

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR) CASE NO. IPC-E-06-35
APPROVAL OF A FIRM ENERGY SALES)
AGREEMENT FOR THE SALE AND)
PURCHASE OF ELECTRIC ENERGY)
BETWEEN IDAHO POWER COMPANY) ORDER NO. 30245
AND BENNETT CREEK WINDFARM LLC)**

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 (Agreement) dated December 20, 2006 with Bennett Creek Windfarm LLC (Bennett Creek). The Commission in this Order approves the submitted Agreement.

Background

On August 4, 2005, the Idaho Public Utilities Commission (Commission) in Case No. IPC-E-05-22, Interlocutory 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 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, which 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.)

Agreement

The proposed Bennett Creek Windfarm will be located within Sections 22, 23, 26 (less SE 1/4) and 27, Township 4 S, Range 8 E, Boise Meridian, Elmore County, Idaho. Bennett Creek warrants the facility will be a qualified small power production facility (QF) under the applicable provisions of PURPA. Agreement ¶ 3.2. The QF 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. Agreement Appendix B-1. The Agreement contains the non-levelized, published avoided cost rates set forth in Order No. 29646 with seasonalization factors applied. Agreement ¶ 7.1. Under normal and/or average operating conditions, the QF 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.

Based on Idaho Power Company's review of the information provided by the developer of the project, Idaho Windfarms LLC, and in light of the procedure the Commission accepted in Cassia Wind Order No. 29954, Case No. IPC-E-05-35, Idaho Power has determined that it would be reasonable to grandfather the Bennett Creek facility based on satisfaction of the following criteria identified by the Commission in Order No. 29839, Case No. IPC-E-05-22.

Primary criteria:

Prior to August 5, 2005, the developer had tendered a signed Firm Energy Sales Agreement to Idaho Power for the facility. This satisfies one of the two primary criteria for grandfathering.

Secondary criteria:

As of August 5, 2005, the facility did not have a signed contract for turbines. Idaho Power has reviewed the information provided by the developer and determined that this developer 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. As a result, prior to August 4, 2005, the developer had entered into a binding commitment to obtain financing. The Company has also confirmed that as of August 4, 2005, the facility had made substantial progress on the other secondary criteria, except for acquisition of turbines. As in the case of Cassia Wind, the developer has now obtained a firm commitment for turbines for the facility and filed the necessary applications for interconnection to satisfy the second primary criteria.

Idaho Power notes that there are three contract provisions the Commission should be aware of in its consideration of the Agreement:

1. In the contract negotiations, Idaho Power and Bennett Creek 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. Agreement ¶¶ 5.3 to 5.6.
2. 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. Bennett Creek 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 Bennett Creek. Agreement ¶ 7.3.
3. The Agreement reflects the changes to Idaho Power's Schedule 72 [Uniform Interconnection Agreement] approved in Order No. 30179 issued on November 17, 2006 in Case No. IPC-E-06-18. Agreement ¶ 4.1.6.

Bennett Creek has selected March 31, 2007 as the estimated Scheduled First Energy Date and December 31, 2007 as the estimated Scheduled Operation Date. Agreement, Appendix B-3.

Section 21.1 of the Agreement provides that the Agreement will not become effective until the Commission has approved all of the Agreement terms and conditions and declared that

all payments Idaho Power makes to Bennett Creek for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

On January 4, 2007, the Commission issued Notices of Application and Modified Procedure in Case No. IPC-E-06-35. The deadline for filing comments was January 26, 2007. Comments were filed by numerous proponents of renewable energy and by the Commission Staff. Reply comments were filed on February 5, 2007 by Idaho Windfarms LLC, the developer of Bennett Creek and on February 6, 2007 by Idaho Power. Sur-reply comments were filed by Idaho Windfarms on February 8, 2007.

Staff Comments

Grandfathering

Based on Staff's review of the information provided with regard to the primary and secondary grandfathering criteria, Staff agrees with Idaho Power that the Bennett Creek facility should be grandfathered.

Staff also comments on three provisions of the Agreement that distinguish it from other recent PURPA agreements.

On-Line Delay Damages

In their contract negotiations, Idaho Power and Bennett Creek agreed that an on-line date of December 2007 is crucial to demonstrate that the project was a viable project in August of 2005. The 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. Staff notes that 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.

Shortfall Energy Payments

The Agreement contains the Fossil Gulch methodology for computing shortfall energy payments. Reference Agreement ¶ 7.3; Case No. IPC-E-04-19, Order No. 29630. The Fossil Gulch method was recently approved by the Commission for Magic Wind Park in Order No. 30206, Case No. IPC-E-06-26. Use of the Fossil Gulch methodology is a negotiated term of

the Agreement and is mutually acceptable to Idaho Power and Bennett Creek. Staff believes that both the Fossil Gulch method (Order No. 29630) and the U.S. Geothermal method (Order No. 29632) are acceptable alternatives for computing shortfall energy payments and has no objection to developers choosing their preferred method.

