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An IDACORP Company

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December 15, 2005

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

Re: Case No. IPC-E-05-32
Idaho Power Company's Reply Comments

Dear Ms. Jewell:

Please find enclosed for filing an original and seven (7) copies of Idaho Power Company's Reply Comments regarding the above-described case.

I would appreciate it if you would return a stamped copy of this transmittal letter in the enclosed self-addressed, stamped envelope.

Very truly yours,

Barton L. Kline

BLK:jb
Enclosures

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Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY BETWEEN IDAHO POWER COMPANY AND NOTCH BUTTE WIND PARK LLC	CASE NO. IPC-E-05-32 REPLY COMMENTS

COMES NOW, Idaho Power Company ("Idaho Power" or "the Company") and submits the following Reply Comments in response to the Comments of Windland Incorporated ("Windland") dated November 28, 2005.

Windland Comments

Windland requests that the Commission consider requiring the contract for the Notch Butte Wind Park Project ("Project") to be revised to include liquidated damages and to require that the Project developer agree to provide financial security instruments to provide a source of funds if the Project fails to come on line in a timely fashion. Windland argues that this is necessary because the Federal Production Tax

Credit ("FPTC") may go away at the end of 2007 and, therefore, it is incumbent on the Commission to require strict performance by the Project. Windland asserts that requiring strict compliance is in the public interest because the Project, as a mandatory PURPA purchase, displaces other projects like Windland's project from acquisition by Idaho Power via an RFP, thereby increasing Idaho Power's costs.

Windland correctly notes in its comments that the template PURPA Power Purchase Agreement ("PPA") that Idaho Power has used for a number of years to acquire energy from smaller QF projects, including wind QFs eligible to receive the published rates, imposes no liquidated damages on QFs that fail to be operational by the date pledged by the developers. Liquidated damages are specific and limited amounts that a contracting party is required to pay to another contracting party in the event an agreed-upon area of performance is not achieved.

The template agreement for smaller QF purchases does include repercussions for the failure to meet the scheduled operation date. Instead of including provisions for liquidated damages, the template agreement provides that a developer's failure to achieve the designated operation date within a ten month period after the scheduled date constitutes an event of default and, if the default is not cured within the timeframe stated in the PPA, the PPA is subject to termination and the Company can pursue legal and equitable relief from the defaulting party.

In addressing Idaho Power's ability to sue a non-performing QF, Windland correctly notes that most QF developers utilize single purpose entities to develop their QF projects, and as a result, they tend to be, as Windland states, "hollow shells." As such, if a QF fails to perform on time, there is usually little recourse to make Idaho

Power's customers whole if they have incurred damages due to a QF's failure to perform.

In summary, Windland has correctly pointed out that the template contract Idaho Power currently utilizes for QF projects entitled to the published rates provides essentially a "free option" to the QF developer to sign a contract, lock in a rate, and then go see if it can actually put together a project. The QF developer, in reality, undertakes little financial risk for non-performance by signing a contract with Idaho Power.

Historical Commission Practice

Historically, the Commission has discouraged the inclusion of liquidated damage clauses and security provisions in contracts with smaller PURPA developers for failure to meet the scheduled operation date. Early in the Commission's consideration of implementation of PURPA in Idaho, the purchasing utilities suggested that the Commission allow them to include liquidated damages provisions for QF projects failing to meet their contract commitments, including the on-line dates. In an effort to encourage PURPA development, the Commission elected not to impose the types of commercial performance requirements that are common in other utility resource acquisition contracts on small PURPA projects because those requirements, such as liquidated damages for failure to meet on-line dates, could have the effect of discouraging PURPA development.

