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IDAHO PUBLIC
UTILITIES COMMISSION

November 8, 2010

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

CASE NO IPC-E-10-30

Dear Ms. Jewell:

We are enclosing an Original and seven (7) copies of the FORMAL COMPLAINT OF GROUSE CREEK II, LLC vs IDAHO POWER COMPANY.

Please let us know if you have any questions. Thank you.

Sincerely,

Nina M. Curtis
Administrative Assistant to Peter Richardson
Richardson & O'Leary PLLC

Peter J. Richardson (ISB # 3195)
Gregory M. Adams (ISB # 7454)
Richardson & O'Leary, PLLC
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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Complainant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

Grouse Creek Wind Park II, LLC,
Complainant,

vs.

IDAHO POWER COMPANY,
Defendant.

Case No. IPC-E-10-30

FORMAL COMPLAINT

INTRODUCTION

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This is a formal complaint filed by Grouse Creek Wind Park II, LLC with the Idaho Public Utilities Commission (the "Commission") pursuant to Idaho Administrative Rules 31.01.01.054. Grouse Creek Wind Park II, LLC requested that Idaho Power Company ("Idaho Power") execute a standard Public Utility Regulatory Policies Act of 1978 ("PURPA") power purchase agreement ("PPA") for qualifying facilities ("QFs") under 10 average monthly megawatts ("aMW") for Grouse Creek Wind Park II, LLC's renewable energy QF. Because Idaho Power has not negotiated in good faith in response to Grouse Creek Wind Park II, LLC's attempt to obligate itself to the terms of a standard PPA at the published avoided cost rates, Grouse Creek Wind Park II, LLC respectfully requests that the Commission issue a declaratory judgment that

1 Grouse Creek Wind Park II, LLC is entitled to such a PPA and further requests that the
2 Commission order Idaho Power to enter into a PPA at the rates in effect on the date of this filing
3 (errata to Order No. 31025).

4 **PRELIMINARY MATTERS**

5 Copies of all pleadings and other correspondence in this matter should be served upon
6 counsel for Grouse Creek Wind Park II, LLC at:

7 Peter J. Richardson
8 Gregory M. Adams
9 Richardson & O’Leary, PLLC
10 515 N. 27th Street
11 P.O. Box 7218
12 Boise, Idaho 83702
13 Telephone: (208) 938-7901
14 Fax: (208) 938-7904
15 peter@richardsonandoleary.com
16 greg@richardsonandoleary.com

17 **In support of this Complaint, Grouse Creek Wind Park II, LLC alleges as follows:**

18 **IDENTITY OF PARTIES**

19 1. Idaho Power is an Idaho Corporation with its principal place of business at 1221
20 West Idaho Street, Boise, Idaho 83702. Idaho Power Company is an electric company and a
21 public utility subject to the jurisdiction and regulation of the Idaho Public Utilities Commission
22 pursuant to I.C. § 61-129. Idaho Power is subject to the jurisdiction of the Commission, the
23 Public Utility Commission of Oregon, and the Federal Energy Regulatory Commission
24 (“FERC”).

25 2. Grouse Creek Wind Park II, LLC is a Delaware limited liability company, duly
26 registered to conduct business in the State of Idaho. Grouse Creek Wind Park II, LLC’s address
27 is Grouse Creek Wind Park II, LLC, c/o Wasatch Wind Intermountain, LLC, 2700 Homestead

1 Road, Suite 210, Park City, Utah 84098. Grouse Creek Wind Park II, LLC has the rights to
2 develop and dispose of the output of the Grouse Creek Wind Park II, LLC wind project, which is
3 a qualifying facility under the Public Utility Regulatory Policies Act of 1978.

4 JURISDICTION

5 3. This case involves PURPA's avoided cost provisions and FERC implementing
6 regulations thereto, which PURPA directs states to implement. *See* 16 U.S.C. § 824a-3 (a)-(g);
7 *FERC v. Mississippi*, 456 U.S. 742, 751 (1982). In Idaho, the Commission possesses jurisdiction
8 over complaints regarding rates of public utilities, including PURPA rates. I.C. §§ 61-129, -501.
9 -502, -503, -612; *see also Afton Energy Inc. v. Idaho Power Co.*, 111 Idaho 925, 929, 729 P. 2d
10 400, 404 (1986). The Commission has jurisdiction to issue declaratory judgments regarding
11 utility contracts pursuant Idaho's Declaratory Judgment Act, I.C. § 10-1203. *See Utah Power*
12 *and Light v. Idaho Pub. Utilities Commission*, 112 Idaho 10, 12, 730 P.2d 930, 932 (1986).

