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 IDAHO PUBLIC
 UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	
IDAHO POWER COMPANY FOR AN)	CASE NO. IPC-E-05-22
ORDER TEMPORARILY SUSPENDING)	
IDAHO POWER'S PURPA OBLIGATION)	IDAHO POWER COMPANY
TO ENTER INTO CONTRACTS TO)	ANSWER TO WINDLAND
PURCHASE ENERGY GENERATED BY)	INCORPORATED'S PETITION FOR
WIND-POWERED SMALL POWER)	STAY OF COMMISSION ORDER
PRODUCTION FACILITIES.)	NO. 29839
_____)	

Idaho Power Company (hereinafter referred to as "Idaho Power" or "the Company") pursuant to RP 057, hereby answers Windland Incorporated's ("Windland") Petition for Stay of Commission Order No. 29839. In response to Windland's Petition, Idaho Power states as follows:

1. Windland Correctly Concludes That The Rates In Grandfathered QF Wind Contracts Will Exceed Avoided Costs Idaho Power agrees that Windland is correct in its conclusion that any PURPA qualifying facilities' ("QF") wind contracts Idaho Power enters into in accordance with the "grandfathering" provisions of Order No. 29839 will result in Idaho Power purchasing energy for twenty years at rates that

exceed the Company's current avoided costs. The Commission's finding in Order No. 29839 that "the unique supply characteristics of wind generation and related integration costs provide a basis for adjustment to the published avoided cost rates." (Order No. 29839, p. 8) confirm the Company's expectation that any "grandfathered" QF wind contracts will contain rates that exceed Idaho Power's avoided cost.

In light of the Commission's determination that the published avoided cost rates for wind generation should be adjusted, when considering Windland's Petition For Stay, Idaho Power believes that the Commission should also consider two FERC decisions, both issued in 1995. In *Connecticut Light & Power*, 70 FERC 61,012 (1995); and *Southern California Edison Co., San Diego Gas & Electric Co.*, 70 FERC 61,215 (1995), the FERC noted that if utilities are required by state law or policy to sign contracts that reflect rates for QF sales at wholesale that are in excess of avoided costs, those contracts will be considered to be void *ab initio* (*Connecticut Light & Power*, 70 FERC 61,012, 61,030 (1995)).

2. Idaho Law Provides Support For Grandfathering Of QF Contracts In Very Limited Circumstances. The question of "grandfathering" QF contracts arises only when a utility presents a case to the Commission in which it seeks a downward adjustment to its published avoided cost rates. At such times, QF developers that are in various stages of development of individual QF projects ask the Commission to retain the higher QF rates. They urge that the Commission deny the utility's request or, alternatively, that their particular project be "grandfathered" to the higher rates based primarily on equity arguments that their projects are beneficial, that they need the higher prices to make their projects economically feasible and/or that the utility's actions

precluded them from obtaining a contract earlier. In considering the issues associated with “grandfathering” of QF projects, we are able to consult a body of Idaho law on this issue. See *Empire Lumber v. Washington Water Power*, 114 Idaho 191, 755 P.2d 1229 (1988); *A.W. Brown Co., Inc. v. Idaho Power Co.*, 121 Idaho 812, 828 P.2d 841 (1992);¹ *Rosebud Enter. v. Idaho Pub. Util. Com’n*, 131 Idaho 1, 951 P.2d 521 (1998); *Rosebud Enter. v. Idaho Pub. Util. Com’n*, 128 Idaho 609, 917 P.2d 766 (1996).

In the above-cited cases, the Idaho Supreme Court upheld the Commission’s establishment of criteria based on contract commitment by the QF, to guide its determination as to whether or not a particular QF project was grandfathered to the prior rates. In *A. W. Brown Co. vs. Idaho Power Company*, 121 Idaho 812, 828 P.2d 841, 817 (1992), the Idaho Supreme Court quoted the Commission’s description of the criteria adopted by the Commission:

The QF must be able to exhibit that it has laid a proper foundation entitling it to contract consideration and the current avoided cost rates. There must be an indication that the QF pursued a power contract with some diligence.... Indeed, this Commission has stated a CSPP is not entitled to contract rates until it is ready, willing and able to sign a contract. It must show that but for the actions of the utility it was otherwise entitled to a contract. In most cases this will entail making a comprehensive binding offer showing with reasonable specificity, design and size characteristics and indicate a willingness to rely on proposed contract terms and proceed thereunder. (*A.W. Brown*, 121 Idaho 812, 817 (1992))

Review of the above-referenced *Empire*, *A.W. Brown* and *Rosebud* cases demonstrates that the Commission has established QF contract commitment as the principal test to be applied to the individual facts that are unique to each QF project seeking grandfather status.

