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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)	CASE NO. IPC-E-05-22
IDAHO POWER COMPANY FOR AN)	
ORDER TEMPORARILY SUSPENDING)	IDAHO POWER COMPANY'S
IDAHO POWER'S PURPA OBLIGATION)	PETITION FOR RECONSIDERATION
TO ENTER INTO CONTRACTS TO)	OF FINAL ORDER NO. 29851
PURCHASE ENERGY GENERATED BY)	AND
WIND-POWERED SMALL POWER)	PETITION FOR STAY OF ORDER
PRODUCTION FACILITIES.)	NO. 29851
_____)	

Idaho Power Company (hereinafter referred to as "Idaho Power" or "the Company"), Petitioner herein, pursuant to RP 331, RP 333 and § 61-626, Idaho Code, respectfully petitions the Commission for Reconsideration and Stay of Order No. 29851. Order No. 29851 makes final the portion of interlocutory Order No. 29839 that established criteria that the Commission would consider to determine if certain PURPA qualifying wind generating facilities ("QFs") should be exempted from the 100 kW size limit for entitlement to published avoided cost rates. In numerous Commission QF orders, granting exemptions to the application of a changed avoided cost regime has been referred to as conferring "grandfather status" or "grandfathering" a QF project.

By these Petitions, Idaho Power is specifically requesting that the Commission reconsider its determination that one of the primary criteria the Commission will consider in deciding whether or not to exempt a QF project from application of the 100 kW published rate eligibility cap is whether or not, prior to July 1, 2005, the QF had filed an interconnection study application and paid the interconnection study fee. Idaho Power believes that filing an interconnection study application and paying the study fee should not be a primary criterion, but, instead, should be included on the list of secondary criteria indicating progress toward QF project completion. The Company requests reconsideration of the interconnection study application “grandfathering” criterion because that criterion is unreasonable, unlawful, erroneous, unduly discriminatory and not in conformity with the facts of record and/or applicable law.

Idaho Power is also petitioning the Commission for an Order staying Idaho Power’s obligation to enter into contracts with wind QFs that claim an exemption from the 100 kW size limit based on the fact that the QF had filed an interconnection application and paid the interconnection study fee on or before July 1, 2005.

Idaho Power’s Petition for Reconsideration and Petition for Stay are based on the following reasons and upon the following grounds:

- 1. Establishing The Submittal Of An Interconnection Study Request And Payment Of Engineering Fee As A Primary Criterion To Determine Eligibility For Grandfathered Status Is Unreasonable, Erroneous, Unduly Discriminatory And Not In Conformity With The Law.**

A. To be entitled to grandfather status, a QF developer must enter into a contract with the utility or demonstrate that it was prevented from obtaining a contract by the unreasonable conduct of the utility.

On August 31, 2005, the Commission Staff filed a Petition for Reconsideration of Final Order No. 29851 and a Cross-Petition for Reconsideration of Final Order No. 29851 ("the Petitions"). In the Petitions, Staff provides a succinct history of the numerous Commission orders and confirming Idaho Supreme Court opinions that address the issues associated with grandfathering QF projects. These orders and opinions describe the criteria that the Commission has applied when considering a QF's request for grandfathering. Idaho Power concurs that the Staff's recitation of the orders and opinions presents an accurate summary of the law in Idaho on the subject of grandfathering QF projects. As a result, to avoid unnecessary duplication of pleadings, Idaho Power will not repeat in this Petition all of the legal citations already presented in Staff's Petitions. In considering Idaho Power's Petition for Reconsideration, Idaho Power requests that the Commission take administrative notice of the Commission orders and Idaho Supreme Court opinions cited and described in Staff's Petitions.

In the Petitions, Staff also recites the criteria the Commission has applied to decide cases when a QF requests grandfathered status. Staff correctly concludes that the Orders and Opinions cited in the Petitions hold that a QF is entitled to be grandfathered *only* if the QF can demonstrate (1) that it has entered into a contract with the utility in which the QF has legally committed itself to perform as provided in the

contract, *or* (2) the QF can demonstrate it was prevented from obtaining a contract by the unreasonable conduct of the utility.

Idaho Power believes that the Staff's analysis of the Commission's Orders and supporting Idaho Supreme Court Opinions provide an accurate representation of the basis for the Commission's adoption of the above-described alternative tests for grandfathering.

