditions:** Some of the terms of this Agreement—specifically the capacity limit of 10,000 kWh per hour and the 90-110% performance band—have been included in several contracts previously approved by the Commission. Although these contract terms are currently the subject of dispute in Case Nos. IPC-E-04-8 and IPC-E-04-10, Staff recommends approval of these terms in this Agreement because both parties have mutually agreed to them.

**Environmental Attributes:** The Agreement does not provide for any purchase of the Project’s Environmental Attributes by Idaho Power, and the Company is not seeking to recover any value for Environmental Attributes in this Agreement. Staff recommends that the Commission approve the contract terms allowing Fossil Gulch to retain ownership of any Environmental Attributes associated with the Project.

**Recommendation:** Staff recommends approval of the Agreement as submitted. Staff also recommends that the Commission declare that all payments Idaho Power makes to Fossil Gulch for energy purchases under the Agreement be allowed as prudently incurred expenses for ratemaking purposes.

#### **COMMISSION FINDINGS**

The Commission has reviewed the filings of record in Case No. IPC-E-04-19 including the underlying Agreement, the public comments and the comments and recommendations of the Commission Staff. Based on our review of the record, we continue to find it appropriate to process this case pursuant to Modified Procedure. IDAPA 31.01.01.204.

Idaho Power in this case requests Commission approval of a PURPA Energy Sales Agreement with Fossil Gulch Wind Park, LLC. Under the terms of the submitted Agreement, Fossil Gulch has elected to contract with Idaho Power for a 20-year term. We find that the Agreement contains non-levelized published avoided cost rates approved by the Commission in Order No. 29391 for QF energy deliveries less than 10 MW. Although the Fossil Gulch wind facility has a generation capacity of 10.5 MW, we find that the “Inadvertent Energy” contract provisions provide an adequate means of qualifying the project for the published avoided cost rates.

Based on the comments, the law and the record, we find it reasonable to approve the submitted Agreement. The Agreement terms we consider are presented in the context of a negotiated and mutually accepted contract. Although the avoided cost rates are likely to change in the near future, we find it reasonable to approve the Agreement's terms based upon the published rates that were in place at the time the Agreement was negotiated in good faith. We find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

With regard to the Environmental Attributes associated with this wind project, we continue to note that the utility and QFs are free to voluntarily contract and negotiate the sale and purchase of potential green tags. Order Nos. 29480 and 29577. However, the price of green tags for said environmental attributes is not a PURPA cost recoverable by the Company. We find that the Agreement does not provide for any purchase of the Project's Environmental Attributes by Idaho Power, and the Company is not seeking to recover any value for Environmental Attributes in this Agreement.

#### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, 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 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 and to implement FERC rules.

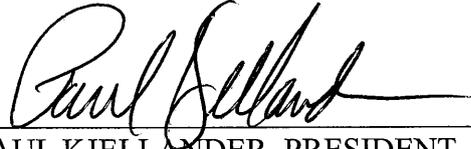
#### **ORDER**

In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission does hereby approve the September 9, 2004, Firm Energy Sales Agreement between Idaho Power Company and Fossil Gulch Wind Park, LLC.

THIS IS A FINAL ORDER. Any person interested in this Order or in interlocutory Orders previously issued in this case may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this case. 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 12<sup>th</sup> day of November 2004.



PAUL KJELLANDER, PRESIDENT

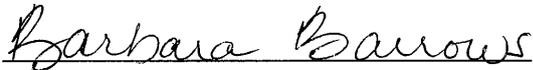


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Barbara Barrows  
Assistant Commission Secretary

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