

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE PETITION OF)
MAGIC WIND LLC TO DETERMINE) CASE NO. IPC-E-05-34
EXEMPTION STATUS)
)
) NOTICE OF PETITION FOR
) DECLARATORY ORDER
)
) NOTICE OF
) MODIFIED PROCEDURE
)
) NOTICE OF
) COMMENT/PROTEST
) DEADLINE**

BACKGROUND

On August 4, 2005, the Idaho Public Utilities Commission (Commission) in Case No. IPC-E-05-22, Order No. 29839, reduced the eligibility cap for avoided cost published rates for non-firm wind projects from 10 aMW to 100 kW, required individual negotiation for larger wind qualifying facilities (QFs), and established criteria for assessing QF contract entitlement. Reference Public Utility Regulatory Policies Act of 1978 (PURPA). By Commission Order No. 29872 the date for grandfathering eligibility was changed from July 1, 2004, the Notice of Petition date, to August 4, 2005, the date of Interlocutory Order No. 29839.

On October 20, 2005, Magic Wind LLC (Magic Wind) filed a Motion to Determine Exemption Status with the Commission seeking a Commission determination that Magic Wind was exempt from the rate eligibility cap established in Order No. 29839. The Motion was accompanied by the supporting affidavit of Armand Eckert.

On November 4, 2005, Idaho Power Company (Idaho Power; Company) filed a response to Magic Wind's Motion contending that the Company was without sufficient information to verify the truth or falsity of the factual allegations contained in the affidavit of Armand Eckert and was therefore denying same and requesting that the Motion be denied.

Following Idaho Power's response, there was an informal stay of proceedings.

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PETITION FOR DECLARATORY ORDER

YOU ARE HEREBY NOTIFIED that on April 26, 2006, Magic Wind requested a Declaratory Order declaring that Magic Wind is entitled to receive from Idaho Power a Purchase Power Agreement that establishes prices for surplus energy using the “modified PacifiCorp method.” Reference Order. No. 30000, Case No. PAC-E-05-6 (Schwendiman); Reference IDAPA 31.01.01.101 – Petition for Declaratory Order.

In Case Nos. IPC-E-04-8 and 04-10, Order No. 29632, the Commission established a “90/110 performance band” requirement, a provision that defines the minimum degree of predictability required for published rate eligibility. Under PURPA contracts submitted by Idaho Power and approved by the Commission, the price to be paid for energy purchases outside of the performance band is equal to 85% of the Mid-C market index price for each month. In Order No. 30000, Case No. PAC-E-05-9 (Schwendiman) the Commission approved an alternate mechanism (PacifiCorp method) for pricing energy deliveries that are outside the “90/110 performance band.” The Schwendiman Agreement includes a computed set of fixed rates (Non-Conforming Energy Purchase Prices) as a substitute for market-based rates.

Under a proposed Agreement submitted by Magic Wind to Idaho Power on April 5, 2006, Magic Wind submitted an Idaho Power template contract that was modified to include a PacifiCorp-Schwendiman type fixed price mechanism for energy deliveries outside the 90/110 performance band, albeit proposing a different calculation of variable O&M expense (modified PacifiCorp method).

Idaho Power by letter response dated April 25, 2006 states its belief that the draft contract presented by Magic Wind on April 5, 2006 fails to acknowledge the role that market prices play in determining the cost Idaho Power is likely to incur should the Magic Wind project fail to perform in accordance with the terms of the Agreement. The change that Magic Wind proposes, Idaho Power contends, eliminates consideration of market prices and the determination of costs Idaho Power will incur if Magic Wind does not provide the monthly amount of energy it agreed to provide. Idaho Power notes that the Schwendiman Order No. 30000 stated the Agreement did not set precedent. Idaho Power contends that the Company 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 on June 14, 2005. Reference October 20, 2005, Affidavit of Armand Eckert, p. 2. 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. As a result, Idaho Power proposes to utilize the template contract it has signed with numerous QFs similar to Magic Wind.

YOU ARE FURTHER NOTIFIED that the Commission has reviewed the filings of record in Case No. IPC-E-05-34. We have also reviewed our Order No. 29632 in Case Nos. IPC-E-04-8 and 04-10 and Order No. 30000 in Case No. PAC-E-05-6. The Commission has preliminarily determined that the public interest regarding Magic Wind's Petition for Declaratory Order may not require a hearing to consider the issues presented and that issues raised by the Petition may be processed under **Modified Procedure**, i.e., by written submission rather than by hearing. Reference Commission's Rules of Procedure, IDAPA 31.01.01.201-204.

YOU ARE FURTHER NOTIFIED that as the subject matter of the Petition for Declaratory Order may have generic ramifications, the Commission is serving copies of this Notice on Avista Corporation dba Avista Utilities and PacifiCorp dba Rocky Mountain Power.

YOU ARE FURTHER NOTIFIED that the **deadline for filing written comments or protests** with respect to Magic Wind's Petition for Declaratory Order and the use of Modified Procedure in Case No. IPC-E-05-34 is **Monday, June 26, 2006**.

YOU ARE FURTHER NOTIFIED that the **deadline for filing reply comments is Monday, July 3, 2006**.

YOU ARE FURTHER NOTIFIED that if no written comments or protests are received within the deadline, the Commission may consider the matter on its merits and may enter its Order without a formal hearing. If comments or protests are filed within the deadline, the Commission will consider them and in its discretion may set the matter for hearing or may decide the matter and issue its Order based on the written positions before it. Reference IDAPA 31.01.01.204.

YOU ARE FURTHER NOTIFIED that written comments concerning Case No. IPC-E-05-34 should be mailed to the Commission, Idaho Power Company, and Magic Wind LLC at the addresses reflected below.

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Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street
Boise, ID 83702-5983

For Magic Wind:

Dean J. Miller
McDevitt & Miller, LLP
420 W. Bannock Street
PO Box 2564 (83701-2564)
Boise, ID 83702
E-mail: joe@mcdevitt-miller.com

For Idaho Power Company:

Barton L. Kline, Senior Attorney
Monica B. Moen, Attorney II
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
E-Mail: bkline@idahopower.com
mmoen@idahopower.com

John R. Gale, VP Regulatory Affairs
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
E-mail: rgale@idahopower.com

Street Address for Express Mail:

1220 W. Idaho Street
Boise, ID 83702

All comments should contain the case caption and case number shown on the first page of this document.

Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at www.puc.idaho.gov. Click the "Comments and Questions" icon, and complete the comment form, using the case number as it appears on the front of this document.

YOU ARE FURTHER NOTIFIED that the Petition for Declaratory Order in Case No. IPC-E-05-34 together with other filings of record in the case may be viewed during regular business hours at the offices of the Idaho Public Utilities Commission, 472 West Washington Street, Boise, Idaho and at the principal office of Idaho Power Company, 1220 West Idaho

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Street, Boise, Idaho. In addition, the Petition may be viewed by accessing the Commission's homepage at www.puc.idaho.gov by clicking on "File Room" and then "Electric Cases."

DATED at Boise, Idaho this 2nd day of June 2006.



PAUL KJELLANDER, PRESIDENT

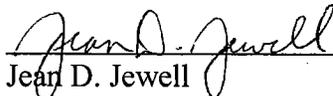


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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