DECISION MEMORANDUM

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

FROM: **MAY 24, 2006**

DATE: **SCOTT WOODBURY**

SUBJECT: **CASE NO. IPC-E-05-34 (Idaho Power)**
MAGIC WIND – MOTION FOR DECLARATORY ORDER

BACKGROUND

On August 4, 2005, the 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 QFs, and established criteria for assessing QF contract entitlement. 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. The matter sought 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, what ensued was an informal stay of proceedings.

PETITION FOR DECLARATORY ORDER

On April 26, 2006, Magic Wind filed a Motion for 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.

COMMISSION DECISION

Magic Wind on April 26, 2006, filed a Motion for Declaratory Order with the Commission. Reference Commission Rule of Procedure 101. Magic Wind contends that it is entitled to receive from Idaho Power the alternate mechanism for pricing energy for deliveries that are outside the 90/110 performance band approved by the Commission in Order No. 30000, Case No. PAC-E-05-9 (Schwendiman). Idaho Power contends that the requested contract changes are inconsistent with the requirements of PURPA and that the Company should not be ordered to enter into a contract containing such provisions.

Because Magic Wind has requested the Commission issue a Declaratory Order, Idaho Power contends that such an Order would be binding on all the electric utilities subject to the Commission's jurisdiction. The Company contends that PacifiCorp and Avista and other interested parties should be provided an opportunity to participate.

Staff by way of further procedure in this case recommends that the matter be processed pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference Commission Rules of Procedure, IDAPA 31.01.01.201-204. Staff recommends that individual copies of the Notice be served on Avista and PacifiCorp. Staff further recommends that the scheduling notice include a reply deadline for Magic Wind and Idaho Power. Does the Commission agree with Staff's recommended procedure?

Scott D. Woodbury

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