

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)
CASSIA WIND TO DETERMINE) CASE NO. IPC-E-05-35
EXEMPTION STATUS)
)
)
) **ORDER NO. 29954**
)

On October 27, 2005, Cassia Gulch Wind Park, LLC and Cassia Wind Farm, LLC (Cassia Wind) filed a Petition with the Idaho Public Utilities Commission requesting a Commission Order determining that Cassia Wind was exempt from the published rate eligibility cap established in Order No. 29839. On November 7, 2005, Idaho Power Company filed an Answer to Cassia Wind's Petition contending that Cassia Wind had not stated a claim for relief and requesting that the Petition be denied.

On December 14, 2005, Cassia Wind filed a Motion for Order determining exemption status together with supporting memorandum and supplemental affidavit. Pursuant to agreement of the parties and the Commission, oral argument on Cassia Wind's Petition for Order determining exemption status in Case No. IPC-E-05-35 was held on January 4, 2006 in Boise, Idaho. The following parties appeared by and through their respective counsel of record:

Cassia Gulch Wind Park, LLC Cassia Wind Farm, LLC	Dean J. Miller
Idaho Power Company	Barton L. Kline
Commission Staff	Scott Woodbury

In interlocutory Order No. 29839 issued in Case No. IPC-E-05-22 the Commission reduced the size cap for QF wind generation facilities entitled to receive the published avoided cost rates from 10 aMW to 100 kW. In its Order, the Commission further identified several criteria that it would consider to determine whether a particular QF wind generation facility in the negotiation queue was sufficiently mature so as to justify "grandfathering" the project to entitlement to the published rates. These criteria are as follows:

- (1) Submittal of a signed power purchase agreement to the utility, or
- (2) Submittal to the utility of a completed Application for 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.

Order No. 29839, p. 10, August 4, 2005; final Order No. 29851. In reconsideration Order No. 29872 issued on September 21, 2005 in the same case, the Commission reaffirmed the grandfathering criteria and changed the “grandfathering” eligibility deadline from the previously-ordered July 1, 2005, to August 4, 2005, the date of interlocutory Order No. 29839.

As we stated in Reconsideration Order No. 29872, the degree of substantial progress and project maturity that we look for 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. We look at the totality of the facts.

Cassia Wind presents documentation in Case No. IPC-E-05-35 demonstrating timely satisfaction of the second threshold criteria, submittal of a completed Application for an Interconnection Study and payment of fee for each project. Idaho Power as reflected in the Company Reply Memorandum filed December 29, 2005 concurs that Cassia satisfies this second threshold criteria. But for the actions of Idaho Power, however, Cassia contends that it would have submitted a signed power purchase agreement to the utility. Reference Exhibit M, June 30 e-mail correspondence from Idaho Power – “until such time as Idaho Power Company receives direction from the Commission in this Petition (IPC-E-05-22), Idaho Power will not be signing a wind agreement for your proposed projects.”

Idaho Power agrees that Cassia Wind has obtained QF self-certification, has performed wind studies, has commenced preliminary permitting and licensing activities, and has made efforts to secure the sites upon which Cassia Wind intends to place the turbines. In these areas Idaho Power states Cassia Wind’s progress appears to be equal to or slightly ahead of the other QF wind developers in the negotiation queue prior to August 4, 2005. All of these

secondary criteria, Idaho Power contends, have a bearing on whether a small project will move forward; but most, it states, are not serious hurdles for small projects.

The two areas in which Cassia Wind lags behind those 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. Idaho Power contends 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. Idaho Power believes that turbines and financing must be secured to demonstrate that the project is substantially mature and can come on-line in a timely manner and to demonstrate entitlement to exemption or grandfathering.

The dilemma for Cassia Wind is that John Deere Credit requires Commission confirmation that the project is grandfathered prior to concluding its due diligence and making final determination as to whether or not to commit funding and wind turbines to Cassia Wind's projects. Exhibits A and O; Confidential Exhibit K. Idaho Power contends that Cassia Wind has put the cart before the horse.

