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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-06-34
OF A FIRM ENERGY SALES AGREEMENT)	
FOR THE SALE AND PURCHASE OF)	
ELECTRIC ENERGY BETWEEN IDAHO)	COMMENTS OF THE
POWER COMPANY AND HOT SPRINGS)	COMMISSION STAFF
WINDFARM 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 January 4, 2007, submits the following comments.

BACKGROUND

On December 26, 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 Hot Springs Windfarm LLC (Hot Springs) dated December 20, 2006 (Agreement).

The Hot Springs facility will be located approximately 10 miles northwest of Glenns Ferry, Idaho. Hot Springs warrants 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 12 Vestas wind turbines with individual nameplate ratings of 1.65 MW for each unit, for a total facility nameplate generator rating of 19.8 MW.

The Agreement contains the non-levelized, published avoided cost rates set forth in Order No. 29391. Under normal and/or average operating conditions, Hot Springs 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. Hot Springs has selected March 31, 2007 as the Scheduled First Energy Date and December 31, 2007 as the Scheduled Operation Date.

ANALYSIS

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.

In Order No. 29839, the Commission also identified several criteria that it would consider to determine whether a particular QF wind generation facility, that had been in the negotiation queue when Order No. 29839 was issued, was sufficiently mature so as to justify "grandfathering" the wind generation facility 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 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).

Staff has reviewed the information provided by the project developer to Idaho Power to support its claim that it should be grandfathered. Staff notes the following with respect to primary and secondary grandfathering criteria:

Primary criteria:

Submittal of a signed power purchase agreement to the utility

On July 14, 2006, Energy Vision LLC, the developer of the Hot Springs project, tendered a signed Firm Energy Sales Agreement to Idaho Power for the facility. Because the signed Agreement was submitted prior to August 4, 2005, one of the two primary criteria for grandfathering is satisfied.

Submittal to the utility of completed Application for Interconnection Study and payment of fee

On October 23, 2006, Energy Vision LLC submitted applications for interconnection studies for the Bennett Creek and Hot Springs projects accompanied by the required application fees. For each of the two projects, applications were submitted for options to interconnect to three different transmission lines in the vicinity. Although these requests were made more than a year after the August 4, 2005 date, they nevertheless provide some indication of the projects' progress.

Secondary criteria:

A wind study demonstrating a viable site for the project

On January 26, 2005 Energy Vision LLC retained an independent meteorologist with expertise in evaluating wind resources for the purpose of locating wind generation projects.

Working together, Energy Vision and the consultant gathered data wind data, modeled project output and prepared analyses to confirm long-term energy production estimates and to assess the economics of the proposed site. Energy Vision has almost three years of on-site data and up to seven years of ten minute or hourly data for five meteorological stations relevant to the project. Staff believes that the information and analysis completed by the project developer and its consultant sufficiently demonstrates a viable site for the project.

A signed contract for wind turbines

As of August 4, 2005, the facility did not have a signed contract for turbines. The developer states that it believed that obtaining financing was the highest priority on the critical path to project development and directed its resources to that goal rather than turbine acquisition. Despite not having a contract for wind turbines prior to August 4, 2005, the developer did provide documentation to Idaho Power of correspondence with 10 different turbine manufacturers and suppliers prior to that date.

Arranged financing for the project

On March 1, 2005, the developer met with a finance company to begin discussions to place financing for the project. On June 21, 2005, the developer and the finance company developed a term sheet detailing the financial structure for the project. The developer withheld authorization for the finance company to proceed to obtain financing until after the Commission had resolved issues related to grandfathering criteria. On October 5, 2005, the finance company was authorized to proceed with the financing as laid out in the term sheet developed earlier. On October 18, 2006, Idaho Power received a letter from a well-known wind project financier spelling out the acquisition, financing, and the turbine placement for the project, subject to Commission approval of the power sales agreement, an acceptable interconnection agreement, and receipt of all required permits and regulatory approvals.

