

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF IDAHO POWER COMPANY FOR )** **CASE NO. IPC-E-05-32**  
**APPROVAL OF A FIRM ENERGY SALES )**  
**AGREEMENT FOR THE SALE AND )**  
**PURCHASE OF ELECTRIC ENERGY )** **ORDER NO. 29950**  
**BETWEEN IDAHO POWER COMPANY )**  
**AND NOTCH BUTTE WIND PARK LLC )**

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On October 20, 2005, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a 20-year Firm Energy Sales Agreement (Agreement) between Idaho Power and Notch Butte Wind Park LLC (Notch Butte) dated October 14, 2005. Under the Agreement, Notch Butte will sell and Idaho Power will purchase electric energy generated by Notch Butte, a project located near Notch Butte, Idaho, which is between Twin Falls and Shoshone, Idaho, in an area more particularly described as Section 36, Township 6 S, Range 16 E, Boise Meridian, Jerome County, Idaho; Sections 3, 4, 5, 6, 8 and 9, Township 7 S, Range 17 E, Boise Meridian, Jerome County, Idaho; and Section 3, 4, 5, 8 and 9, Township 7 S, Range 17 E, Boise Meridian, Lincoln County, Idaho. The project will consist of twelve (12) 1.5 MW GE wind turbines. The nameplate rating of the project is 18.0 MW. Under normal and/or average conditions, the project will not exceed 10 aMW on a monthly basis. If energy in excess of this amount (Inadvertent Energy) is accidentally generated, Idaho Power will accept Inadvertent Energy that does not exceed the 19.2 MW Maximum Capacity Amount, but will not purchase or pay for it. Agreement ¶ 7.3.2; Appendix B-4.

The Notch Butte project will be a qualified small power production facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). As represented by Idaho Power, the Agreement comports with the terms and conditions of Commission Order No. 29632 (*U.S. Geothermal et al v. Idaho Power*), avoided cost Order No. 29646 and Commission Order Nos. 29839, 29851 and 29872 in Case No. IPC-E-05-22. The Agreement is for a 20-year term and contains the non-levelized published avoided cost rates set forth in Order No. 29646.

In interlocutory Order No. 29839 issued in Case No. IPC-E-05-22 the Commission reduced the size cap for QF wind generation facilities entitled to receive the published avoided cost rates from 10 aMW to 100 kW. In its Order, the Commission further identified several criteria that it would consider to determine whether a particular QF wind generation facility in the negotiation queue was sufficiently mature so as to justify “grandfathering” the project to entitlement to the published rates. These criteria are as follows:

- (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.

Order No. 29839, p. 10, August 4, 2005; final Order No. 29851. In reconsideration Order No. 29872 issued on September 21, 2005 in the same case, the Commission reaffirmed the grandfathering criteria and changed the “grandfathering” eligibility deadline from the previously-ordered July 1, 2005, to August 4, 2005, the date of interlocutory Order No. 29839.

Considering and weighing all of the Commission-identified criteria, Idaho Power believes that the Notch Butte project is sufficiently far enough along the development path that it should be “grandfathered” to the published rates. Notch Butte has selected November 2006 as the scheduled first energy date and May 2007 as the scheduled operation date.

As reflected in Agreement Section 24, the Agreement will not become effective until the Commission has approved all the Agreement’s terms and conditions and declares that all payments that Idaho Power makes to Notch Butte for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

On November 7, 2005, the Commission issued a Notice of Application and Modified Procedure in Case No. IPC-E-05-32. The deadline for filing written comments was November 28, 2005. Comments were filed by Commission Staff and Windland Incorporated. Staff has reviewed the submitted Agreement and finds that it comports with the terms and conditions of Commission Order No. 29632 (*U.S. Geothermal, et al. v. Idaho Power*), avoided cost Order No.

29646 and Commission Order Nos. 29839, 29851 and 29872 in Case No. IPC-E-05-22. The Agreement is for a 20-year term and contains the non-levelized published avoided cost rates set forth in Order No. 29646. Staff recommends approval of the Agreement with an effective date of October 14, 2005.