Idaho Power concurs with and, to avoid unnecessary duplication of pleadings, hereby adopts as its reasons and grounds for seeking reconsideration, the Staff's assertion in the Petitions that to qualify for grandfathering eligibility and entitlement to a contract at published avoided cost rates, the QF must demonstrate that it has entered into a contract or "legally enforceable obligation" binding itself to perform in accordance with the agreement *or alternatively* it must demonstrate that, "but for" the actions of the utility, it would have entered into such a legally enforceable obligation. Idaho Power further concurs with and adopts Staff's conclusion that any other criterion for conferring grandfather status is not in conformity with the requirements and procedures previously established by the Commission in its orders.

B. Submittal of an interconnection study request may be evidence of QF project progress but it does not satisfy the requirements established by the Commission for entitlement to grandfather status.

In its Petitions, Staff argues that the second threshold criterion enumerated by the Commission in Order No. 29851, i.e., "(2) submittal to the utility of a complete application for interconnection study and payment of fee" (Order No. 29851,

p. 10) is not properly a threshold eligibility criterion for determining entitlement to published avoided cost rates.

Idaho Power concurs with and adopts Staff's conclusion as stated in its Petitions that an application for interconnection study is not an enforceable, binding QF commitment to deliver energy. While there is no question that completion of the interconnection process is one of the major milestones on the critical path toward developing a QF project, submittal of an application for an interconnection study does not commit the QF to anything. Submittal of a request for an interconnection study is only the first step in the interconnection process. It can be withdrawn or abandoned at any time at the sole discretion of the developer and does not commit the QF to any project development activities. Staff's Petitions correctly characterize an application for interconnection study as a second tier criteria providing an *indication* of project progress and maturity.

C. Nature and Extent of Evidence and Argument to be Offered on Reconsideration.

RP 331 requires that Idaho Power state the nature and the extent of any evidence or argument it will present or offer if reconsideration is granted. It is the position of Idaho Power that the evidentiary record before the Commission and the applicable law requires that the Commission modify Order No. 29851 as set forth in this Petition for Reconsideration and to grant the Petition for Stay. Idaho Power does not believe that any further evidence is necessary for the Commission to reach that conclusion. Idaho Power believes that any additional proceedings before the Commission should be limited to the filing of briefs or comments. Nevertheless, the

Company is prepared to present additional testimony and/or argument in support of the items it has identified as requiring modification as set forth in these Petitions, including additional information on the interconnection processing if the Commission desires to consider such additional information.

PETITION FOR STAY

In its Petition for Reconsideration, Idaho Power concurs with Staff's reasons for seeking reconsideration and with the legal citations supporting those reasons outlined in the Staff's Petitions. However, Idaho Power differs with Staff's position in one major area. In its Petitions, Staff indicates that it "differs from Windland in that Staff believes the determination of project eligibility and entitlement for a contract of the public avoided cost rates should go forward." As such, Staff has not requested a stay of Order No. 29851. Unlike the Staff, Idaho Power believes it is imperative that the Commission issue its Order staying Idaho Power's obligation to enter into contracts with QFs that claim they are exempt from the 100 kW size limitation based on the second threshold criterion enumerated by the Commission in Order No. 29851, i.e. "(2) submittal to the utility of a complete application for interconnection study and payment of fee." (Order No. 29851, p. 2)

Idaho Code §62-626 and Commission RP 333 are unequivocal that a petition for reconsideration does not excuse a public utility from complying with or obeying any order or requirement of any order of the Commission during the pendency of a petition for reconsideration unless the Commission stays the utility's compliance with the order.

Idaho Power is concerned that unless the Commission issues a stay during the pendency of the Company's Petition for Reconsideration, a number of QF developers will file complaints against the Company alleging that they have filed applications for interconnection and have paid the application study fee and in accordance with Order No. 29851 and are therefore exempt from the 100 kW limit on entitlement to published rates. Unless the Commission issues the limited stay as requested by Idaho Power, the resources of both the Commission and Idaho Power will be unnecessarily consumed in responding to such complaints.

RESPECTFULLY SUBMITTED at Boise, Idaho, this 7th day of
September, 2005.

A handwritten signature in black ink, appearing to read 'B. L. Kline', written over a horizontal line.

BARTON L. KLINE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 2005, I served a true and correct copy of IDAHO POWER COMPANY'S PETITION FOR RECONSIDERATION AND PETITION FOR STAY upon the following named parties by the method indicated below, and addressed to the following:

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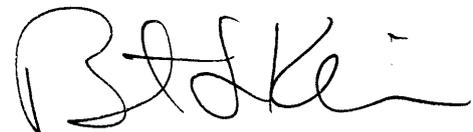
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