

## DECISION MEMORANDUM

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

**FROM:** JULY 21, 2006

**DATE:** SCOTT WOODBURY

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

### 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.

## 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.

On June 2, 2006, the Commission in Case No. IPC-E-05-34 issued Notices of Petition for Declaratory Order and Modified Procedure. The deadline for filing written comments was June 26, 2006. Pursuant to subsequent notice the deadline for reply comments was extended from July 3 to July 10, 2006.

Initial comments were filed by Magic Wind LLC, Idaho Power Company, Energy Vision LLC, Renewable Northwest Project and NW Energy Coalition, and Commission Staff. Reply comments were filed by Idaho Power, Magic Wind and Energy Vision. Idaho Power and Magic Wind agree that the matter is fully submitted based upon the written filings of record. Neither party requests a hearing.

#### **COMMISSION DECISION**

Magic Wind has filed a Petition for Declaratory Order requesting a schedule of fixed rates to be paid for non-conforming energy as a substitute for market based rates. Magic Wind and Idaho Power agree that no hearing is required and that it is appropriate to issue a Commission decision based on the written record.

---

Scott D. Woodbury

b1s/M:IPC-E-05-34\_sw2