

William J. Batt
 John R. Hammond, Jr.
 BATT & FISHER, LLP
 U S Bank Plaza, 5th Floor
 101 South Capitol Boulevard
 P.O. Box 1308
 Boise, Idaho 83701
 (208) 331-1000
 (208) 331-2400 facsimile

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 IDAHO PUBLIC
 UTILITIES COMMISSION

Attorneys for Windland Incorporated

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

Windland Incorporated ("Windland") hereby requests, pursuant to Idaho Code § 61-626 and RP 331, that the Commission reconsider Order No. 29839 (the "Suspension Order") issued in this case on August 4, 2005.

The Commission issued the Suspension Order yesterday, and Windland is still considering the likely effects of the Order on future viability of wind energy in Idaho, including the major project that Windland has bid into the Idaho Power Wind RFP. Nevertheless, given the time-sensitivity of the issues in this case, and their importance to the direction of public energy policy in Idaho, Windland has immediately filed this Petition for Reconsideration.

Windland intends to expeditiously file a brief in support of this Petition for Reconsideration, together with a request for stay of the Suspension Order pending a decision on Windland's Petition for Reconsideration, and entry or continued stay of the Suspension Order

during the pendency of Windland's request for review of the Suspension Order by the Idaho Supreme Court, should such a request be filed.

Windland requests that the Commission reconsider the Suspension Order on the following grounds:

- The Order requires Idaho Power to enter into contracts at rates exceeding avoided cost, contrary to law.
 - The Order sets criteria for "grandfathering" certain proposed QF projects that do not have established contractual rights to old, clearly outdated avoided cost rates, contrary to law.
- 1. The rate established in Order No. 29646 does not accurately reflect cost of alternative energy**

The evidence introduced in the record demonstrates that the current avoided cost rate is too high, at least for wind powered QFs. Section 210 of the PURPA requires that the rates paid to QFs should not "exceed the incremental cost to the electric utility of alternative electric energy".¹ In its testimony and pleadings, Idaho Power asserted that the RFP produced an average price of \$55 per MWh. This and other testimony shows that the incremental cost of wind-generated alternative electric energy in the Idaho Power service territory is well below the avoided costs of nearly \$61 per MWh established in Order No. 29646.² Indeed, Idaho Power's witness, John R. Gale testified that the current avoided cost rate "deserves to be reexamined" because the Company thought it "would acquire wind resources closer to \$43.00" in its RFP.

Testimony of John R. Gale, Tr. at p. 71, l. 25, p. 72, ll. 11-20. Additionally, the Company

¹ Public Utilities Regulatory Policy Act of 1978, 210(b)(2).

² Indeed Windland's bid for selling the output of the Cotterrel wind farm is lower than both the avoided cost rate of \$61 per MWh for PURPA projects and the Idaho Power claimed \$55 per MWh price, fact which further demonstrates that using the current avoided cost rate for wind powered QFs is unjust and unreasonable. *Heckler Testimony*.

believed that “integration issues” made applying the current avoided cost rate to wind QFs questionable. *Id.* Staff witness Rick Sterling agreed in his testimony that there were sufficient reasons to question whether the current avoided cost rates as applied to wind QFs were too high. *See Testimony of Rick Sterling*, Tr. at pp. 110, 111 & 117. Thus, the Commission correctly found that avoided cost rates are set too high for wind QFs:

Based on the record established in this case the Commission finds reason to believe that wind generation presents operational integration costs to a utility different from other PURPA qualified resources. We find that the unique supply characteristics of wind generation and the related integration costs provide a basis for adjustment to the published avoided cost rates, a calculated figure that may be different for each regulated utility.

Order No. 29839 at p. 8 (emphasis added). This being the case, the current avoided cost rate is unjust and unreasonable as applied to the parties and matters before the Commission in the instant case. The Commission correctly stated: “In moving forward with this case we do so in recognition that no utility is required to pay more than its avoided cost for QF purchases.” Suspension Order, p. 9.

Nevertheless, the effect of the Suspension Order is to require Idaho Power to enter into new contracts under PURPA at a rate that clearly exceeds the avoided cost rate for QF purchases. In so doing, the Commission erred.

2. The Commission has ordered grandfathering of QFs contrary to law

In the Suspension Order the Commission stated:

[T]his 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) submittal 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.

Suspension Order, pp. 9-10.

