



IDAHO POWER COMPANY  
P.O. BOX 70  
BOISE, IDAHO 83707

**BARTON L. KLINE**  
Senior Attorney

RECEIVED  
MAY 10 2006  
PUBLIC UTILITIES COMMISSION

May 8, 2006

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

Re: Case No. IPC-E-05-34  
Idaho Power Company's Answer to Magic Wind's  
Motion For Declaratory Order

Dear Ms. Jewell:

Please find enclosed for filing with the Commission an original and seven (7) copies of Idaho Power Company's Answer to Magic Wind's Motion for Declaratory Order regarding the above-referenced case.

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

Very truly yours,

Barton L. Kline

BLK:jb  
Enclosures

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MONICA MOEN ISB #5734  
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FAX Telephone: (208) 388-6936  
E-mail: [bkline@idahopower.com](mailto:bkline@idahopower.com)  
E-mail: [mmoen@idahopower.com](mailto:mmoen@idahopower.com)

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JUL 17 2005 PM 4:54  
PUBLIC UTILITIES COMMISSION

Attorneys for Idaho Power Company

Street Address for Express Mail:

1221 West Idaho Street  
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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF )	CASE NO. IPC-E-05-34
MAGIC WIND LLC TO DETERMINE )	
EXEMPTION STATUS )	IDAHO POWER COMPANY'S
)	ANSWER TO MAGIC WIND'S
)	MOTION FOR DECLARATORY
_____ )	ORDER

Idaho Power Company ("Idaho Power" or "the Company"), in accordance with RP 057, hereby answers the Motion for Declaratory Order of Magic Wind LLC ("Magic Wind") in the above-entitled case as follows:

1. While Magic Wind has identified its pleading as a Motion, it has indicated that it is seeking a declaratory order in accordance with RP 101, *et. seq.* As a result, this answer responds to Magic Wind's Motion as an answer to a petition for a declaratory order in accordance with RP 101, *et. seq.*

2. Idaho Power admits the allegations contained in Magic Wind's Paragraphs I, II, III and VIII of Magic Wind's Motion.

3. With respect to the allegations contained in Magic Wind's Paragraph IV, Idaho Power denies that Magic Wind and Idaho Power have undertaken negotiations regarding the terms of a power purchase agreement. On June 14, 2005, Magic Wind presented a signed Firm Energy Sales Agreement to Idaho Power. On several occasions since it initially determined that Magic Wind's project appeared to qualify for grandfathering to the published rates, Idaho Power has advised Magic Wind that it is prepared to enter into a Firm Energy Sales Agreement with Magic Wind in the form tendered by Magic Wind on June 14, 2005. On April 5, 2006, for the first time, Idaho Power was advised by Magic Wind that it did not intend to enter into the Firm Energy Sales Agreement it had previously signed and submitted to Idaho Power, but instead desired to negotiate a contract that included some of the provisions in the PacifiCorp-Schwendiman Power Purchase Agreement that had been approved by the Commission in Order No. 30000. A chronology demonstrating Idaho Power's efforts to enter into a Firm Energy Sales Agreement with Magic Wind is included with this Answer as Attachment 1.

4. With respect to the allegations contained in Paragraph V, Idaho Power admits that the Commission issued Order No. 30000 in Case No. PAC-E-05-06. Order No. 30000 speaks for itself. The balance of the statements in Paragraph V constitute legal conclusions and arguments, not allegations of fact that can be admitted or denied. As such, Idaho Power denies the same.

5. With respect to the allegations contained in Paragraph VI, Idaho Power admits that on April 5, 2006, Magic Wind transmitted a draft Firm Energy Sales Agreement to Idaho Power and requested that Idaho Power enter into negotiations with Magic Wind to revise the Firm Energy Sales Agreement Magic Wind had previously

signed and tendered to Idaho Power in a manner consistent with the April 5, 2006 submittal.

6. With respect to the allegations contained in Paragraph VII, Idaho Power does not have sufficient information to either admit or deny the allegations contained in Paragraph VII and consequently Idaho Power denies the same.