Windland Incorporated expresses concern that the presence of “signed but not yet built” wind PURPA contracts limits Idaho Power Company’s options to procure other wind energy resources. If projects are approved but not built on schedule, Windland contends that there is a significant financial risk to Idaho ratepayers. Windland contends that Exergy Development Group has been late meeting target dates for three approved projects to date. The United Materials Horseshoe Bend Wind Park project near Great Falls, Montana is now almost a year late in meeting its scheduled on-line date. The Fossil Gulch project near Hagerman, Idaho is on-line but did not achieve the status by its January 1, 2005 milestone target. The Burley Butte project near Burley, Idaho did not meet its October 30, 2005 first energy date. Windland does not expect the Thousand Springs, Pilgrim Stage, Oregon Trail and Tuana Gulch projects to meet their December 31, 2005 scheduled operation dates. If Exergy fails to bring Notch Butte and three other proposed projects on-line by the scheduled May 2007 date, Windland contends that it will be too late for Idaho Power to procure alternate wind resources from another source before the federal production tax credit expires at the end of 2007. Reference Milner Dam (IPC-E-05-30), Lava Beds (IPC-E-05-31), and Salmon Falls (IPC-E-05-33). Windland requests that the Commission examine the totality of facts associated with these four contracts and only approve them if Exergy provides adequate assurances that the projects will be timely built.

Exergy by way of reply contends that 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. Exergy contends that such issues are beyond the scope of the instant proceeding. Exergy further contends that 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. *Citing Utah Power & Light v. IPUC*, 107 Idaho 47, 52, 685 P.2d 276 (1984).

Idaho Power in reply comments addresses Exergy contract performance, notes the default provisions of the Agreement and cites prior QF contract policy regarding the inappropriateness of liquidated damage provisions in small QF published rate contracts. Idaho

Power contends that the Notch Butte project satisfies the Commission's grandfathering eligibility criteria and requests that the Commission approve the Firm Energy Sales Agreement. Idaho Power agrees that the template contract the Company currently utilizes for small QF published rate contracts 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. Windland is correct in its assessment, the Company concurs, 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. Should the Commission find the performance and liquidated damage issues raised by Windland to be worthy of further consideration, Idaho Power contends that the suggested changes are appropriate only for prospective application and recommends that the appropriate procedure would be to open a separate docket.

### **COMMISSION FINDINGS**

The Commission has reviewed and considered the filings of record in Case No. IPC-E-05-32, including the underlying Agreement, the comments and recommendations of Commission Staff and Windland Incorporated, and the reply comments of Exergy and Idaho Power. We have also reviewed public comments filed in support of the project.

The Commission Staff recommends that the Notch Butte Agreement be approved. Windland Incorporated recommends that the Commission require adequate assurances from the developer that the project will be timely built. Idaho Power notes the default provisions of the Agreement and suggests that the generic performance and liquidated damage issues raised by Windland be addressed, if at all, in a separate docket for prospective application in future contracts.

The Commission has considered the concerns raised by Windland regarding the ramifications of an approved QF project failing to come on-line. While the identified risks exist, we find the risk to be small. There is always a risk that QF projects will not come on-line at the time projected. In addition, prices of resources are always changing. The Company's planning process is flexible enough to accommodate the risk associated with small QF projects. We have no developed record of upfront project failure to justify the imposition of a performance bond requirement assuring that small projects qualifying for published rates will be timely built. Until the facts are demonstrated to be otherwise we do not find a performance bond requirement in this case or an investigation to be warranted.

Idaho Power has presented a Firm Energy Sales Agreement with Notch Butte for Commission consideration and approval. The nameplate rating of the wind facility is 18.0 MW. The contract is for a 20-year term and contains non-levelized published avoided cost rates for energy deliveries not exceeding 10 aMW on a monthly basis. The Commission finds that the Agreement submitted in this case contains acceptable contract provisions and comports with the terms and conditions of Order Nos. 29632 and 29682 in Case Nos. IPC-E-04-8; 04-10. The Commission finds that the project satisfies the grandfathering eligibility criteria established in Order Nos. 29839 and 29872 in Case No. IPC-E-05-22.

The Commission finds it reasonable that the submitted Agreement be approved without further notice or procedure. IDAPA 31.01.01.204. We further find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

#### **CONCLUSIONS OF LAW**

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations for the purchase of energy from qualified facilities and to implement FERC rules.

#### **ORDER**

In consideration of the foregoing, IT IS HEREBY ORDERED and the Commission does hereby approve the October 14, 2005 Firm Energy Sales Agreement between Idaho Power Company and Notch Butte Wind Park, LLC.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10<sup>th</sup>  
day of January 2006.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell  
Commission Secretary

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