¹ It should be noted that the principal Idaho cases dealing with “grandfathering” were decided prior to the FERC’s decision in *Connecticut Light & Power*.

In Order No. 29839, the Commission identified several criteria for determining whether a particular wind QF project that was in the negotiation queue on July 1, 2005, would be eligible for exemption from the 100 kW published rate cap. In discussing the criteria to be applied, Order No. 29839 made the following findings of fact:

At the beginning of the hearing on July 22, the Commission adjourned to allow the parties to explore whether any consensus could be reached regarding those PURPA projects that were in various stages of negotiation with Idaho Power. The parties were unable to reach consensus. Accordingly, this Commission finds it reasonable to establish the following criteria to determine the eligibility of PURPA qualifying wind generating facilities for contracts at the published avoided cost rates. For purposes of determining eligibility we find it reasonable to use the date of the Commission's Notice in this case, i.e., July 1, 2005. For those QF projects in the negotiation queue on that date, the criteria that we will look at to determine project eligibility are: (1) submittal of a signed power purchase agreement to the utility, or (2) submitted to the utility of a completed Application for Interconnection Study and payment of fee. In addition to a finding of existence of one or both of the preceding threshold criteria, the QF must also be able to demonstrate other indicia of substantial progress and project maturity, e.g., (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 licensing path.

Idaho Power believes that the portion of Order No. 29839 that identifies "submittal to the utility of a completed application for interconnection study and payment of fee" as primary criteria for eligibility for "grandfathered" status is not consistent with the Commission's prior orders requiring QF contract commitment as the basis for grandfathering.

3. The Commission Should Stay Idaho Power's Obligation to Enter Into Twenty-Year Grandfathered Contracts In the conclusion of its Petition for Stay, Windland asks the Commission to stay its decision in Order No. 29839 regarding "grandfathering" until Windland's Petition for reconsideration is resolved and/or until the time the Commission issues an order regarding the law governing grandfathering and the parties' relationships concerning wind power QF contracts. Windland requests that the Commission amend Order No. 29839 to prohibit the "grandfathering" of any wind QF projects into the avoided cost rate established by Order No. 29646.

This will advise the Commission that Idaho Power also intends to file a Petition for Reconsideration asking that the Commission reconsider the portion of Order No. 29839 which establishes criteria to determine eligibility for published rates for QF wind generating facilities as of July 1, 2005. Idaho Power will not be seeking the same relief sought by Windland, i.e., a complete ban of all "grandfathering," but instead will be requesting that the Commission revise its order to align the requirements for grandfathering with the existing body of law established in *A.W. Brown* and the other cases cited above.

Because the Commission issued its Order making the grandfathering criteria portion of Order No. 29839 a final Order on August 23, 2005, Idaho Power has not had sufficient time to prepare and file its Petition for Reconsideration. When it makes that filing, Idaho Power will also request that the Commission stay Idaho Power's obligation to enter into grandfathered QF contracts until such time as the Commission can fully consider the issues raised in Idaho Power's petition for reconsideration.

Conclusion

Based on the foregoing, Idaho Power respectfully requests that the Commission, pursuant to RP 234, issue its Order granting the relief requested by Windland to stay Idaho Power's obligation to enter into QF wind contracts containing the QF purchase rates established by Order No. 29646 until a final, non-appealable order is issued by this Commission addressing the grandfathering criteria described in Order No. 29839.

Respectfully submitted this 30th day of August, 2005.



BARTON L. KLINE
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2005, I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO WINDLAND INCORPORATED'S PETITION FOR STAY OF COMMISSION ORDER NO. 29839 upon the following named parties by the method indicated below, and addressed to the following:

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