

SCOTT WOODBURY
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0320
BAR NO. 1895

RECEIVED
2006 DEC -7 AM 8:48
IDAHO PUBLIC
UTILITIES COMMISSION

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
IDAHO POWER COMPANY FOR APPROVAL)	CASE NO. IPC-E-06-26
OF A FIRM ENERGY SALES AGREEMENT)	
FOR THE SALE AND PURCHASE OF)	
ELECTRIC ENERGY BETWEEN IDAHO)	COMMENTS OF THE
POWER COMPANY AND MAGIC WIND)	COMMISSION STAFF
PARK LLC.)	
)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on November 8, 2006, submits the following comments.

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. 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 in Case No. IPC-E-05-34 filed a Motion to Determine Exemption Status seeking a Commission determination that Magic Wind was exempt from the rate eligibility cap established in Commission Order No. 29839. On August 15, 2006, the Commission in Order No. 30109 determined that Magic Wind was entitled to an exemption. The Commission further declared that Magic Wind was not entitled to receive from Idaho Power a PURPA QF Purchase Power Agreement that established fixed prices for surplus energy outside the 90/110 performance band using the "Modified PacifiCorp Method." Reference Order No. 30000, Case No. PAC-E-05-9.

On October 27, 2006, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a 20-year Firm Energy Sales Agreement between Idaho Power and Magic Wind Park LLC (Magic Wind) dated October 11, 2006 (Agreement).

Agreement

The Magic Wind facility will be located in Sections 1, 2 and 11, Township 9 S, Range 13 E, Boise Meridian, Twin Falls County, Idaho. Magic Wind warrants that the facility will be a qualified small power production facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). The facility will consist of eight wind turbines with individual nameplate ratings of 2.5 MW for each unit. The nameplate capacity of the facility will be 20 MW. The Agreement contains the non-levelized, published avoided cost rates set forth in Order No. 29391. Under normal and/or average operating conditions, Magic Wind will not generate more than 10 aMW on a monthly basis. Energy delivered in excess of this monthly amount is Inadvertent Energy. Idaho Power will accept Inadvertent Energy that does not exceed the Maximum Capacity Amount (20 MW) but will not purchase or pay for Inadvertent Energy. Agreement ¶ 7.6.

As reflected in the Application and Appendix B to the Agreement, Magic Wind is one of the generating resources that may be affected by the outcome of the Cassia Wind complaint, Case No. IPC-E-06-21, a dispute regarding cost responsibility for funding upgrades to Idaho Power's transmission system. Magic Wind has selected July 31, 2007 as the Scheduled First Energy Date and December 31, 2007 as the Scheduled Operation Date for the facility. These dates are subject to revision depending on the time required to resolve the issues raised in the Cassia Wind Complaint.

ANALYSIS

The Magic Wind Agreement contains all of the current rates, terms and conditions contained in other recently approved Idaho Power PURPA contracts, but with one notable exception relating to pricing for energy deliveries that fall short of the "90/110 percent performance band," a provision that defines the range of predictability required for published rate eligibility (i.e., shortfall energy). In this Agreement, Magic Wind and Idaho Power are seeking to adopt terms first introduced in the Fossil Gulch agreement, rather than terms used by all other subsequent Idaho Power contracts approved following Commission decisions in the U.S. Geothermal case (Case No. IPC-E-04-8/10).

In accordance with Order No. 29632 (U.S. Geothermal case), recent PURPA contracts submitted by Idaho Power and approved by the Commission price energy purchases outside of the performance band at 85% of the Mid-Columbia (Mid-C) market index price for each month. However, in the subsequent Schwendiman case (Case No. PAC-E-05-9, Order No. 30000), the Commission approved an alternate mechanism (PacifiCorp Method) for pricing energy deliveries that are outside the 90/110 percent performance band. The Schwendiman Agreement includes a computed set of fixed rates (Non-Conforming Energy Purchase Prices) as a substitute for market-based rates.