Based on its review of the information provided to Idaho Power, Staff does not believe that actual financing for the project had been obtained prior to August 4, 2005. However, significant progress had been made by that date, and financing commitments are now in place.

Related progress on the facility permitting and licensing path

It appears that very little, if any, progress had been made on permitting and licensing for the project prior to August 4, 2005. The developer provided evidence that project representatives have appeared before the Elmore County Board of Commissioners to inform them of the proposed project, but the date of the appearance was not stated. The developer also indicates that it has discussed the project with the County's Planning and Zoning Department and with the Mountain Home Air Force Base. On November 19, 2006 a Notice of Self-Certification as a Qualifying Small Power Production Facility was filed with the Federal Energy Regulatory Commission. The Notice was accepted for filing by FERC on November 20, 2006. On April 18, 2005 site control was established via an easement with the property owners.

The Commission noted in Order No. 29872 in Case No. IPC-E-05-22, that the degree of substantial progress and project maturity that it would 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. The Commission stated it would look at the totality of the facts presented.

Based on Idaho Power Company's review of the information provided by the developer and in light of the procedure the Commission accepted in Cassia Wind Order No. 29954, Case No. IPC-E-05-35, Idaho Power contends that it would be reasonable to grandfather the Hot Springs facility. The Company believes that the Hot Springs facility satisfies the grandfathering criteria identified by the Commission in Order No. 29839, Case No. IPC-E-05-22.

Based on Staff's own review of the facility's progress with regard to the primary and secondary grandfathering criteria, Staff agrees with Idaho Power that the Hot Springs facility should be grandfathered. At least one of the two primary criteria had been satisfied prior to August 4, 2005 (a signed power purchase agreement), and at least one of the secondary criteria had been satisfied by that date (a wind study demonstrating a viable site for the proposed project). Although not satisfying other secondary criteria before August 4, 2005, the project has demonstrated that it had made some progress on most of them. In addition, the project has filed the necessary applications for interconnection to satisfy the second primary criterion. Furthermore, as in the case of Cassia Wind, the developer has now obtained a firm commitment for financing and turbines for the facility.

Notable Contract Provisions

There are three provisions in the Agreement that distinguish it from other recent PURPA agreements:

1. Online Delay Damages

In the contract negotiations for this project, Idaho Power and Hot Springs agreed that an on-line date of December 2007 is crucial to demonstrate that the project was a viable project in August of 2005. This Agreement contains delay damage provisions that require the project to pay Idaho Power damages if the project comes on-line after December 31, 2007. The delay damages will accrue for a period of up to 90 days. Staff supports this contract provision. At least six recent QF projects have failed to meet their contractual on-line dates; therefore, Staff believes it is reasonable for Idaho Power to begin inserting damage provisions into PURPA contracts to provide a mechanism for the Company to be made whole if it incurs higher costs to acquire replacement power.

2. Shortfall Energy Payments

The Agreement contains 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) and recently approved for Magic Wind Park in Order No. 30206 issued in Case No. IPC-E-06-26. Hot Springs has voluntarily selected the Fossil Gulch Method. Use of the Fossil Gulch methodology is a negotiated term of the Agreement and is mutually acceptable to Idaho Power and Hot Springs. Staff believes that both the Fossil Gulch method and the U.S. Geothermal method are acceptable alternatives for computing shortfall energy payments and has no objection to developers choosing their preferred method.

3. Separate Interconnection Agreement

The Agreement reflects the changes to Idaho Power's Schedule 72 approved in Order No. 30179 issued on November 17, 2006 in Case No. IPC-E-06-18. One of the significant changes in Schedule 72 was the creation of a standard interconnection agreement (Uniform Interconnection Agreement) that is separate from the power sales agreement. The Bennett Creek

and Hot Springs projects are the first wherein separate agreements will exist for power sales and for interconnection.