7. Commission Order No. 30000 stated that the Commission's approval of the Schwendiman-PacifiCorp agreement did not set precedent. Idaho Power has fully satisfied its mandatory purchase obligation under PURPA by offering to purchase the generation from Magic Wind's proposed wind farm by entering into a Firm Energy Sales Agreement in the form previously signed and tendered by Magic Wind. The Commission has approved the Firm Energy Sales Agreement offered by Idaho Power to Magic Wind on numerous occasions.

8. The changes that Magic Wind proposes to make to the Firm Energy Sales Agreement tendered by Idaho Power eliminates consideration of market prices in the determination of costs Idaho Power will incur if Magic Wind does not provide the monthly amount of energy it agreed to provide. It is Idaho Power's belief that elimination of market prices from consideration will shift costs and risks to customers that should be appropriately borne by Magic Wind and that such shift is inconsistent with PURPA.

9. Service of Pleadings. Communications with reference to this case should be sent to the following:

Barton L. Kline  
Monica B. Moen  
Idaho Power Company  
P.O. Box 70  
Boise, Idaho 83707-0070  
[bkline@idahopower.com](mailto:bkline@idahopower.com)  
[mmoen@idahopower.com](mailto:mmoen@idahopower.com)

John R. Gale  
Vice President – Regulatory Affairs  
Idaho Power Company  
P.O. Box 70  
Boise, Idaho 83707-0070  
[rgale@idahopower.com](mailto:rgale@idahopower.com)

10. Requested Relief:

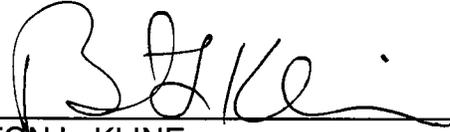
(1) Magic Wind's Motion should be treated as a Petition for Declaratory Order by the Commission;

(2) Magic Wind has not stated a claim of relief which can be granted and the Motion should be denied by the Commission;

(3) Magic Wind's proposed contract changes are inconsistent with the requirements of PURPA and Idaho Power should not be ordered to enter into a contract containing the provisions demanded by Magic Wind; and

(4) Because Magic Wind has requested that the Commission issue a declaratory order, such an order would be binding on all of the electric utilities subject to the Commission's jurisdiction. As of the date of this Answer, Idaho Power does not believe that Magic Wind has served copies of its Motion on either PacifiCorp or Avista. Idaho Power proposes that Magic Wind serve PacifiCorp and Avista with a copy of its Motion and that the Commission direct the parties to convene a scheduling conference to establish the procedure and schedule for processing this case, which schedule would include an opportunity for parties to intervene.

DATED at Boise, Idaho, this 8<sup>th</sup> day of May, 2006.

A handwritten signature in black ink, appearing to read 'B L Kline', written over a horizontal line.

BARTON L. KLINE  
Attorney for Idaho Power Company

# ATTACHMENT 1

On June 14, 2005, Magic Wind presented a signed Firm Energy Sales Agreement to Idaho Power and requested that Idaho Power sign the tendered Firm Energy Sales Agreement. By tendering this signed Firm Energy Sales Agreement to Idaho Power, Magic Wind satisfied one of the primary criteria for entitlement to exemption from the rate eligibility cap established by the Commission in Order No. 29839. On November 22, 2003, to address one of the secondary criteria set out in Order No. 29839, Magic Wind provided a letter dated November 16, 2005, from Clipper Wind Power, Inc. to Magic Wind confirming that Clipper Wind Power "has the capacity to and is prepared to deliver to Magic Wind LLC eight 2.5 MW Clipper wind turbines not later than the first quarter of 2007." Following receipt of the Clipper Wind Power commitment letter, Idaho Power advised Magic Wind that it was prepared to enter into a Firm Energy Sales Agreement in the form previously executed by Magic Wind but that it would be necessary for Magic Wind to supply and confirm certain information regarding the project. A copy of an e-mail from Idaho Power to Magic Wind dated December 12, 2005 requesting this information is attached as Attachment 1(a).

During the months of January and February, Idaho Power continued to seek information from Magic Wind with the intention of completing the Firm Energy Sales Agreement previously tendered by Magic Wind. A copy of a letter confirming Idaho Power's ongoing efforts to obtain information needed to complete the Firm Energy Sales Agreement is attached as Attachment 1(b).