In Magic Wind's Case No. IPC-E-05-34, in addition to receiving an exemption from the current moratorium on wind contracts for projects larger than 100 kW, Magic Wind requested a Declaratory Order from the Commission declaring that Magic Wind is entitled to receive from Idaho Power a Purchase Power Agreement that uses a "Modified PacifiCorp Method" to establish fixed prices for surplus energy outside the 90/110 percent performance band. The Commission in Order No. 30109 declined to direct Idaho Power to accept the Schwendiman-type method for pricing energy deliveries outside the 90/110 performance band, noting that the Schwendiman Agreement was a negotiated and mutually acceptable agreement, whereas in the Magic Wind case the negotiating parties were not in agreement.

As reflected in this Application, Magic Wind next inquired of Idaho Power as to whether it would be possible to utilize the methodology for computing shortfall energy payments the Commission approved in the Firm Energy Sales Agreement between Idaho Power and Fossil Gulch Wind Park LLC (Case No. IPC-E-04-19, Order No. 29630), rather than the more recent methodology for determining shortfall energy payments established by Commission Order No. 29632 in Case No. IPC-E-04-8/10, the U.S. Geothermal case. Under the Fossil Gulch Method if the

QF delivers less than 90% of the scheduled “net energy” amount (for reasons other than forced outage or force majeure events) the shortfall energy is priced at 85% of the market price, less the contract rate, the difference capped at 150% of contract rate. In the U.S. Geothermal case the Commission shared U.S. Geothermal’s concern that under certain conditions use of the Fossil Gulch methodology could have adverse results for QFs. (Order No. 29632, p. 20). Despite this concern, Magic Wind has voluntarily selected the Fossil Gulch method believing that it presents less risk than that associated with use of the U.S. Geothermal Method. Agreement ¶¶ 7.3-7.5. Use of the Fossil Gulch methodology is a negotiated term of the Agreement and is mutually acceptable to Idaho Power and Magic Wind.

Generally, the Commission’s past practice has been to allow negotiated terms and conditions in PURPA contracts as long as those terms and conditions do not violate prior Commission Orders, do not adversely affect ratepayers, and as long as the QFs and utilities are in mutual agreement. The Commission has rejected contracts in which these standards have not been met. Negotiated terms and conditions have in the past not generally included pricing issues, however.

In the case of the Magic Wind Agreement, clearly the parties are in mutual agreement. In addition, Staff does not believe that negotiated terms of the Agreement violate any prior Commission Order. Terms in the U.S. Geothermal case related to pricing of shortfall energy were established at least in part because of U.S. Geothermal’s objection to the terms proposed by Idaho Power that had been included in the Fossil Gulch contract signed previously. Furthermore, because the Commission allowed a deviation from the U.S. Geothermal terms in the Schwendiman case, Staff does not believe that the Commission intended for the U.S. Geothermal terms to become the standard to which all future contracts must adhere. Staff believes that the Fossil Gulch, Schwendiman, and the U.S. Geothermal methods all present reasonable alternatives for pricing of shortfall energy.

Staff does have some concern, however, that price-related terms in PURPA contracts not become completely subject to negotiation between the parties. The Fossil Gulch, Schwendiman, and U.S. Geothermal contracts reflect three different methods for pricing shortfall energy. Fair pricing of shortfall energy is particularly important for wind projects because Staff believes it is likely that they will frequently have shortfall energy due to the difficulty in predicting intermittent generation in advance. While the utilities are responsible for administering contracts,

administration in the future becomes much more difficult for both the utilities and for the Commission Staff as more pricing variations are adopted. Staff cautions against creating a smorgasbord of different pricing options from which QFs can choose. Staff believes that three pricing options provide a reasonable and sufficient set of choices for future contracts.

With regard to whether the Fossil Gulch method or the U.S. Geothermal method offers greater protection to the utility and its ratepayers, it is impossible to determine. Under some combinations of shortfall generation and market prices, one method results in a higher payment to the QF, but under other combinations the other method produces a higher payment. Because future market prices are unknown, neither method can be judged superior.

Both methods are based on sound, yet different logic. Under the Fossil Gulch method, a shortfall energy penalty is assessed whenever market prices (85% of Mid-C) are higher than the contract price. There is no penalty when market prices are less than the contract price. This method is based on the logic that in the event of a shortfall in generation, Idaho Power would have to pay more if it purchased replacement energy from the market at prices higher than specified in the contract. Under the U.S. Geothermal method, market prices are paid for shortfall energy whenever market prices are less than the contract rate. This method is based on the logic that market prices reflect non-firm energy rates, and non-firm rates are what should be paid for shortfall energy. Attachment A shows amounts that would be paid under both methods for a hypothetical expected quantity of energy and for various actual generation amounts and market prices.