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. Bennett Creek has yet to sign an interconnection agreement. Staff recognizes that a QF may have good reason to pursue each agreement separately, even consecutively. In response to Staff production requests, Idaho Power states that it has no reason to believe that a Uniform Interconnection Agreement will not be signed for the project, and further, that if there are no cluster or queue issues that arise requiring additional studies, it is anticipated that a Uniform Interconnection Agreement could be signed by year end 2007. (December 31, 2007 is the Scheduled Operation Date for the project.) The risk to this approach, Staff contends, must remain with the project developer.

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 a project's output to be deliverable on a firm basis. As long as Bennett Creek requests firm transmission and agrees to appropriate terms subsequently established for making any required transmission upgrade, the Firm Energy Sales Agreement, Staff believes, can stand unaffected. However, should the project request 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 the project acquires firm transmission. Conversely, Staff suggests that some downward adjustment to the contract rates could be warranted if non-firm transmission service is requested. Staff believes that the energy product delivered by Bennett Creek and the price ultimately paid for that product is necessarily determined by both the terms in the power purchase agreement and the interconnection agreement.

Staff recommends approval of the terms and conditions of the Agreement. However, Staff recommends that Commission approval of the Agreement be contingent upon the QF requesting firm transmission service and agreeing to participate in funding any necessary transmission upgrade. Should the QF 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.

Reply Comments – Idaho Windfarms LLC

Idaho Windfarms LLC on behalf of its affiliate Bennett Creek disagrees with Staff's recommended inclusion of conditions related to transmission services. While Idaho Windfarms recognizes the implicit linkage between avoided cost calculations and firm transmission services, it contends that this is not the proper proceeding to deal with transmission-related issues. Idaho Windfarms' objection is based on the following:

- A record for transmission related decisions has not been developed.
- A decision on such issues is not currently required.
- Adding transmission considerations now is inconsistent with grandfathering.

Idaho Windfarms states it is aware that most of the PURPA wind projects with approved power purchase agreements are currently negotiating their interconnection arrangements. This process, it contends, has been complicated by a lack of existing policies related to the cost responsibilities associated with system upgrades and many complex issues, such as:

- The lack of explicit system upgrade costs in the current avoided cost calculation.
- The FERC requirement for reimbursement of system upgrade costs which produce network benefits.
- The quantification of network benefits.
- The reasonableness of the load and resource scenario used in the N-1 study.
- The reasonableness of the system upgrade plan.
- The appropriateness of various full or partial funding and reimbursement mechanisms.

The above issues, it states, are presently being addressed through discussions and negotiations between the parties. Idaho Windfarms contends that Bennett Creek is not in the transmission

constrained area near Twin Falls. Some of the issues faced by the other projects will, however, it contends, impact Idaho Windfarms' transmission negotiations. Idaho Windfarms states that there has been no information placed in the record of this proceeding which would allow for an informed Commission decision on any of these matters.

Regardless of the manner in which the issues noted above are resolved with regard to the project, Idaho Windfarms contends that they will almost certainly be brought to the Commission for approval. That, it states, will be the appropriate time to make decisions related to transmission services and to establish the Commission's policies on these matters.

The Bennett Creek project, Idaho Windfarms contends, has requested firm transmission service. The completed Transmission Feasibility Studies have preliminarily identified the costs associated with such service. Idaho Windfarms contends that there is no reason, in the context of this case, to assume the project and Idaho Power will fail to achieve an appropriate agreement regarding transmission cost responsibility. Nor, it contends, is there any reason in this proceeding to predetermine the substance of, or limits on, the interconnection agreements. Idaho Windfarms believes that transmission service consistent with Idaho's avoided cost calculation is achievable, but it is too early to determine the form the interconnection agreements will take. Idaho Windfarms contends that it is unfair to force it to accept restrictions which have not been applied to the rest of the PURPA projects. That, it states, would be unreasonably prejudicial to Idaho Windfarms' upcoming interconnection negotiations. Idaho Windfarms' projects, it states, should have the same rights and obligations that are ultimately applied to the other PURPA projects.

Staff comments, Idaho Windfarms notes, correctly state that the Bennett Creek project is one of the first to separate transmission service and power purchasing obligations, in compliance with Commission Order No. 30179. Those changes, however, it states, were essentially ministerial and did not address any of the issues related to firm transmission services and cost responsibility. Those changes, it states, do not provide a basis for restricting the project's transmission options before the establishment of the Commission's ultimate transmission policies.