On March 3, 2006, Magic Wind provided the requested information that would allow Idaho Power to finalize the Firm Energy Sales Agreement for the Magic Wind Project. See Attachment 1(c).

On March 16, 2006, in response to a further inquiry by Idaho Power, Magic Wind provided additional information needed to finalize the Firm Energy Sales Agreement in the form requested by Magic Wind. See Attachment 1(d).

On April 5, 2006, for the first time, Idaho Power was advised by Magic Wind that it did not intend to enter into the Firm Energy Sales Agreement it had previously signed and submitted to Idaho Power but instead desired to negotiate a contract that included provisions that had been approved by the Commission in Order No. 30000.

**Attachment 1(a)****Allphin, Randy**

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**To:** Armand Eckert**Subject:** Magic Wind LLC - Proposed wind project

Dear Mr. Eckert

In the recent letter you provided Idaho Power from Clipper Windpower Inc. Clipper committed to deliver 8 - 2.5 MW machines for your proposed project, this calculates to be 20 MW. In the previous information you had provided for a potential draft purchase power agreement the brand of machines was different and the nameplate was different. Could you please provide the monthly Kwh estimates, scheduled first energy date and scheduled operation date to be included in an updated draft purchase power agreement.

Randy Allphin  
Idaho Power Company  
208-388-2614

12/12/2005

Attachment 1(b)



**Randy C. Allphin**  
Contract Administrator

February 22, 2006

Magic Wind  
Armand M. Eckert  
716-B East 4900 North  
Buhl, ID 83316

E-mail Copy: Armand Eckert  
Joe Miller

Armand@safelink.net  
joe@mcdevitt-miller.com

Original: US Mail

RE: Magic Wind Wind Park

Dear Mr. Eckert:

As you are aware, based on the documentation you provided that indicated that before and after August 4, 2005, Clipper Windpower had committed to provide eight (8) 2.5 MW Clipper wind turbines for your proposed wind project, Idaho Power agreed that your project appeared to be eligible for a PURPA purchase power agreement containing the published avoided costs. Within this documentation, Clipper Windpower's commitment to provide turbines was conditioned upon: a) execution by Idaho Power Company of the Purchase Power Agreement; b) the payment of required deposits by Magic Wind LLC and c) the execution of Clipper Windpower's standard Turbine Supply Agreement by Magic Wind LLC.

In conjunction with item a), in early December 2005, Idaho Power contacted you with a request for updated information to complete the details for a purchase power agreement. Some of these details

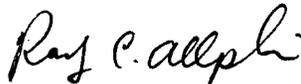
being estimated monthly kWh deliveries, project description and contact information. As of the date of this letter, Idaho Power has not received any of the requested data. Is it still your intention to move forward with this Project?

If so, please provide Idaho Power the additional information required to complete the purchase power agreement (monthly kWh estimates, project description and contact information) and a current status report on items b) and c) listed above.

In addition, Idaho Power would appreciate an update of Magic Wind's documentation concerning the status of any ongoing efforts to secure financing for the Project.

If you have any questions please contact me at your convenience.

Very truly yours,



Randy C. Allphin  
Idaho Power Company  
Contract Administrator

Cc: Bart Kline (IPCo)

**Attachment 1(c)**

**McDevitt & Miller LLP**  
Lawyers

(208) 343-7500  
(208) 336-6912 (Fax)

420 West Bannock Street  
P.O. Box 2564-83701  
Boise, Idaho 83702

Chas. F. McDevitt  
Dean J. (Joe) Miller

March 3, 2006

*Via E-Mail*

Barton L. Kline, Esquire  
IDAHO POWER  
P.O. Box 70  
Boise, ID 83707  
bkline@idahopower.com

Re: Magic Wind

Dear Bart:

This is in reply to Randy Allphin's February 22, 2006 letter to Magic Wind. Please excuse the delay in reply.

Magic fully intends to proceed with the project and continues to take steps toward construction. The previous turbine commitment from Clipper remains in effect.

With respect to the project description, I believe the following could be used:

"The Facility will consist of 8 Clipper Wind turbines with individual ratings of 2.5 MW for each unit, for a total Facility generator rating of 20 MW."

