

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<b>IN THE MATTER OF THE APPLICATION )          OF IDAHO POWER COMPANY FOR )          APPROVAL OF A FIRM ENERGY SALES )          AGREEMENT FOR THE SALE AND )          PURCHASE OF ELECTRIC ENERGY )          BETWEEN IDAHO POWER COMPANY )          AND IDAHO WINDS LLC )</b>	<b>CASE NO. IPC-E-09-25               ORDER NO. 30964</b>
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On September 10, 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 Idaho Winds LLC (Idaho Winds) dated September 1, 2009 (Agreement).<sup>1</sup>

### AGREEMENT

Idaho Winds proposes to design, construct, own, operate and maintain a 21 MW wind generating facility located approximately six miles northwest of Glenns Ferry in Elmore County, Idaho. The location of the project is more particularly described as Section 16, Township 5 S, Range 9 E, Boise Meridian, Elmore County, Idaho. Idaho Winds warrants that the facility to be known as the Sawtooth Wind Project will be a qualified small power production facility (QF) under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). This is the second firm energy sales agreement executed by Idaho Power and Idaho Winds LLC for this location. Reference Case No. IPC-E-06-36, Order No. 30253 (Alkali Wind Project – 18 MW).

The Application states that the Agreement comports with the terms and conditions of the various Commission Orders applicable to PURPA agreements for wind resources. Order Nos. 30415 (daily load shape adjustment), 30488 (wind integration adjustment; Mechanical Availability Guarantee), 30738 (SAR non-fuel cost variables), and 30744 (published avoided cost rates). The Agreement contains non-levelized published avoided cost rates as currently established by the Commission for energy deliveries of less than 10 aMW.

The nameplate rating of the facility is 21 MW. Under normal and/or average conditions, the facility will not exceed 10 aMW on a monthly basis. Should the facility exceed

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<sup>1</sup> Replacement contract pages 14-16 of Agreement submitted November 12, 2009.

10 aMW on a monthly basis, Idaho Power will accept the energy (Inadvertent Energy) that does not exceed the maximum capacity amount; however, the Company will not purchase or pay for this Inadvertent Energy. ¶ 7.5. Idaho Winds has selected October 31, 2012, as the first energy date and December 31, 2012 as the Scheduled Operation Date. Appendix B-3.

As reflected in the Application, in conformance with Commission Order No. 30488, this Agreement includes a Mechanical Availability Guarantee (MAG) (¶ 6.4), wind integration cost reduction (¶ 7.1), and wind forecasting cost sharing (Appendix E). In addition, the Agreement contains provisions for Delay Liquidated Damages (¶ 5.3) and associated Delay Security (¶ 5.7) to secure the established Scheduled Operation Date. Idaho Winds has been advised and understands that delays in the interconnection process do not constitute excusable delays in achieving the Scheduled Operation Date and if the Scheduled Operation Date is not achieved, delay damages will be assessed.

Agreement Paragraph 21.1 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 Idaho Winds for purchases of energy from the Sawtooth Wind Project will be allowed as prudently incurred expenses for ratemaking purposes.

On October 28, 2009, the Commission issued a Notice of Application and Modified Procedure in Case No. IPC-E-09-25. The deadline for filing written comments was November 25, 2009. Timely comments were filed by Commission Staff and a number of proponents of wind energy.

#### **Staff Comments**

Although Idaho Winds originally signed a contract for the Alkali project with much lower rates than are contained in the new proposed Sawtooth contract, Staff believes that the unusual circumstances of this case justify (1) termination of the Alkali contract and (2) approval of the new Sawtooth contract. Staff believes that no evidence exists that either Idaho Winds or Idaho Power took any actions to deliberately "game" the system to the disadvantage of ratepayers. Staff recommends that the Commission acknowledge termination of the Alkali Agreement and approve all of the Sawtooth Agreement's terms and conditions.

As reflected in Staff comments, the primary issue with this Agreement is that this is the second firm energy sales contract executed by Idaho Power and Idaho Winds LLC for this

location. The first power sales contract for the 18 MW Alkali Wind Project was approved on February 26, 2007. Reference Case No. IPC-E-06-36, Order No. 30253. On May 20, 2008, Idaho Power filed with the Commission a copy of a May 6, 2008, Letter Agreement between Idaho Power and the Alkali Wind Project terminating the contract. The power purchase rates contained in the Alkali contract were roughly 30% less than the rates in the Sawtooth Agreement for which the parties are now seeking approval. Although Idaho Winds considers the Alkali and Sawtooth Wind Projects to be different, the only difference apparent to Staff is that the Sawtooth project is 3 MW larger. In all other respects, the proposed Sawtooth Wind Project to Staff appears to be substantially the same as the Alkali Wind Project.

