

## **DECISION MEMORANDUM**

**TO:           COMMISSIONER KJELLANDER  
COMMISSIONER SMITH  
COMMISSIONER REDFORD  
COMMISSION SECRETARY  
LEGAL  
WORKING FILE**

**FROM:       RICK STERLING  
SCOTT WOODBURY**

**DATE:       JULY 25, 2007**

**RE:           CASE NO. IPC-E-06-35 (Idaho Power)  
FIRST AMENDMENT TO BENNETT CREEK WINDFARM FIRM  
ENERGY SALES AGREEMENT**

On July 11, 2007, Idaho Power Company (Idaho Power; Company) submitted for Commission approval an amendment (First Amendment) to the December 20, 2006, Firm Energy Sales Agreement (Agreement) between Idaho Power and Bennett Creek Windfarm LLC (Bennett Creek). The original Agreement was approved on February 20, 2007, in Order No. 30245 (Order). Idaho Power and Bennett Creek desire to amend the Agreement to (1) revise the wind turbine manufacturer and specifications; (2) revise the scheduled operation date; and (3) provide liquid security in the amount of estimated Delay Damages.

### **BACKGROUND**

In the original Agreement, Bennett Creek selected December 31, 2007 as the estimated scheduled operation date for the Bennett Creek Windfarm Project (Project). The Agreement contains provisions that require the Project to pay Idaho Power liquidated damages if the Project comes online after December 31, 2007 (Delay Damages). The Delay Damages will accrue for a period of up to ninety days. (Agreement Sections 5.3-5.6).

In the Order approving the original Agreement, the Commission noted that the Bennett Creek Windfarm Project had not signed an interconnection agreement at the time of the Commission's approval of the Agreement. During the negotiation of the Agreement, Bennett Creek indicated to Idaho Power that it believed that the costs of interconnection would be

manageable and that the time required for interconnection studies would not adversely impact its ability to meet the December 31, 2007 scheduled operation date.

Bennett Creek has now completed initial discussions with Idaho Power's delivery business unit as required by the Agreement. As a result of those discussions, it has become apparent that the Bennett Creek Project will require network upgrades in order to accommodate the Project's generation and that the time required for completion of necessary studies and the construction of necessary interconnection facilities and network upgrades will delay the Project's online date beyond the December 31, 2007 scheduled operation date. Such a delay will trigger Delay Damages.

Bennett Creek is also now concerned about its ability to absorb all of the network upgrade costs. Bennett Creek has indicated that the type of settlement that is proposed in Case No. IPC-E-06-21 (Cassia Case) will allow it to proceed with its Project. However, until Case No. IPC-E-06-21 is resolved; Bennett Creek is reluctant to proceed.

## **FIRST AMENDMENT**

### ***1. Wind Turbine Manufacturer and Specifications***

The delay in interconnection of the Project has caused Bennett Creek's investor and wind turbine supplier to reallocate the project's turbines to another project. Bennett Creek must now wait for the next available turbines, which are due before the end of the year. One of the new turbine options requires a modification of the type and size of wind turbines allowed under the Agreement. The First Amendment reflects this change in turbine manufacturer and size. It also recognizes that the turbine market is volatile and additional changes in turbine configuration may be required in the future.

### ***2. Scheduled Operation Date***

In light of the foregoing, Bennett Creek has requested that Idaho Power agree to amend the Agreement to extend the scheduled operation date for a period of approximately one year. Bennett Creek believes this time is necessary to ensure that it will be able to meet the revised scheduled operation date and give the Project the opportunity to avoid the payment of Delay Damages.

### ***3. Liquid Security***

Idaho Power states that it is willing to enter into the First Amendment for two reasons. First, in exchange for this Amendment, Bennett Creek is willing to provide Idaho

Power with liquid security in an amount sufficient to cover the liquidated Delay Damages. This provision is not currently included in this or other QF contracts and Idaho Power believes that the inclusion of this provision provides value for the Company and its customers. Second, Idaho Power is aware of two other wind projects in the same area facing similar delays due to unanticipated (by the developer) interconnection delays (Bennett Creek; Alkali Wind). If the Commission concurs, Idaho Power indicates that it will propose a similar resolution for those projects.

The Bennett Creek and Hot Springs contracts were the first wherein the firm energy sales agreements will be separate from the interconnection agreements. When power sales agreements are approved first, without signed transmission interconnection agreements, projects can be delayed and necessitate later amendments to firm energy sales agreements. FERC's Standard of Conduct rules make it impossible for the Company's power supply business unit to independently confirm the reasonableness of the QF developer's selection of a particular date for scheduled operation. To address this problem in the future, Idaho Power states that it has implemented new contract procedures. As a result, Idaho Power states that it will now be the policy of the power supply business unit not to sign firm energy sales agreements until the QF project developer can demonstrate that it has completed its interconnection application to the extent that the scheduled operation date is unlikely to be modified due to delays in the interconnection study and transmission construction process. This is the only way that the Company can be reasonably certain that the scheduled operation dates selected by the QF developer are realistic.

