IDAHO POWER
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IDAHO PUBLIC
UTILITIES COMMISSION

BARTON L. KLINE
Senior Attorney

December 29, 2005

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

Re: Case No. IPC-E-05-35
Idaho Power Company's Reply Memorandum

Dear Ms. Jewell:

Please find enclosed for filing an original and seven (7) copies of the Company's Reply Memorandum in the above-entitled case.

I would appreciate it if you would return a stamped copy of this transmittal letter for our files in the enclosed self-addressed stamped envelope.

Very truly yours,

Barton L. Kline

BLK:jb
Enclosures

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Attorneys for Idaho Power Company

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF CASSIA WIND TO DETERMINE EXEMPTION STATUS.	))))	CASE NO. IPC-E-05-35 IDAHO POWER COMPANY REPLY MEMORANDUM

This Reply Memorandum is in response to the Motion and Memorandum in Support filed by Cassia Gulch Wind Park LLC and Cassia Wind Farm LLC (collectively "Cassia Wind") seeking a Commission Order determining that Cassia Wind is exempt from the rate eligibility cap contained in Order No. 29839.

Standard To Be Applied

In its Memorandum in Support, Cassia Wind describes the standard it believes the Commission should apply to the facts to make a determination as to whether or not Cassia Wind should be exempted from the 100 kW cap on eligibility for entitlement to the published rates. Such an exemption is often referred to as "grandfathering" in various pleadings and Commission Orders addressing this subject.

First, Cassia Wind quotes the section of Order No. 29839 in which the Commission described the primary and secondary indicia of substantial progress it will consider for determining which projects will be grandfathered to the previous 10 aMW cap.

Second, Cassia Wind acknowledges that Order No. 29839 was the subject of petitions of reconsideration filed by Windland, Commission Staff and Idaho Power.

With two exceptions, Idaho Power believes Cassia Wind has accurately described the standard to be applied. However, those two exceptions are significant. The first exception Idaho Power takes to Cassia Wind's description of the standard to be applied arises out of the language of Order No. 29872, which was the Order denying reconsideration. In Order No. 29872, the Commission provided additional guidance as to the degree of substantial progress and project maturity that it was looking for in QF projects in order to qualify for grandfathering. In Order No. 29872, the Commission stated:

> The degree of substantial progress and project maturity that we look for in projects that have not submitted a signed power purchase agreement to the utility by our grandfathering cut-off date is a demonstration that the QF project can be brought on line in a timely manner and within a reasonable period following contract execution and approval.
>
> (Order No. 29872, pp. 10-11).

Cassia Wind's Motion and Memorandum do not mention this language from Order No. 29872.

As will be discussed in greater detail later in this Memorandum, Idaho Power believes this section of Order No. 29872 is an important clarification of the

standard the Commission should apply to the facts in making a decision on whether an individual QF should be grandfathered.

The second area where Idaho Power takes exception to Cassia Wind's analysis is the inference that it proposes that the Commission draw from Staff's comments in the *Schwendiman* case. In its Memorandum in Support, Cassia Wind states that the 100 kW exemption standard was subject to interpretation in PacifiCorp's application for approval of the *Schwendiman* Agreement. In fact, the Commission did not need to address "grandfathering" criteria to decide *Schwendiman* in light of the parties' failure to include the 90%/110% band in the proposed contract.

Cassia Wind states that in the comments Commission Staff filed in the *Schwendiman* case, Staff "asserted that the exemption standard was satisfied if evidence showed the existence of one of the primary criteria and at least one of the secondary criteria." (Cassia Memo, p. 2.) Cassia Wind seems to be inferring that it is Staff's position that if a QF can demonstrate it has completed one of the primary criteria and one of the secondary criteria, it is entitled to grandfather status. Based on the Staff's comments, Idaho Power believes that drawing this inference would be incorrect.

In the final analysis, Cassia Wind acknowledges that the Commission did not need to discuss the primary and secondary criteria to decide the Schwendiman case, and as a result, it is impossible to tell from the *Schwendiman* case Order what, if anything, the Commission might think of Staff's discussion or its comments on this specific point.

If the Commission thinks the *Schwendiman* case should have any application to this case, Idaho Power suggests that rather than speculate on what the

Commission Staff meant in its comments in the *Schwendiman* case, the Commission ask the Staff to explain or clarify, if necessary, what their position is on the application of the secondary criteria to the entitlement to grandfathering.

Cassia Wind Meets One of the Primary Criteria

With respect to the primary criteria described in Order No. 29839 and clarified in Order No. 29872, Idaho Power agrees that Cassia Wind meets one of the primary criteria because it made a request to Idaho Power's Delivery Business Unit for an interconnection prior to August 4, 2005.