In so doing, the Commission requires Idaho Power to enter into contracts with which it has no legal obligation under contract law. Idaho law provides otherwise. Thus, the Supreme Court has stated:

In *A.W. Brown Co.*, this Court ruled that IPUC has authority, under state and federal law, to require that before a developer can lock in a certain rate, there must be either a signed contract to sell at that rate or a meritorious complaint alleging that the project is mature and that the developer has attempted and failed to negotiate a contract with the utility; that is, there would be a contract but for the conduct of the utility. *121 Idaho at 816, 828 P.2d at 845*

Rosebud Enterprises, Inc., v. Idaho Public Utilities Commission, and Idaho Power Company, *131 Idaho 1, at 9, 951 P.2d 521 (1997)* (emphasis added). Other than the wind QF projects which the Commission has previously approved and the Arrow Rock project, Idaho Power Company has not entered into any further contracts. As such, the “grandfathering” criteria that is provided for in the Commission Suspension Order is in error.

Conclusion

For the foregoing reasons, Windland requests that the Commission reconsider its decision regarding “grandfathering” in Order No. 29839. After such reconsideration, Windland respectfully 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 because such rate is unjust and unreasonable.

DATED this 5th day of August, 2005.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John R. Hammond, Jr.", written over a horizontal line.

John R. Hammond, Jr.
William J. Batt
BATT & FISHER, LLP
101 South Capital Blvd., Suite 500
P.O. Box 1308
Boise, ID 83701
(208) 331-1000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2005, I served the foregoing upon all parties of record in this proceeding as indicated below.

Barton L. Kline
Monica B. Moen
IDAHO POWER COMPANY
P.O. Box 70
Boise, ID 83707-0070
bk1line@idahopower.com
mmoen@idahopower.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Peter J. Richardson
RICHARDSON & O'LEARY PLLC
515 N. 27th Street
Boise, ID 83702
peter@richrdsonandoleary.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Richard L. Storro
Director, Power Supply
AVISTA CORPORATION
1411 E. Mission Ave
P.O. Box 3727, MSC- 7
Spokane, WA 99220-3727
dick.storro@avistacorp.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

R. Blair Strong
PAINE, HAMBLÉN, COFFIN,
BROOKE & MILLER LLP
717 West Sprague Avenue, Suite 1200
Spokane, WA 99201-3505
r.blair.strong@painehamblen.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Scott Woodbury
Deputy Attorney General
IDAHO PUBLIC UTILITIES COMMISSION
424 W. Washington Street
P.O. Box 83720
Boise, ID 83720-0074
scott.woodbury@puc.idaho.gov

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Michael Heckler
Director of Marketing and Development
WINDLAND INCORPORATED
7669 West Riverside Drive, Suite 102
Boise, ID 83714
Telephone: (208) 377-7777
Facsimile: (208) 375-2894
mheckler@windland.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Dean J. Miller
MCDEVITT & MILLER LLP
420 W. Bannock
Boise, ID 83702
joe@mcdevitt-miller.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Jared Grover
CASSIA WIND LLC
CASSIA GULCH WIND PARK LLC
3635 Kingswood Drive
Boise, ID 83701

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Armand Ecker
MAGIC WIND LLC
716-B East 4900 North
Buhl, ID 83316

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Glenn Ikemoto
Principal
ENERGY VISION LLC
672 Blain Avenue
Piedmont, CA 94611
glenni@pacbell.net

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Bob Lively
PACIFICORP
One Utah Center, 23rd Floor
201 S. Main Street
Salt Lake City, UT 84140
bob.lively@pacificorp.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Lisa Nordstrom
PACIFICORP
825 NE Multnomah, Suite 1800
Portland, OR 97232
lisa.nordstrom@pacificorp.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

David Hawk
Director, Energy Natural Resources
J.R. SIMPLOT COMPANY
999 Main Street
P.O. Box 27
Boise, ID 83707-0027
dhawk@simplot.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

R. Scott Pasley
Assistant General Counsel
J.R. SIMPLOT COMPANY
999 Main Street
P.O. Box 27
Boise, ID 83707-0027
spasley@simplot.com

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

William M. Eddie
ADVOCATES FOR THE WEST
1320 W. Franklin Street
P.O. Box 1612
Boise, ID 83701
billeddie@rmci.net

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Troy Gagliano
917 SW Oak Street, Suite 303
Portland, OR 97205

Certified Mail
 First Class Mail
 Hand Delivery
 Facsimile
 Electronic Mail



John R. Hammond, Jr.