Hot Springs has not yet signed an interconnection agreement. In response to production requests, Idaho Power states that it has no reason to believe that a Uniform Interconnection Agreement will not be signed for this project, and further, that if there are no cluster or queue issues that arise requiring additional studies, it is anticipated that the Uniform Interconnection Agreement could be signed by year-end 2007. (December 31, 2007 is the Scheduled Operation Date for the project.)

The first phase of the transmission analysis, the Feasibility Study, has just been completed—only one day before the submittal of these comments. The feasibility study indicates that there are, at least for some of the interconnection options considered, cluster or queue issues that will require further studies. The project developer now has the option of proceeding to the next phase of transmission analysis, the System Impact Study. That study will identify transmission upgrades and associated costs necessary in order for Idaho Power to provide firm transmission service. In any case, no interconnection agreement yet exists. Moreover, a completed interconnection agreement seems unlikely at least for several months.

Ideally, Staff would prefer that transmission and interconnection issues be resolved, and that a signed interconnection agreement be submitted at the same time the power sales agreement is submitted for Commission approval. Staff recognizes, however, that the QF may have good reason to pursue each agreement separately, even consecutively. The power sales agreement and the interconnection agreement for Hot Springs are on separate tracks and their timing does not coincide. The risk to this approach, however, must remain with the project developer. In instances like this one in which firm transmission may not be available to accommodate the project without additional investment by the Company or consideration of non-firm transmission as an alternative, prices in the related power sales agreement may be affected.

The published avoided cost rates contained in the Agreement, Staff believes, are based on an assumption that firm transmission would be available to deliver a project's output without additional Company investment. Consequently, Staff believes that firm transmission capacity is a prerequisite in order for the project's output to be deliverable on a firm basis. As long as Hot Springs requests firm transmission and agrees to appropriate terms subsequently established for making the required transmission upgrades, the Firm Energy Sales Agreement can stand unaffected. However, if Hot Springs requests non-firm transmission, Staff submits that the


power product that it delivers must also be considered non-firm. Staff cannot support payment of the full published avoided cost rates contained in the Agreement unless Hot Springs acquires firm transmission. Conversely, Staff suggests that some downward adjustment to the contract rates could be warranted if non-firm transmission service is requested by Hot Springs. Staff believes that the product delivered by Hot Springs and the price ultimately paid for that product is necessarily determined by both the terms in the power purchase agreement and the interconnection agreement.

The Bennett Creek and Hot Springs projects are the first for Idaho Power in which separate agreements will exist for power sales and for interconnection. Staff's concerns with regard to the avoided cost rates being paid to the QF and whether the project acquires firm or non-firm transmission are not unique, however, to these two projects. Staff has similar concerns for wind projects with previously signed contracts that are located in areas with transmission constraints.

RECOMMENDATION

Staff recommends that the Commission approve all of the Agreement's terms and conditions and declare that all payments Idaho Power makes to Hot Springs for purchases of firm energy will be allowed as prudently incurred expenses for ratemaking purposes. However, Staff further recommends that Commission approval of the Firm Energy Sales Agreement be contingent upon Hot Springs requesting firm transmission service and agreeing to participate in funding any necessary transmission upgrades. Should Hot Springs request non-firm transmission service and decline to participate in funding any transmission upgrades, Staff recommends that the Commission reserve the ability to adjust the rates contained in the Agreement to fairly account for the reduced firmness of the energy delivered or any additional transmission cost incurred by Idaho Power.

Respectfully submitted this 26th day of January 2007.



Scott Woodbury
Deputy Attorney General

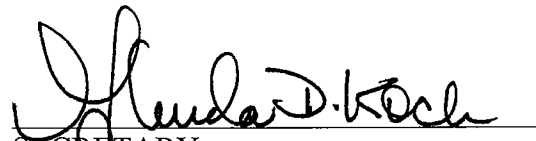
Technical Staff: Rick Sterling
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 26TH DAY OF JANUARY 2007, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-06-34, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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