Cassia Wind contends that the Commission established no weighting or ranking of the secondary criteria and that the utility is attempting to reshuffle the eligibility criteria and elevate the turbine and financing issue to the status of primary or threshold criteria. Cassia Wind recommends that the Commission in considering its Motion adopt a "totality of the circumstances" approach to arrive at a judgment about project maturity. Such an approach, it contends, will provide fair treatment of projects that relied on prior rules in investments and efforts made in reliance on such rules. The approach of John Deere Credit to financing and turbine commitment, it contends, is not unreasonable. Cassia Wind points to John Deere Credit Exhibit O language "JDC, an affiliate of Deere and Company, has attempted in good faith to illustrate our desire to invest in Cassia Gulch Wind Park, LLC and Cassia Wind Farm, LLC (collectively, "Cassia Wind"), along with a local land owner and wind energy developer, Mr. Jared Grover" as demonstration that John Deere's was not a speculative or fanciful interest. Exhibit I indicates John Deere Credit and Cassia Wind anticipate that both wind projects will be commissioned no later than December 2006.

The parties were asked about the reasonableness of the Commission issuing an Order that would exempt the Cassia Wind projects from the published rate eligibility cap subject and contingent on a firm contractual commitment by John Deere Credit within a time certain as to the

availability of turbines and financing. The parties agreed that this would be a reasonable approach under the specific facts of this case.

The Commission is satisfied that Cassia Wind has met the second threshold criteria for grandfathering. We also find that Cassia Wind has demonstrated other indicia of substantial progress and project maturity. The Commission finds that the record and evidence regarding John Deere Credit demonstrates that prior to the grandfathering cutoff date established in Order No. 29839, the process ongoing between Cassia Wind and John Deere to firm up a commitment for turbines and financing was in the final stages. We acknowledge the estimated December 2006 on-line or in-service date for the two projects. In our reconsideration Order No. 29872 we stated that it was reasonable in assessing entitlement to grandfathering to look at the totality of the facts. We stated also that the QF should be able to demonstrate its ability to bring the project on-line in a timely manner. Idaho Power offered comments regarding turbine availability and/or the lack thereof at the time of the Commission's Order. To such end we find it reasonable in its grandfathering analysis for Idaho Power in assessing project maturity and ability to bring a project on-line in a reasonable period of time to look to Cassia Wind's efforts and progress in securing turbines prior to the established grandfathering cutoff date. Cassia Wind represented that with an Order granting exemption for its two projects it could secure a firm commitment for turbines and financing from John Deere Credit within 30 days. Following conclusion of oral argument on January 4, 2006, the Commission issued the following bench ruling:

The Commission today determines that Cassia Wind will receive the grandfathering or exemption with the contingency that they are able to secure a financing commitment with relationship to not just the money but also the turbines with John Deere Credit, and limited to John Deere Credit only, no later than 30 days from this point (January 4, 2006). Our intent then is that Cassia Wind bring back that documentation and file it with the Commission.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric

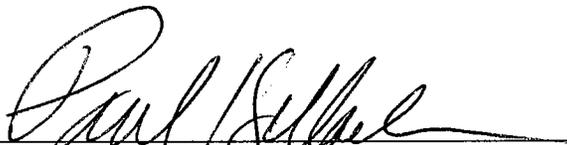
utilities to enter into fixed term obligations for the purchase of energy from qualified facilities and to implement FERC rules.

ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby reaffirm its bench ruling issued January 4, 2006 granting a Commission determination that Cassia Wind is entitled to receive grandfathering or exemption from the published rate eligibility cap established in Commission Order No. 29839 contingent on Cassia Wind's ability to secure contractual financing and turbine commitment from John Deere Credit no later than 30 days from January 4, 2006.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 17th day of January 2006.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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