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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>IDAHO POWER COMPANY FOR APPROVAL</b>	)	<b>CASE NO. IPC-E-09-18</b>
<b>OF A FIRM ENERGY SALES AGREEMENT</b>	)	
<b>FOR THE SALE AND PURCHASE OF</b>	)	
<b>ELECTRIC ENERGY BETWEEN IDAHO</b>	)	<b>COMMENTS OF THE</b>
<b>POWER COMPANY AND CAMP REED WIND</b>	)	<b>COMMISSION STAFF</b>
<b>PARK LLC.</b>	)	
	)	

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**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 and Notice of Modified Procedure issued on August 4, 2009, submits the following comments.

**BACKGROUND**

On July 17, 2009, 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 Camp Reed Wind Park LLC (Camp Reed) dated July 9, 2009 (Agreement).

Camp Reed proposes to design, construct, install, own, operate and maintain a 22.5 megawatt (MW) wind generating facility. The Camp Reed facility will be located approximately

8 miles west of Hagerman, Idaho. Camp Reed has selected September 30, 2010, as both the scheduled First Energy Date and the Scheduled Operation Date. Appendix B-3.

Agreement ¶ 21 provides that the Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declares that all payments Idaho Power makes to Camp Reed for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

## **STAFF ANALYSIS**

### **Qualifying Facility Status**

Camp Reed 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). Agreement ¶ 3.2. Staff confirmed that a QF self-certification application for the project was filed at the Federal Energy Regulatory Commission on October 19, 2007 in Docket No. QF08-25-000.

### **Purchase Rates**

The Agreement contains levelized published avoided cost rates as currently established by the Commission for energy deliveries of less than 10 aMW. Agreement Article VII. Staff confirms that the rates in the Agreement comport with those contained in Order No. 30744. Rates in the Agreement are adjusted seasonally, and a daily load shape adjustment is made in accordance with Order No. 30415. In addition, a wind integration adjustment has been applied in accordance with Order No. 30488.

### **Security for Levelized Rates**

The rates contained in the Agreement are levelized rates. Levelized rates have become rare in recent years due to the requirements for security; consequently, Staff reviewed the security requirements carefully.

The Commission in its implementation of PURPA and the related rules and regulations of the Federal Energy Regulatory Commission (FERC) has utilized levelized rates as an incentive to the development of the cogeneration and small power production industry. Levelization provides the project developer with a price for supplied power at the front-end of the contract in excess of the power's actual energy value, thus enabling the project to better service its debt and meet start-

up costs. In later years the cumulative overpayment is recouped because the payments at levelized rates are projected to be less than the value of the power. At the end of the contract, the cumulative sum of overpayments and underpayments theoretically will be zero.

In the event of a default, some project owners may be unable to refund this overpayment unless they maintain some form of liquid security to provide the funds. The Commission requires that liquid security be made available to the utility (and thus its ratepayers) in an amount equal to the computed overpayment liability, adjusted for risk reduction. The need for security for the amount of overpayment attendant to the front-end loading is commensurate with the perceived risk of economic walk away by the project owner and the consequential or ensuing loss to the utility's ratepayers. The Commission has determined previously that the required liquid security for overpayment liability can be reduced by 1) having adequate insurance, 2) obtaining engineering certification of the project's design and construction adequacy, 3) obtaining engineering certification of the project's ongoing operations and maintenance policies, 4) establishing a maintenance and debt service escrow, and 5) granting the utility second lien rights. Reference Order No. 21690.

This Agreement includes the various security requirements required by Commission Order No. 21690 for levelized agreements (i.e., debt service reserve account (§ 19.3.2), maintenance reserve account (§ 4.19), second lien requirements (§ 4.1.10), and an expanded list of required insurances (§ 13.2). Although all other security requirements contained in the Agreement are standard and in compliance with prior Commission Orders, the minimum balance requirement for the maintenance reserve account is specific to this particular project. The Agreement requires that a minimum of \$2 million be retained in a maintenance reserve account. This amount is estimated to be the approximate cost to completely replace one wind turbine should failure occur. The amount would be adjusted upward or downward every three years to reflect current replacement costs. Staff believes this minimum balance amount is reasonable for wind projects of this size.

### **New Wind Contract Provisions**

As reflected in the Application, this is one of the first PURPA wind agreements executed since the issuance of Commission Order No. 30488, which requires the inclusion of the Mechanical Availability Guarantee (MAG) (§ 6.4), wind integration cost reduction (§ 7.1), and wind forecasting cost sharing (Appendix E). The Commission approved these provisions for future wind contracts as an acceptable substitute for the "90/110" requirements in earlier

contracts. The "90/110" provisions required facilities to predict future monthly generation with a fairly high degree of certainty within a 90/110 band in order to justify payment of "firm" energy rates. For resource technologies with intermittent generation (like wind), the "90/110" requirements were difficult to meet.

Under the MAG provisions in this Agreement, the project is required to achieve a minimum monthly mechanical availability of 85 percent. In other words, the project must be able to operate at least 85 percent of the hours in the month, not counting hours when wind speeds are too low or too high, force majeure events, forced outages, and scheduled maintenance periods. Failure to achieve an 85 percent mechanical availability results in damages being assessed equal to the difference in the per kWh price between the contract rates and corresponding market energy prices, subject to a minimum price penalty of 15 mills per kWh. The 15 mills per kWh minimum price penalty is intended to recognize that Idaho Power will incur transaction and administrative costs to acquire replacement power even if market prices are less than contract rates.