13 APPLICABLE LAWS AND REGULATIONS

14 4. Section 210 of PURPA requires electric utilities to purchase power produced by
15 small power producers that obtain QF status under section 201. 16 U.S.C. § 824a-3(a)(2). FERC
16 rules provide QFs with the option of selling electricity and capacity to a utility based on the
17 utility's "avoided costs" at the time the QF incurs a legally enforceable obligation to deliver
18 energy or capacity over a specified term. *See* 18 C.F.R. § 292.304(d)(2)(ii). Thus, "a QF, by
19 committing itself to sell to an electric utility, also commits the electric utility to buy from the QF;
20 these commitments result either in contracts or in non-contractual, but binding, legally
21 enforceable obligations." *JD Wind 1, LLC*, "Notice of Intent Not to Act and Declaratory Order,"
22 129 FERC ¶ 61,148, at p. 10-11 (November 19, 2009).

1 **FACTUAL BACKGROUND**

2 5. Grouse Creek Wind Park II, LLC, and its predecessors, have been actively
3 engaged in the development of the Grouse Creek Wind Park II, LLC wind project. The project
4 has a nameplate capacity rating of 21 MW, and is designed to generate no more than 10 average
5 monthly mega-watts.

6 6. Grouse Creek Wind Park II, LLC, and its predecessors, have made substantial
7 efforts in development of the project, and the project is mature and entitled to obligate itself to a
8 long-term PPA for a PURPA QF under 10 aMW entitled to the published rates.

9 7. Grouse Creek Wind Park II, LLC, and its predecessors, have been in contact with
10 Idaho Power for a substantial amount of time regarding the site and the specifics of
11 interconnection, transmission, and sale of its output. The Grouse Creek Wind Park II, LLC
12 project will interconnect with the Raft River Rural Electric Cooperative, and wheel the output
13 through Bonneville Power Administration (“BPA”) for delivery of the output to Idaho Power’s
14 system at the Minidoka substation.

15 8. Grouse Creek Wind Park II, LLC obligated itself to enter into the standard
16 PURPA PPA at a time when the rates in Order No. 31025 were applicable to its project, by
17 providing Idaho Power with the project’s specifications and stating that it intended to obligate
18 itself to a standard PURPA PPA containing all of the terms and conditions approved by the
19 Commission.

20 9. Despite Grouse Creek Wind Park II, LLC’s efforts, Idaho Power has acted in bad
21 faith by requiring completion of unnecessary interconnection processes and transmission service
22 requests prior to executing the PPA and refusing to enter into an agreement without a punitive
23 delay liquidated damages security provision requiring Grouse Creek Wind Park II, LLC to post

1 \$45/kw nameplate capacity. Grouse Creek Wind Park II, LLC has expressed a willingness to
2 agree to a delay security damages clause reasonably calculated by the Commission to
3 approximate Idaho Power's damages in the event of a delay default, and Grouse Creek Wind
4 Park II, LLC remains committed to such a provision deemed reasonable by the Commission.
5 With Grouse Creek Wind Park II, LLC's commitment to such a provision, Idaho Power's
6 insistence on completion of the protracted interconnection and transmission processes prior to
7 executing a PPA is unreasonable.

8 10. Additionally, after the close of business on Friday, November 5, 2010, Grouse
9 Creek Wind Park II, LLC learned of Idaho Power's joint petition and motion, with Rocky
10 Mountain Power and Avista Corporation, filed in Commission Case No. GNR-E-10-04,
11 requesting the Commission immediately lower the eligibility cap for published rates from 10
12 aMW to 100 kilowatts of nameplate capacity. Idaho Power acted in bad faith by failing to notify
13 Grouse Creek Wind Park II, LLC that it would file this Joint Motion to lower the eligibility cap
14 for published avoided cost rates prior to executing the PPA to which Grouse Creek Wind Park II,
15 LLC has been attempting to obligate itself.

16 11. Idaho Power provided Grouse Creek Wind Park II, LLC with no advance notice
17 of its intent to request that the Commission make the PPA sought by Grouse Creek Wind Park II,
18 LLC unavailable.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Grouse Creek Wind Park II, LLC respectfully requests that the
3 Commission issue an Order:

4 1. Declaring that Idaho Power is in violation of PURPA, FERC's implementing
5 regulations, and the Commission's orders.

6 2. Requiring Idaho Power to execute a standard PURPA power purchase agreement
7 with Grouse Creek Wind Park II, LLC at Idaho Power's avoided cost rates on file for QFs under
8 10 aMW in Order No. 31025.

9 3. Granting any other relief that the Commission deems necessary.

Respectfully submitted this 8th day of November 2010.

RICHARDSON AND O'LEARY, PLLC

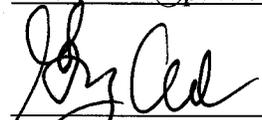


Peter J. Richardson (ISB No: 3195)
Gregory M. Adams (ISB No. 7454)
Attorneys for Complainant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of November, 2010, a true and correct copy of the within and foregoing **FORMAL COMPLAINT BY GROUSE CREEK WIND PARK II, LLC** was served by HAND DELIVERY, to:

Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, Idaho 83702
Jean.jewell@puc.idaho.gov



Gregory M. Adams