

## DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER HANSEN  
COMMISSION SECRETARY  
COMMISSION STAFF  
LEGAL**

**FROM: SCOTT WOODBURY**

**DATE: DECEMBER 16, 2005**

**SUBJECT: CASE NOS. IPC-E-05-30; 05-31; 05-32; 05-33 (Idaho Power)  
FIRM ENERGY SALES AGREEMENTS – MILNER DAM (05-30); LAVA  
BEDS (05-31); NOTCH BUTTE (05-32); SALMON FALLS (05-33)**

On October 20, 2005, Idaho Power Company (Idaho Power; Company) filed four Applications with the Idaho Public Utilities Commission (Commission) requesting approval of Firm Energy Sales Agreements (Agreements) between Idaho Power and Milner Dam Wind Park LLC (Milner Dam); Lava Beds Wind Park LLC (Lava Beds); Notch Butte Wind Park LLC (Notch Butte); and Salmon Falls Wind Park LLC (Salmon Falls), collectively the Wind Projects. The Agreements are dated October 14, 2005. The Wind Projects, as represented, are qualified small power production facilities (QFs) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Milner Dam project is located approximately 2,000 yards west of the Milner Dam in Cassia County, Idaho. The Lava Beds project is located near Taber, Idaho which is between Blackfoot and Atomic City. The Notch Butte project is located between Twin Falls and Shoshone, Idaho. The Salmon Falls project is located near Hagerman, Idaho, south of the Bell Rapids area.

The Notch Butte, Lava Beds and Milner Dam projects will consist of twelve (12) 1.5 MW GE wind turbines, the facility generator rating for each project being 18 MW. The Salmon Falls project will consist of fourteen (14) 1.5 MW GE turbines for a total facility generator rating of 21 MW. Under normal and/or average conditions the Wind Projects will not exceed 10 aMW on a monthly basis. If energy in excess of this amount (inadvertent energy) is accidentally generated, Idaho Power will except inadvertent energy that does not exceed the 10.5 MW maximum capacity amount, but will not purchase or pay for it. Agreement ¶ 7.3.2.

As represented by Idaho Power, the Agreements comport 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 Agreements are for a 20-year term and contain 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 four Wind Projects are sufficiently far enough along the development path that they should be “grandfathered” to the published rates. The projects have each selected November 2006 as the scheduled first energy date and May 2007 as the scheduled operation date.

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

On November 7, 2005, the Commission issued Notices of Application and Modified Procedure in Case Nos. IPC-E-05-30-33. The deadline for filing written comments was November 28, 2005. Comments were filed by Commission Staff and Windland Incorporated. Staff has reviewed the submitted Agreements and finds that they comport 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 Agreements are for 20-year terms and contain the non-levelized published avoided cost rates set forth in Order No. 29646. Staff recommends approval of the Agreements 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 the four 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 the four current 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. 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 Agreements and cites prior QF contract policy regarding the inappropriateness of liquidated damage provisions in small QF published rate contracts. Idaho Power contends that all four projects satisfy the Commission's grandfathering eligibility criteria and requests that the Commission approve the Firm Energy Sales Agreements. 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 DECISION**

Tendered for Commission approval are Firm Energy Sales Agreements with Milner Dam, Lava Beds, Notch Butte and Salmon Falls. The contracts are for 20-year terms and contain the non-levelized published avoided cost rates for energy deliveries not exceeding 10 aMW on a monthly basis. The Commission Staff recommends that the Agreements be approved. Windland Incorporated recommends that the Commission require adequate assurances from the developer that the projects will be timely built. Idaho Power notes the default provisions of the Agreements 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. Does the Commission find it reasonable to approve the Agreements? With or without further qualifications or requirements? Should a separate docket be established to consider the generic performance and liquidated damage issues raised by Windland?

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