

Peter J. Richardson
ISB No. 3195
Richardson & O'Leary
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonandoleary.com

RECEIVED
FILED
2005 DEC 13 AM 8:15
IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Exergy Development Group of Idaho, Inc.

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 OF EXERGY DEVELOPMENT GROUP OF IDAHO, INC. |
|--|---|

COMES NOW, Exergy Development Group of Idaho, Inc. ("Exergy") hereby lodges its reply comments to the comments filed by Windland Incorporated in the above captioned matter.

Windland raises issues of generic applicability to PURPA contracts relative to penalties or damage calculations for delay in achieving the first operation date for QF projects. However such considerations are beyond the scope of the instant proceeding. The question before the Commission is clearly stated in the Notice of Comment/Protest Deadline issued by the Commission on November 7, 2005. In that Notice the Commission identified the two issues that are presented by Idaho Power's application for approval of the four agreements. The first issue is whether the projects are, indeed, qualified small power production facilities (QFs) under the applicable provisions of the Public Utility Regulatory Policy Act of 1978 (PURPA) and whether

the terms and conditions of the agreements comport with the Commission's implementing orders including *U.S. Geothermal et al v. Idaho Power* and avoided cost Order Nos. 29646, 29839, 29851, 29872 and 29646. The second issue is whether the projects are grandfathered under the terms of interlocutory Order No. 29839 and Order No. 29872 in Case No. IPC-E-05-22.

Windland's comments fail to address either question at issue in this docket. Staff of the PUC, on the other hand, filed comments that do address both of the questions at issue in this docket. Staff concluded that the projects should be grandfathered pursuant to the terms of Case No. IPC-E-05-22. Staff also concluded that the projects are QFs and the contracts comport with this Commission's precedent and rulings implementing PURPA.

Windland is asking this Commission to retroactively change its orders implementing PURPA which would be an unjust and unwarranted denial of Exergy's due process rights. It is black letter law in Idaho that when the Commission makes changes in a utility's rates or the terms and conditions of service, that such changes may only be made on a prospective basis. *Utah Power & Light v. Idaho Public Utilities Comm'n*, 107 Idaho 47, 52, 685 P.2d 276 (1984). Exergy was, and is, entitled to rely upon the Commission's orders and PURPA in spending the time and effort to bring this project to a stage at which it is entitled to the published avoided cost rates, and terms and conditions, set by the Commission.

Exergy respectfully requests this Commission accept Staff's recommendation and expeditiously approve this agreement. Windland's concerns are not properly before this Commission in this docket and should not be considered in the Commission's final decision making process.

//

//

Respectfully submitted this 12th day of December, 2005.

Richardson & O'Leary, LLP

By 
Peter J. Richardson
Attorneys Exergy Development Group of Idaho, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December I caused the foregoing REPLY COMMENTS OF EXERGY DEVELOPMENT GROUP OF IDAHO in the above referenced docket to be mailed, postage prepaid, to the following:

Monica Moen
Bart Kline
Idaho Power Company
PO Box 70
Boise, Idaho 83707-0070

Randy Alphin
Idaho Power Company
PO Box 70
Boise, Idaho 83707-0070



Nina Curtis
Administrative Assistant
Richardson & O'Leary