The Evidence Cassia Wind Has Supplied Does Not Demonstrate That It Has Sufficiently Met The Secondary Criteria To Entitle It To An Exemption

In order to determine if QF developers met the primary and secondary criteria in the Commission's Order No. 29839 regarding grandfathering, Idaho Power identified 14 wind-generating project developers that had contacted Idaho Power regarding a potential wind QF project. By letter dated August 8, 2005, the Company requested that each of the identified QF developers provide Idaho Power information regarding their project that the Company could use to determine whether or not the particular wind QF would meet the primary and secondary criteria for grandfathering established by the Commission. Cassia Wind provided responses to each of the items in the Company's August 8th letter and provided supplemental responses following discussions with Idaho Power.

Idaho Power has compared Cassia Wind's responses to the standard set by the Commission in Order No. 29872 for projects that had not submitted signed contracts by the grandfathering cut-off date (August 4, 2005), i.e., "the degree of

substantial progress and project maturity that demonstrates that the project can be brought on line in a timely manner and within a reasonable period of time following contract execution and approval." Idaho Power has also compared Cassia Wind's progress to the progress of other QFs for which grandfathering has been sought. In undertaking its review, Idaho Power believes it has acted in a manner consistent with the Commission's intent expressed in Order No. 29839 by considering *all* of the criteria identified in Order No. 29839. This analysis yields the following:

Cassia Wind, like all of the other QF projects, has performed wind studies, has commenced preliminary permitting and licensing activities, and has made efforts to secure the sites upon which they intend to place the turbines. In all of these areas, Cassia Wind's progress appears to be equal to or slightly ahead of the other QF developers that provided responses to Idaho Power. The two areas in which Cassia Wind lags behind the other wind developers which Idaho Power has agreed are entitled to be grandfathered is in the progress that Cassia Wind has made in securing financing and wind turbines.

As Idaho Power has stated in the four Applications for approval of contracts for the wind projects which Idaho Power believes are entitled to grandfathering, one criterion that Idaho Power identified as being entitled to substantial weight is a signed contract for wind turbines. Based on discussions with QF wind developers and other publicly-available information, Idaho Power has determined that the supply of wind turbines is extremely tight and if a binding commitment for wind turbines has not been procured, it may be many months before turbines are available. Therefore, a demonstration by a QF that prior to the August 4, 2005 cut-off date it had

taken reasonable steps to bind a turbine manufacturer or other financially-responsible supplier to deliver the needed wind turbines to the QF in a timely manner is critical for qualification for grandfathering.

In Idaho Power's judgment, Cassia Wind does not possess a commitment for either financing or wind turbines sufficient to entitle it to be grandfathered. In support of its contention that it has a commitment for financing and wind turbines, Cassia Wind has provided a copy of correspondence from John Deere Credit ("JDC") in which JDC indicates that it is *considering* a commitment for the investment in Cassia Wind's project. (Cassia Wind Exhibit A). In Exhibit A, JDC also indicates it is *considering* whether it should allocate 14 Suzlon S-88 Arctic 2.1 MW nameplate turbines to the Cassia Wind project. However, it is very clear in the John Deere letter that JDC requires that the Commission first confirm that the project is grandfathered and then JDC's management team will conclude its due diligence and make a final determination as to whether or not to commit funding and wind turbines to Cassia Wind's project.

In Exhibit K, Cassia wind also provides correspondence concerning other turbines that could be available. This correspondence seems to conflict with the JDC letter and certainly doesn't indicate a binding commitment by the supplier.

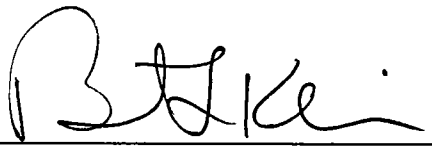
In Idaho Power's opinion, Cassia Wind has the procedure backward. It is up to Cassia Wind to demonstrate that it has taken reasonable steps to procure financing. It is up to Cassia Wind to demonstrate it has a commitment from the wind turbine manufacturer or supplier. If those commitments are in place and if the other secondary criteria indicate that the project is substantially mature and can come online in a timely manner, the project should be grandfathered. It is not incumbent on the

Company and the Commission to commit to grandfathering and *then* have the financier-turbine supplier make a final determination whether or not it will commit to finance the project and supply the turbines.

Conclusion

In the final analysis, in Order No. 29872, the Commission described a somewhat subjective test to which Idaho Power has tried to apply the objective facts in this case. Idaho Power does not believe the objective facts in this case warrant grandfathering.

DATED at Boise, Idaho, this 29th day of December, 2005.



BARTON L. KLINE
MONICA B. MOEN
Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December, 2005, I served a true and correct copy of the within and foregoing IDAHO POWER COMPANY'S REPLY MEMORANDUM upon the following named parties by the method indicated below, and addressed to the following:

Dean J. Miller McDevitt & Miller LLP 420 W. Bannock Street Boise, Idaho 83702	X Hand Delivered x U.S. Mail ____ Overnight Mail ____ FAX
Scott Woodbury Deputy Attorney General Idaho Public Utilities Commission 472 W. Washington Street P.O. Box 83720 Boise, Idaho 83720-0074	x Hand Delivered ____ U.S. Mail ____ Overnight Mail ____ FAX

BARTON L. KLINE