In describing the circumstances of the Alkali contract termination, as related to Staff by Idaho Power, Staff states that the Alkali Wind Project was proposed to be located near Glenns Ferry, not far from a cluster of numerous other proposed projects in the Hagerman-Magic Valley area. This dense cluster of proposed projects necessitated that studies be performed to resolve issues related to necessary transmission system improvements and fair cost sharing mechanisms amongst all of the proposed projects. Reference Case No. IPC-E-06-21, Order No. 30414. Although the Alkali project was not included in the transmission cluster studies, the analysis and design work that was being performed by Idaho Power's transmission group for the cluster studies impacted the interconnection and transmission upgrade analysis for the Alkali project. During the analysis of the "cluster," Idaho Power and the developer of the Alkali project became aware of previously unknown transmission and interconnection issues and potential costs, and resolution of these issues caused time delays in the interconnection process. In addition, the interconnection analysis for the Alkali project was delayed by Idaho Power replacing the study engineer in the middle of the Alkali interconnection study. Idaho Power admits that processing the interconnection request of Alkali was inordinately delayed. At least some of the delay, Idaho Power concedes, can be attributed to the Company.

This period of transmission uncertainty occurred at a time when the costs of material and equipment for the Alkali project were rising quickly. As a result, the developer of the Alkali project advised Idaho Power that he desired to cancel the power sales contract rather than continue to develop the project and risk a financial failure. Idaho Power maintains that it made a diligent effort to work with the developer with the intention of extending the online date rather than terminating the contract. However, in the end, the developer concluded that he could not

proceed and Idaho Power agreed to a mutual termination of the contract. On May 6, 2008, Idaho Power filed a copy of the termination agreement between Idaho Power and the Alkali project with the Commission. By its express terms, the termination agreement and cover letter specify that "Termination of the Agreement shall only be effective upon execution of this document by both parties and acceptance of this termination by the Idaho Public Utilities Commission." Although Idaho Power filed the termination letter agreement with the Commission on May 20, 2008, the Commission never took any action to either notice, acknowledge, or accept it.

In offering a new contract to the Sawtooth Project, Idaho Power does not believe that the Sawtooth Wind Project should be bound by the same rates, terms and conditions as were included in the Alkali contract that preceded it. The current avoided cost rates were approved in February of 2009, approximately one year after the decision was made to cancel the Alkali contract. Staff believes that Idaho Winds terminated its original contract in good faith, knowing that the escalation in project costs that occurred during transmission study delays made its project uneconomical at the avoided cost rates contained in the contract. Staff believes that the unusual circumstances of this case justify a new contract. Staff further believes that the circumstances of the Alkali/Sawtooth project can be distinguished from other Magic Valley QF projects involved in the interconnection and transmission cluster issue.

### **COMMISSION FINDINGS**

The Commission has reviewed and considered the filings of record in Case No. IPC-E-09-25 including the September 1, 2009, Sawtooth Project Agreement (with replacement pages) and the comments and recommendations of Commission Staff and proponents of wind energy.

We have also reviewed and considered the prior December 12, 2006, firm energy sales agreement approved by the Commission for this site (Alkali Wind Farm). Reference Case No. IPC-E-06-36, Order No. 30253. We have also reviewed the May 6, 2008, Letter Agreement between Idaho Power and the Alkali Wind Project terminating the contract for the Alkali Wind Project.

Based on our review of the record, we find it reasonable to accept the May 6, 2008, Letter Agreement between Idaho Power and the Alkali Wind Project terminating the Alkali contract and find it reasonable to regard the Alkali Project contract as terminated. In doing so, we acknowledge the escalating capital costs, transmission study delay and uncertainty described above as providing a reasonable basis for termination.

The Sawtooth Project Agreement submitted in this case is for a 21 MW wind project located in Elmore County, Idaho. As represented and pursuant to contract terms, under normal and/or average conditions the generation from Idaho Winds and the Sawtooth Project 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. 30744. 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, an electric utility, and the issues raised in this matter 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 acknowledge termination of the December 12, 2006 Firm Energy Sales Agreement between Idaho Power and Idaho Winds LLC for the Alkali Wind Project.


IT IS FURTHER ORDERED and the Commission approves the September 1, 2009 Firm Energy Sales Agreement between Idaho Power and Idaho Wind LLC for the Sawtooth Wind Project.

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.

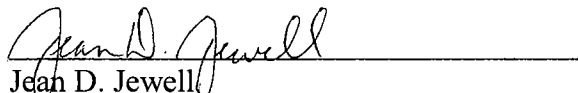
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 16<sup>th</sup>  
day of December 2009.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

bls/O:IPC-E-09-25\_sw2