Staff believes that the MAG provisions in the Agreement are reasonable, but recognizes that this will be one of Idaho Power's first contracts to include them. Consequently, Staff recommends that the MAG provisions be approved, but that they not be viewed as precedential should they later need to be modified or prove to be unworkable.

As specified in Order No. 30488, Idaho Power shall make use of a wind energy production forecasting model to forecast the energy production from this facility and other QF wind generation resources. Idaho Power will share the cost of wind energy production forecasting equally with the project owner. The facility's share of wind energy production forecasting will be prorated based on its generation in relation to all other QF wind projects providing energy to Idaho Power. The project's share will not be greater than 0.1 percent of the total energy payments made to the project by Idaho Power during the previous contract year.

### **Delay Liquidated Damages and Security Provisions**

The Agreement contains provisions for delay liquidated damages (§ 5.3) and associated delay security (§ 5.7) to secure the established scheduled operation date of September 30, 2010. Delay liquidated damages have been included in contracts since July 2007; however, this will be one of the first contracts to require delay security.

Under the terms of the Agreement, for online delays of up to 90 days, liquidated damages are assessed if Idaho Power must pay more to acquire replacement power than it would have otherwise paid to purchase power under the contract. If a delay in the project's online date extends beyond 90 days, liquidated damages of \$20 per kW will be assessed (\$450,000 based on a capacity of 22.5 MW). In addition, Idaho Power can choose to terminate the Agreement if the delay in meeting the scheduled operation date extends beyond 90 days. In order to insure that the project will be able to pay delay liquidated damages should they be incurred, the project is required to post liquid security in an amount equal to \$20 per kW of project capacity.

Staff believes that these provisions are necessary and reasonable. Many PURPA projects in the past with existing contracts have experienced delays in meeting their scheduled online dates, some due to transmission constraints, some due to equipment availability and some for other reasons. When new contracts are signed, Idaho Power plans accordingly. But when projects are delayed, Idaho Power must sometimes incur higher costs to acquire replacement power. Staff believes that these provisions will help to protect Idaho Power and its ratepayers if higher costs are incurred due to project delays.

### **Generator Interconnection and Transmission**

The Camp Reed, Yahoo Creek and Payne's Ferry projects are proposed to be located in an area west of Hagerman, in close proximity to each other and to several other proposed and existing projects. Projects in this vicinity were studied as a cluster in connection with Case No. IPC-E-06-21 ("Cassia Case"). One outcome of that case was a Settlement Stipulation that determined the transmission system improvements necessary in order to accommodate all of the proposed projects in the cluster, and devised a method for allocating costs amongst Idaho Power and each of the projects. The Camp Reed, Yahoo Creek and Payne's Ferry projects were included in the Settlement Stipulation.

In addition to the Power Sales Agreement, it will be necessary for a Generator Interconnection Agreement to be signed before the project can proceed. The terms and costs to be included in the Generator Interconnection Agreement will be in accordance with the "Cassia Formula" as included in the Stipulation in Case No. IPC-E-06-21. Moreover, the transmission interconnection costs to be assigned to the three projects will be based on "redispatch" as described in the Stipulation in the Cassia Case.


Although a Generation Interconnection Agreement has yet to be negotiated, "Facility Studies" — the last in the series of three transmission studies — are complete for the three projects. Exergy, the developer of the Camp Reed, Yahoo Creek and Payne's Ferry projects, has until September 23, 2009, to respond with comments on the Facility Study Report. The Generation Interconnection Agreement will be drafted from the Facility Study Report and be sent to Exergy within 30 calendar days of Exergy's comments on the Facility Study Report. Based on the interconnection studies to date and the discussions with Exergy, Idaho Power has concluded that, assuming Exergy continues to provide necessary technical information and pay for long lead time materials in a timely manner, the Company will have sufficient time and available resources to construct the interconnection facilities in time to allow the expansion facilities to meet the scheduled operation date.

Staff would prefer that a signed Generator Interconnection Agreement be presented at the same time as Idaho Power seeks Commission approval of the Power Sales Agreement. Scheduled operation dates for other projects (many of which are being developed by Exergy) have sometimes not been achieved due to delays in completing interconnection studies, delays in completing a Generator Interconnection Agreement, delays in procuring interconnection or substation equipment, or delays in completing construction of transmission interconnection or substation facilities. Staff stated its preference for concurrent submittal of Power Sales Agreements and Generator Interconnection Agreements in the Commission's approval of two of Idaho Power's most recent PURPA wind contracts (Hot Springs - IPC-E-08-34 and Bennett Creek - IPC-E-08-35). While stopping short of agreeing to require a signed GIA before signing a power sales agreement, Idaho Power stated in reply comments in those cases that it would be the Company's policy in the future not to sign any power 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. Reference Order No. 30398 at p. 3. Idaho Power appears satisfied in this case that transmission and generator interconnection issues are unlikely to cause a delay in the project's scheduled operation date.

## RECOMMENDATIONS

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

Respectfully submitted this 22<sup>nd</sup> day of September 2009.

  
Scott Woodbury  
Deputy Attorney General

Technical Staff: Rick Sterling

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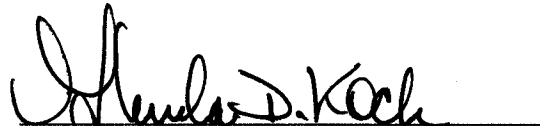
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 22<sup>nd</sup> DAY OF SEPTEMBER 2009, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-09-18, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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CERTIFICATE OF SERVICE