With respect to monthly generation estimates, I am attaching estimates prepared by Renaissance Engineering. These are arranged in chronological order. I assume Mr. Allphin can re-arrange these to take into account the seasonal differences in prices.

Magic continues to believe financing is available for the project, although, as you know, finalization of this must await an executed purchase power agreement.

Very Truly Yours,

MCDEVITT & MILLER LLP

  
Dean J. Miller

DJM/lc

C: Armand Eckert

*Copy - to Miller*

## MAGIC WIND ESTIMATED MONTHLY ENERGY

100 meter Towers			
8 CLIPPER 2.5MW C99@20MW			
	Estimated Generation kWh	Ave MW/mo	Monthly NET Capacity Factor
Jan	4,580,098	6.16	30.8%
Feb	5,720,491	8.22	41.1%
Mar	5,395,947	7.25	36.3%
Apr	4,370,833	6.07	30.4%
May	4,105,320	5.52	27.6%
Jun	4,962,172	6.89	34.5%
Jul	3,401,877	4.57	22.9%
Aug	2,791,276	3.75	18.8%
Sep	4,272,864	5.93	29.7%
Oct	4,102,945	5.51	27.6%
Nov	4,394,931	6.10	30.5%
Dec	5,206,030	7.00	35.0%
	<b>53,304,782</b>	<b>6.08</b>	<b>30.4%</b>

**Attachment 1(d)****Allphin, Randy**

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**To:** Armand@safelink.net; joe@mcdevitt-miller.com  
**Cc:** Kline, Bart  
**Subject:** encrypt  
**Attachments:** Magic Wind non levelized 3-10-2006.doc

Magic Wind LLC draft agreement -

Armand

Attached is a draft agreement with the description and monthly Kwh estimates from Mr. Miller's letter dated March 3, 2006.

I have highlighted in yellow a couple of areas in which I still need some information from you.

A key area being an estimated First energy date and an estimated Scheduled Operation date (Appendix B). As these are draft agreements you may revise these dates at any time prior to both parties executing the documents. However, I need at least a good estimate of these dates prior to me forwarding this Agreement to my management and legal group for a final Idaho Power internal review.

Please send me this information as soon as possible so that we can continue moving this agreement forward.

This draft agreement is for discussion purposes only, Idaho Power reserves the right to modify this draft agreement at any time until a final agreement has been executed by both parties.

Randy

PS - Armand requested I copy Joe Miller on this e-mail

3/10/2006

**Allphin, Randy**

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**From:** Armand Eckert [armand@safelink.net]  
**Sent:** Thursday, March 16, 2006 8:54 AM  
**To:** Allphin, Randy  
**Cc:** Granville Eckert; Mike Eckert; Norman Eckert; Ron Elkin  
**Subject:** PPA information

Randy - the information highlighted in yellow on your draft is as follows:

For Magic Wind LLC:

Armand M. Eckert, Secretary/Treasurer

For Seller Contact  
24-Hour Project Operational contact:

Armand M. Eckert  
208-543-8518  
208-308-7774

Project On-site Contact information:  
Larry Zirker  
208-680-0809

Scheduled First Energy Date:

December 31, 2006

Scheduled Operation Date:

July 01, 2007

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8<sup>th</sup> day of May, 2006, I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO MAGIC WIND LLC'S MOTION FOR DECLARATORY ORDER 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, ID 83720-0074  
[scott.woodbury@puc.idaho.gov](mailto:scott.woodbury@puc.idaho.gov)

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX (208) 334-3762  
 E-mail

Peter J. Richardson  
Richardson & O'Leary PLLC  
515 N. 27th Street  
P.O. Box 7218  
Boise, ID 83707  
[peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX (208) 938-7904  
 E-mail

Richard L. Storro  
Director, Power Supply  
Avista Corporation  
1411 E. Mission Avenue  
P.O. Box 3727, MSC-7  
Spokane, WA 99220-3727  
[dick.storro@avistacorp.com](mailto:dick.storro@avistacorp.com)

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 E-mail

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[jrh@battfisher.com](mailto:jrh@battfisher.com)

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BARTON L. KLINE