

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR ) CASE NO. IPC-E-09-19  
APPROVAL OF A FIRM ENERGY SALES )  
AGREEMENT FOR THE SALE AND )  
PURCHASE OF ELECTRIC ENERGY ) ORDER NO. 30925  
BETWEEN IDAHO POWER COMPANY )  
AND YAHOO CREEK WIND PARK LLC )

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 Yahoo Creek Wind Park LLC (Yahoo Creek) dated July 9, 2009 (Agreement).

### AGREEMENT

Yahoo Creek proposes to design, construct, install, own, operate and maintain a 22.5 megawatts (MW) wind generating facility. The Yahoo Creek facility will be located near Hagerman, Idaho, in an area more particularly described as all except the SE 1/4 of the SE 1/4 of Section 35, and all except the NE 1/4 of the NE 1/4 of Section 36, Township 7 S, Range 12 E, Boise Meridian, Twin Falls County, Idaho; Section 2 and the W 1/2 and SW 1/4 of the NE 1/4 and the W 1/2 of the SE 1/4 and the SE 1/4 of the SE 1/4 of Section 1, Township 8 S, Range 13 E, Boise Meridian, Twin Falls County, Idaho; and the N 1/2 of Section 6, Township 8 S, Range 13 E, Boise Meridian, Twin Falls County, Idaho. Yahoo Creek 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 Yahoo Creek for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

On August 4, 2009, the Commission issued a Notice of Application and Modified Procedure in Case No. IPC-E-09-19 and established a September 22, 2009, comment deadline. Comments were filed by Commission Staff and a number of wind energy proponents. Staff recommends that the Firm Energy Sales Agreement between Idaho Power and Yahoo Creek be approved.

## COMMISSION STAFF COMMENTS

### *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*

Staff notes that the submitted Agreement 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 and recommends that they be approved.

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*

Staff notes that 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 ensure 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. When projects are delayed, Staff notes that the Company must sometimes incur higher costs to acquire replacement power.

#### *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, Staff states 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, had 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.

#### **COMMISSION FINDINGS**

The Commission has reviewed the filings of record in Case No. IPC-E-09-19 including the proposed Agreement and filed comments. We note that 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.

Idaho Power has presented a Firm Energy Sales Agreement with Yahoo Creek Wind Park LLC. As represented and pursuant to contract, under normal and/or average conditions the project will not exceed 10 aMW on a monthly basis. We thus find that the project is qualified to receive the published avoided cost rates approved by the Commission. We note that 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.

The Commission finds that the proposed Agreement submitted in this case contains acceptable contract provisions and includes levelized published avoided cost rates approved by the Commission in Order No. 30477. We find it reasonable that the submitted Agreement be approved without further notice or procedure. IDAPA 31.01.01.204. We further find it reasonable to allow payments made under the Agreement as prudently incurred expenses for ratemaking purposes.

### **CONCLUSIONS OF LAW**

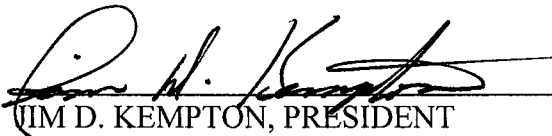
The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing 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 and to implement FERC rules.

### **ORDER**

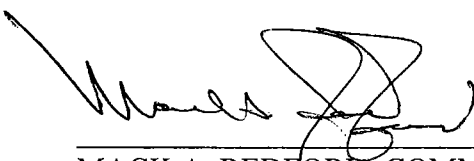
IT IS HEREBY ORDERED and the Commission hereby approves the July 9, 2009, Firm Energy Sales Agreement between Idaho Power Company and Yahoo Creek Wind Park LLC.

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.

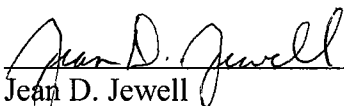
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8<sup>th</sup>  
day of October 2009.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

bls/O:IPC-E-09-19\_sw