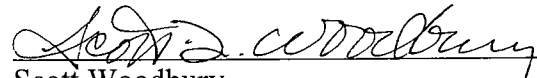
Despite the differences in the two methods, both represent reasonable attempts to fairly price shortfall energy. Because both methods have been used in prior contracts, Staff is not opposed to allowing QFs and utilities to make a choice based on their own assessments of perceived risks, expected market prices, and expected wind project performance. Consequently, Staff has no objection to the inclusion of the Fossil Gulch method in this Agreement, rather than the U.S. Geothermal method.

RECOMMENDATION

Staff recommends approval of all of the Agreement's terms and conditions and that the Commission declare that all payments Idaho Power makes to Magic Wind for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this

7th day of December 2006.


Scott Woodbury
Deputy Attorney General

Technical Staff: Rick Sterling

i:umisc:comments/ipce06.26swrps

Comparison of Fossil Gulch Method to U.S. Geothermal Method for Pricing Shortfall Energy Hypothetical Monthly Revenue

Assumptions

Contract rate 0.06 \$/kWh
Contract kWh 1000 kWh/mo
90% of contract kWh 900 kWh/mo
110% of contract kWh 1100 kWh/mo

US Geothermal Method (Order No. 29632)

85% of Mid-C	0	100	200	300	400	500	600	700	800	900	1000	1100	1200	1300	1400
0.01	0	1	2	3	4	5	6	7	8	54	60	66	67	68	69
0.02	0	2	4	6	8	10	12	14	16	54	60	66	68	70	72
0.03	0	3	6	9	12	15	18	21	24	54	60	66	69	72	75
0.04	0	4	8	12	16	20	24	28	32	54	60	66	70	74	78
0.05	0	5	10	15	20	25	30	35	40	54	60	66	71	76	81
0.06	0	6	12	18	24	30	36	42	48	54	60	66	72	78	84
0.07	0	6	12	18	24	30	36	42	48	54	60	66	72	78	84
0.08	0	6	12	18	24	30	36	42	48	54	60	66	72	78	84
0.09	0	6	12	18	24	30	36	42	48	54	60	66	72	78	84
0.10	0	6	12	18	24	30	36	42	48	54	60	66	72	78	84

Fossil Gulch Method (Magic Wind Contract)

85% of Mid-C	0	100	200	300	400	500	600	700	800	900	1000	1100	1200	1300	1400
0.01	0	6	12	18	24	30	36	42	48	54	60	66	67	68	69
0.02	0	6	12	18	24	30	36	42	48	54	60	66	68	70	72
0.03	0	6	12	18	24	30	36	42	48	54	60	66	69	72	75
0.04	0	6	12	18	24	30	36	42	48	54	60	66	70	74	78
0.05	0	6	12	18	24	30	36	42	48	54	60	66	71	76	81
0.06	0	6	12	18	24	30	36	42	48	54	60	66	72	78	84
0.07	(9)	(2)	5	12	19	26	33	40	47	54	60	66	72	78	84
0.08	(18)	(10)	(2)	6	14	22	30	38	46	54	60	66	72	78	84
0.09	(27)	(18)	(9)	0	9	18	27	36	45	54	60	66	72	78	84
0.10	(36)	(26)	(16)	(6)	4	14	24	34	44	54	60	66	72	78	84

150% Cap (81) (72) (63) (54) (45) (36) (27) (18) (9) 0

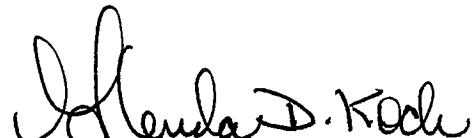
Shaded areas reflect generation that would be priced at the full contract rate of \$0.06 per kWh.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 7TH DAY OF DECEMBER 2006, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-06-26, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

BARTON L KLINE
MONICA B MOEN
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070

RANDY C ALLPHIN
CONTRACT ADMINISTRATOR
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070



SECRETARY