#### **COMMENTS OF IDAHO WINDS LLC**

Idaho Winds LLC is the developer of Alkali Wind Farm (IPC-E-06-36; Order No. 30253), a PURPA qualified facility with an Idaho Power contract. The Alkali project (Project) faces similar obstacles to meeting its online date due to unanticipated interconnection delays. Idaho Winds is currently engaged in discussion with the Idaho Power delivery business unit and, like Hot Springs and Bennett Creek, it has become apparent that Alkali will require network upgrades in order to accommodate the Project's generation and the time required for completion of necessary studies and the construction of necessary interconnection facilities and network upgrades will delay this Project's online date beyond the December 31, 2007 Scheduled Operation Date, triggering Delay Liquidated Damages.

Idaho Winds believes that the Delay Liquidated Damages provision of Alkali Project's contract is adequate to protect Idaho Power and its customers and objects to Idaho Power's proposal to require Delay Security from Idaho Winds and its PPA, or upon any other developer in a similar situation.

#### **STAFF ANALYSIS**

Staff has no objection to amending the Agreement to revise the wind turbine manufacturer and specifications. The particular turbine manufacturer and specifications are not critical, and do not change the energy product Idaho Power will be purchasing under the Agreement.

As a condition of the one-year contract extension, the parties propose extending the scheduled operating date by approximately one year. Because both Idaho Power and Bennett Creek are in agreement, Staff does not oppose the proposed changes. Unlike most of the other wind contracts wherein the projects have yet to come online, this Agreement contains liquidated damages provisions in the event of delays in achieving the expected online date.

Staff believes strongly that approval of the First Amendment should not carry with it either explicit or implicit approval of any terms of interconnection. The Interconnection Agreement, which is yet to be signed, and the Firm Energy Sales Agreement are clearly two separate agreements. The Bennett Creek project is not included in the "Twin Falls" cluster and will not be included in a settlement stipulation in the Case IPC-E-06-24; therefore, whether any terms of the proposed settlement in the pending IPC-E-06-24 case relating to QF interconnection can be applied to this project is yet to be determined. Staff expects that a separate interconnection agreement for this project will be submitted for Commission approval at a later date.

Bennett Creek agrees to provide liquid security in the amount of estimated Delay Damages. Staff has no objection to this change in security. Idaho Power states that if the Commission concurs, Idaho Power would propose a similar resolution for other wind projects in the same vicinity that are facing similar transmission interconnection delays. Although Staff does not have any particular objections to proposals for similar resolutions for other projects, Staff wishes to make it clear that it does not believe that Commission approval of the Bennett Creek First Amendment should be interpreted by the Company as blanket approval for any other

wind contracts. Staff recommends that the Commission decline to comment on this proposal of the Company.

### **STAFF RECOMMENDATION**

Staff recommends that the Commission issue an Order: (1) approving the First Amendment to the Firm Energy Sales Agreement (Attachment 1) without change or condition; and (2) confirming that the costs associated with the Agreement as amended will be approved as prudent expenditures for ratemaking purposes as originally provided in Order No. 30245. Staff recommends that the Commission decline to comment on the Company's proposal to use the "Liquid Security" amendment to the online delay damages provision agreed to by the contract parties in this case as a template for other instances of QF failure to achieve scheduled operation dates.

### **COMMISSION DECISION**

The underlying Agreement between Idaho Power and Bennett Creek was approved on February 20, 2007, in Order No. 30246 (Order). Idaho Power and Bennett Creek desire in this case to amend the Agreement to (1) revise the wind turbine manufacturer and specifications; (2) revise the scheduled operation date; and (3) provide liquid security in the amount of estimated Delay Damages. Staff recommends that the First Amendment be approved.

Does the Commission wish to approve the First Amendment to the Firm Energy Sales Agreement between Idaho Power and Bennett Creek Windfarm LLC?

Does the Commission agree with Staff's recommendation that the Commission decline to comment on the Company's proposal to use the "Liquid Security" amendment to the online delay damages provision agreed to by the contract parties in this case as a template for other instances of QF failure to achieve scheduled operation dates? Staff has contacted both Idaho Power and Idaho Winds LLC. Neither party objects to Staff's recommendation. The respective positions of each need not be resolved in this docket, can be raised later and are preserved and not waived.

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Scott Woodbury

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