In the past, the Commission has approved the inclusion of liquidated damages and security provisions in power purchase agreements between the Company and large QF projects for failure to achieve specified milestone performance dates. *See* IPUC Order No. 24805 at 4; Case No. IPC-E-92-4 (the "Meridian Generating Project

Case"). See also Order No. 26091 in Case No. IPC-E-95-12 addressing the Auger Falls Hydro Project, which was scheduled to produce 43.6 MW, the "largest hydroelectric QF resource in Idaho" and would have been capable of serving the "annual energy requirements of approximately 20,000 customers." *Id.* at 5. In the case of larger QF developments, the Commission has determined that the "risks of a QF must rest with its investors and not the utility or its ratepayers" and has determined that the imposition of liquidated damages on those projects is prudent. *See* Order No. 26041 at 2.

Windland is correct in its assessment that should multiple QF projects entitled to the published rates fail to meet the scheduled operation dates, the collective impact could adversely affect the Company's resource planning process. In a separate, future case, the Commission may wish to consider the aggregate risks to Idaho Power and its customers if multiple QF developers entitled to published rates fail to construct their projects and produce electricity by the scheduled operation dates and whether, in response to those risks, future QF contracts should include liquidated damages provisions and require some type of creditworthiness assurance from the PURPA developers.

QF Project Economics

In its comments, Windland also claims that availability of the federal PTC is vital to the development of wind-powered resources. Windland asserts that "the cost structure of a commercial wind generation facility in the United States varies enormously with the absence or availability of a . . . PTC" and that ratepayers are affected by the availability, or lack thereof, of the PTC. *See* Comments of Windland Incorporated, dated November 28, 2005, at 2. Windland predicts that "current federal fiscal realities will preclude the PTC being extended beyond December 2007." *Id.* As a result, Windland anticipates that construction of larger wind generation resources will "stop being cost effective." *Id.*

In numerous earlier orders, the Commission has been very explicit in its direction that Idaho Power is not entitled to consider the financing structure and viability of QF resources. As a result, Idaho Power has no way of knowing whether any of the benefits of the PTC are actually flowed through to Idaho Power's customers in the form of lower prices sought by wind developers. Obviously, wind developers, such as Windland that participate in a competitive resource acquisition process, will have a much greater incentive to use the PTCs to lower their bid price. In the case of PURPA facilities, particularly those facilities utilizing the published rates, because the purchase price is administratively determined and does not vary with supply and demand, QF developers may, in fact, lawfully retain all of the PTC.

Developer Delays

Finally, Windland references milestones allegedly missed by the developer, Exergy, the sponsor of the Project, in the past. In August 2005, Idaho Power granted an extension of the operation date of Exergy's Horseshoe Bend Wind Park project for four months from October 31, 2005 to March 1, 2006 based on credible documentation that (1) substantial progress had been made toward completion of the project and (2) evidence that Hurricane Katrina impacted the shipment of equipment required to timely complete the Horseshoe Bend project. The Commission should be assured that if the explanations offered by Exergy in its request to extend the operation date of its facility had not been reasonable and if the developer is unable to cure the default within the timeframe specified in the parties' agreement, the Company would have exercised its right under the agreement to terminate the agreement and seek legal and equitable remedies.

Conclusion

As noted by Staff in its comments, the Project meets the Commission-adopted criteria for entitlement to the published rates. As a result, Idaho Power respectfully requests that the Commission approve the Firm Energy Sales Agreement between Idaho Power and the Project as set out in the Company's Application in this matter. If the Commission believes that the issues Windland has raised are worthy of further consideration, Idaho Power believes that the correct procedural course to follow would be for the Commission to open a separate docket in which the Commission could consider whether, on a prospective basis, liquidated damages and reasonable financial security for those damages should be included in future contracts with smaller QF developers who are entitled to receive the published rates.

Respectfully submitted this 15th day of December, 2005.

BARTON L. KLINE
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of December, 2005, I served a true and correct copy of the within and foregoing REPLY COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

Scott Woodbury Deputy Attorney General Idaho Public Utilities Commission 472 W. Washington Street P.O. Box 83720 Boise, Idaho 83720-0074	_x_ Hand Delivered ____ U.S. Mail ____ Overnight Mail ____ FAX (208) 334-3762 ____ E-mail

BARTON L. KLINE