

## DECISION MEMORANDUM

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

**FROM:** SCOTT WOODBURY

**DATE:** DECEMBER 12, 2006

**SUBJECT:** CASE NO. IPC-E-06-26 (Idaho Power)  
FIRM ENERGY SALES AGREEMENT – MAGIC WIND PARK LLC

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).

### **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 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.

### **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 clipper 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, following issuance of Commission exemption Order No. 30109, Magic Wind 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 methodology for determining shortfall energy payments established by Commission Order No. 29632 in Case No. IPC-E-04-8, 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 expressed a concern that under certain conditions use of the Fossil Gulch methodology could have adverse results for QFs. (Order No. 29632, p. 20.) Magic Wind has voluntarily selected the Fossil Gulch 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.

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.

Section 24 of the Agreement provides that the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to Magic Wind for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

On November 8, 2006, the Commission issued Notices of Application and Modified Procedure in Case No. IPC-E-06-26. The deadline for filing written comments was December 7, 2006. Comments were received from Commission Staff, State Representative Sharon Block and many supporters of wind and renewable energy. Representative Block and all public comments support the proposed Agreement and recommend approval.

Representative Block, Chairman of the Health and Welfare Committee, has been studying energy issues in Idaho during the past year and has attended all of the Interim Energy meetings at which the proposal for Idaho's Energy Plan was developed. The Interim Energy Committee, she states, has placed renewable resources as a top priority. She notes that the objectives of the Energy Plan state the importance of protecting Idaho's public health, safety and natural environment, as well promoting sustainable economic growth, job creation, and rural economic development. The development of wind energy, she states, meets all of these objectives. On behalf of the economics, health, safety, and well-being of the people of Idaho, Representative Block recommends approval of the Magic Wind contract.

Staff notes that 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 (IPC-E-04-8/10).

Staff notes that 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. Staff notes, however, that negotiated terms and conditions in the past have not generally included pricing issues.

In the case of the Magic Wind Agreement, Staff notes that clearly the parties are in mutual agreement. In addition, Staff does not believe that the negotiated terms of the Agreement violate any prior Commission Order. Terms in the U.S. Geothermal case relating to pricing shortfall energy, it states, 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, it is Staff's belief that if the Commission did not intend 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 U.S. Geothermal methods all present reasonable alternatives for pricing of shortfall energy.

Staff expresses its concern, however, that price related items 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 a particularly important, Staff contends, for wind projects because Staff believes it is likely that they will frequently have shortfall energy do to the difficulty in predicting intermittent generation in advance. While the utilities are responsible for administering contracts, administration in the future, Staff contends, becomes much more difficult for both 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 of the U.S. Geothermal method offers greater protection to the utility and its ratepayers, Staff contends that 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 the Fossil Gulch and U.S. Geothermal methods are based on sound, yet different logic, Staff contends. 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. Despite the differences in the two methods, Staff contends that 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 assessment 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 the Agreement, rather than the U.S. Geothermal method.

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

#### **COMMISSION DECISION**

Submitted for Commission review is a Firm Energy Sales Agreement between Idaho Power Company and Magic Wind Park LLC. The Agreement terms are standard save for inclusion of the Fossil Gulch method for pricing shortfall energy. All parties recommend approval of the Agreement. Does the Commission continue to find it reasonable to process this case under Modified Procedure? Does the Commission find the Magic Wind Agreement including the Fossil Gulch shortfall energy methodology to be acceptable?

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Scott Woodbury

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