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IDAHO PUBLIC
UTILITIES COMMISSION

*Attorneys for Cassia Gulch Wind Park LLC
and Cassia Wind Farm LLC*

ORIGINAL

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

**MEMORANDUM IN SUPPORT OF
ORDER DETERMINING
EXEMPTION STATUS**

This Memorandum is submitted in support of the motion of Cassia Gulch Wind Park LLC and Cassia Wind Farm LLC (“Cassia Wind”) for the entry of an Order determining that Cassia Wind is exempt from the rate eligibility cap contained in Order No. 29839.

The Standard.

In Case No. IPC-E-05-22 the Commission reduced the eligibility cap for entitlement to published avoided costs from 10 aMW to 100 kw. As is often the case when rules are charged, it was necessary to draw a line between projects that are to be subject to the new eligibility cap and projects that are subject to then existing eligibility cap. In Order No 29839 the Commission created the following standard for determining which projects are exempt from the new cap:

For purposes of determining eligibility we find it reasonable to use the date of the Commission's Notice in this case, i.e., July 1, 2005. For those QF projects in the negotiation queue on that date, the criteria that we will look at to determine project eligibility are: (1) submittal of a signed power purchase agreement to the utility, or (2) submittal to the utility of a completed Application for the Interconnection Study and payment of fee. In addition to a finding of existence of one or both of the preceding threshold criteria, the QF must also be able to demonstrate other indicia of substantial progress and project maturity, e.g., (1) a wind study demonstrating a viable site for the project, (2) a signed contract for wind turbines, (3) arranged financing for the project, and/or (4) related progress on the facility permitting and licensing path.

Subsequently, the Commission re-affirmed the articulated standard in denying Petitions for Reconsideration filed by Windland, Staff and Idaho Power Company.

The exemption standard has only been subject to interpretation in one subsequent case. In PacifiCorp's application for approval of the Schwendiman agreement, 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. Staff did not require proof that all of the secondary criteria be established; nor did it assert that some were more important than others.¹

¹ It was not necessary for the Commission to discuss Staff's interpretation because the Commission determined that the Schwendiman agreement was not subject to the exemption analysis.

Cassia Wind's entitlement to an exemption.

It is clear that Cassia Wind meets one of the primary criteria. A request for interconnection study was filed prior to the relevant date. And, Cassia would have met the other primary criteria—a signed purchase power agreement—but for the reluctance or inaction of Idaho Power Company.

The Affidavit of Jared Grover dated October 27, 2005 discusses the secondary criteria, establishing evidence of project maturity. For the convenience of the Commission, that discussion is set forth below:

Wind Study

I have collected a substantial amount of data, and have completed a wind study. I have a percentage ownership in four anemometer towers used for collecting data, and also have complete ownership of an additional 50 meter tower at my site. Usually at least six months to one year of data from one or more anemometers is required to complete a wind study. Data was collected from the oldest anemometer that I have ownership in back 2002. The projects I am involved with have much more data than minimally required.

I have used tools developed by the Idaho National Lab to evaluate my data. The nearby operational Fossil Gulch wind project also validates the viability of my projects wind resources. Based on this I believe the projects are viable. The investors I have worked with hired independent consultants to verify my wind study. Based on the results of my wind

study, if I am able to get a power purchase agreement, the investors feel confident that my project will be a success.

The data and the results of the analysis are highly confidential. They will be made available upon execution of an appropriate Protective Agreement.

I believe that for these reasons, the both projects meet the “secondary criteria” for grandfathered status.

Project Financing

I have been working with several different investors which have been interested in financing the projects. None of the investors I have met with have been willing to commit to financing without a signed Power Purchase Agreement. However, anticipating a power purchase agreement, the investors have performed due diligence on the projects and are very interested to provide financing as well as turbines for the projects.

The potential investors have requested that they remain anonymous to the public and to my competitors. Upon execution of a confidentiality agreement, and if either project does not already meet the secondary criteria the two-prong grandfathering test with the wind study, documentation can be provided to Commissioners or Staff regarding Project Financing.

Wind Turbines

Wind turbines are available for my wind projects. The investors interested in my project have allotted turbines for my project. (See Exhibit A) The investors have contracts in place for supply of wind turbines. I

have selected one investor out of several investors having access to turbines, but obviously a power purchase agreement needs to be signed before they make a multi million dollar commitment of turbines to my specific project.

Permitting and Licensing and Other Progress

Although one would typically wait for a power purchase agreement and interconnection study before investing a substantial amount of time and money in obtaining permits, access rights, and licenses for the potential project, I have chosen to continue to move ahead anyway.

Much progress has been made on the permitting and licensing path for the Cassia Wind projects. Since land where these projects will be constructed is owned by members of the wind projects, and because country roads and utilities border the properties, access controls (easements etc) to land for roads, utilities etc are not an issue. I own the land for one of the projects, and another member of the Cassia Wind Farm LLC owns the other property. Exhibit B is a letter providing Cassia Wind Farm LLC with the option of arranging a wind farm on that property.

In addition to owning the land, extraordinary efforts are being taken to ensure a smooth completion of the permitting process. One such effort is arranging a land swap for a neighboring land owner. I am under obligation to finalize the purchase of approximately 700 additional acres of land (See Exhibit C) that may be used for the land swap as well as to provide alternative sites for access to the projects. The additional land can also

provide alternative turbine placement options if necessary based on the geothermal studies, planning and zoning, or interconnection studies are finished. With the price of land being sold for over 300 dollars an acre, the obligation to purchase this much additional land for my wind project comes at a significant cost. Based on a \$300 per acre price, the cost is over \$200,000. I will be liable to purchase this land even if I fail to get a Power Purchase Agreement from Idaho Power Inc.

Both projects have filed as Qualifying Facilities under FERC and were issued QF numbers before the August 4th 2005. Since that time FAA filings have also been submitted.

I have been in contact with Bureau of Land Management, Idaho Fish and Game, the Twin Falls Planning and Zoning Administration as well as the Idaho Transportation Department for applicable permits and licenses. The Interconnection Feasibility study for one of the projects has been completed. Completion of other studies such as System Impact Study, and Facility Study, and Interconnection Agreement may be required before finalizing easements and collecting details for final permits.

The Supplemental Affidavit of Jared Grover shows that since the spring and summer of 2005 Cassia Wind has continued to pursue development of the projects, culminating in a declaration of intent of John Deere Credit Corporation, subject to usual contingencies, to supply both turbines and project financing.

Conclusion.

For the reasons set forth above, the Commission should enter its Order determining that Cassia Wind is exempt from the new rate eligibility cap contained in Order No. 29839.

DATED this 14 day of December, 2005.

Respectfully submitted,

MCDEVITT & MILLER LLP

A handwritten signature in black ink, appearing to read "Dean J. Miller", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2005, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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