Reply Comments – Idaho Power

The avoided costs contained in the Agreement, Idaho Power contends, were established on the assumption that the costs Idaho Power can avoid by purchasing firm energy

from Bennett Creek are financially equivalent to the fixed and variable costs of a firm, dispatchable, combined cycle combustion turbine owned and operated by Idaho Power.

At this time, Idaho Power states it has no reason to believe that the Bennett Creek project will not acquire firm transmission to allow deliveries of firm energy to Idaho Power. Idaho Power states it does not know what system upgrade costs, if any, the project may be asked to pay so that delivery can provide firm transmission and the project can deliver firm energy to Idaho Power. Finally, it states there is no indication that the project intends to do anything differently than what it has contractually committed to do – that is, deliver firm energy to Idaho Power.

All that being said, Idaho Power states it is in full agreement with Staff's comments that the project is not entitled to be paid the published avoided cost rates contained in the Agreement unless the project contracts for firm transmission service to be provided for the full 20-year term of the Agreement.

Idaho Power recommends that the Commission include findings in its Order confirming that the published avoided cost rates are available only to QFs that obtain firm transmission for the full term of the firm energy sales agreements. The Order, it states, should also provide that the requirement to obtain firm transmission would not preclude a QF from seeking lower cost firm transmission service. Finally, it contends that the Order should provide that after the project has entered into a transmission arrangement, then Idaho Power or Staff can ask the Commission to review the transmission arrangements to confirm that the rates contained in the Agreement are appropriate based on the type of transmission the project has acquired.

Commission Findings

The Commission has reviewed and considered the filings of record in Case No. IPC-E-06-35, including the underlying Agreement, the filed comments and recommendations of the public and Commission Staff, the reply and sur-reply comments of Idaho Windfarms LLC and the reply comments of Idaho Power. Based on our review of the developed record, we continue to find that the public interest does not require a hearing to consider the issues presented in this case and that Modified Procedure is appropriate. IDAPA 31.01.01.204.

A Firm Energy Sales Agreement for the Bennett Creek Windfarm has been presented for Commission approval. Idaho Power contends and Staff agrees that the project is entitled to grandfathered treatment and exemption from the Commission's Order reducing the eligibility

cap for avoided costs published rates for non-firm wind projects from 10 aMW to 100 kW. Based on the developed record, the Commission agrees that grandfathering is appropriate and that the project satisfies the grandfathering eligibility criteria established in Order Nos. 29839 and 29872 in Case No. IPC-E-05-22.

The Agreement is for a 19.8 MW wind project located in Elmore County. As represented and pursuant to contract, under normal and/or average conditions the generation from Bennett Creek will not exceed 10 aMW on a monthly basis. We thus find the project is qualified to receive the published avoided cost rates approved by the Commission. The Commission finds the Agreement submitted in this case contains acceptable contract terms and includes the non-levelized published rates approved by the Commission in Order No. 29646. We further find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

We note that the Bennett Creek project has yet to sign an interconnection agreement. In our approval of separate agreements for power purchase and interconnection in Order No. 30179, we recognized the functional separation between power supply and delivery mandated by FERC. Interconnection is managed by Idaho Power's Power Delivery (Transmission) business unit, while power purchase agreements fall within the purview of Idaho Power's Power Supply (Marketing) business unit. In our Order at page 4 we stated "It does not appear requiring two separate agreements will make it any more burdensome for non-utility generators to develop projects." We have no reason to question this expectation.

Staff contends that the published firm rates presume that the energy will be delivered on a firm basis. Should firm transmission capacity not be requested by the QF or should the QF decline to participate in the funding of necessary transmission upgrades, Staff contends that the rates should be adjusted downward. Idaho Power is in general agreement with Staff and believes that the Order should not be silent on this issue. Idaho Windfarms contends that the Bennett Creek project has requested firm transmission service, and that there is no reason, in the context of this case, to assume that the project and Idaho Power will fail to achieve an appropriate agreement regarding transmission cost responsibility. Idaho Windfarms contends further that the developed record in these cases provides no basis for establishing conditions to its generation agreements related to transmission services. The Commission agrees with Idaho Windfarms and

finds it reasonable to approve the Bennett Creek Agreement without conditions related to transmission service.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, and the issues raised in Case No. IPC-E-06-35 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 (QFs) 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 approve the December 20, 2006 Firm Energy Sales Agreement between Idaho Power Company and Bennett Creek Windfarm LLC.

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 20th
day of February 2007.

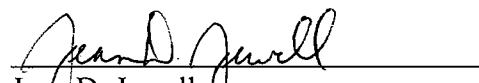


PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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