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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-10-33

Dear Ms. Jewell:

We are enclosing an Original and seven (7) copies of the FORMAL COMPLAINT OF BRAVO WIND, 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)
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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Complainant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

Bravo Wind, LLC,
Complainant,

vs.

IDAHO POWER COMPANY,
Defendant.

Case No. IP-E-10-33

FORMAL COMPLAINT

INTRODUCTION

1
2 This is a formal complaint filed by Bravo Wind, LLC with the Idaho Public Utilities
3 Commission (the "Commission") pursuant to Idaho Administrative Rules 31.01.01.054. Bravo
4 Wind, LLC requested that Idaho Power Company ("Idaho Power") execute a standard Public
5 Utility Regulatory Policies Act of 1978 ("PURPA") power purchase agreement ("PPA") for
6 qualifying facilities ("QFs") under 10 average monthly mega-watts ("aMW") for Bravo Wind,
7 LLC's renewable energy QF. Because Idaho Power has not negotiated in good faith in response
8 to Bravo Wind, LLC's attempt to obligate itself to the terms of a standard PPA at the published
9 avoided cost rates, Bravo Wind, LLC respectfully requests that the Commission issue a
10 declaratory judgment that Bravo Wind, LLC is entitled to such a PPA and further requests that

1 the Commission order Idaho Power to enter into a PPA at the rates in effect on the date of this
2 filing (errata to Order No. 31025).

3 **PRELIMINARY MATTERS**

4 Copies of all pleadings and other correspondence in this matter should be served upon
5 counsel for Bravo Wind, LLC at:

6 Peter J. Richardson
7 Gregory M. Adams
8 Richardson & O’Leary, PLLC
9 515 N. 27th Street
10 P.O. Box 7218
11 Boise, Idaho 83702
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15 greg@richardsonandoleary.com

16 **In support of this Complaint, Bravo Wind, LLC alleges as follows:**

17 **IDENTITY OF PARTIES**

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

24 2. Bravo Wind, LLC is a Delaware limited liability company, duly registered to
25 conduct business in the State of Idaho. Bravo Wind, LLC’s address is Bravo Wind, LLC, c/o
26 Cotterel WindEnergy Center, LLC, 150 N. Dairy Ashford, Building C, Suite 356D, Houston,
27 Texas 77079. Bravo Wind, LLC has the rights to develop and dispose of the output of the Bravo

1 Wind, LLC wind project, which is a qualifying facility under the Public Utility Regulatory
2 Policies Act of 1978.

3 JURISDICTION

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

12 APPLICABLE LAWS AND REGULATIONS

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

22

23

1 **FACTUAL BACKGROUND**

2 5. Bravo Wind, LLC, and its predecessors, have been actively engaged in the
3 development of the Bravo Wind, LLC wind project. The project has a nameplate capacity rating
4 of 29.9 MW, and is designed to generate no more than 10 average monthly mega-watts.

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

8 7. Bravo Wind, LLC, and its predecessors, have been in contact with Idaho Power
9 for a substantial amount of time regarding the site and the specifics of interconnection and sale of
10 its output. Bravo Wind, LLC has the rights to interconnect to Idaho Power’s system with other
11 QFs, which will all utilize a single point of delivery under Large Generator Interconnection
12 Request No. 302. That request secured interconnection and transmission rights for up to 177
13 MW of capacity.

14 8. Bravo Wind, LLC obligated itself to enter into the standard PURPA PPA at a time
15 when the rates in Order No. 31025 were applicable to its project, by delivering to Idaho Power a
16 standard PURPA PPA for the project executed by Bravo Wind, LLC.

17 9. Despite Bravo Wind, LLC’s efforts, Idaho Power has acted in bad faith by
18 requiring completion of unnecessary interconnection processes and transmission service requests
19 prior to executing the PPA, when Bravo Wind, LLC has the right to use the interconnection and
20 transmission rights secured under Request No. 302.

21 10. Additionally, after the close of business on Friday, November 5, 2010, Bravo
22 Wind, LLC learned of Idaho Power’s joint petition and motion, with Rocky Mountain Power and
23 Avista Corporation, filed in Commission Case No. GNR-E-10-04, requesting the Commission

1 immediately lower the eligibility cap for published rates from 10 aMW to 100 kilowatts of
2 nameplate capacity. Idaho Power acted in bad faith by failing to notify Bravo Wind, LLC that it
3 would file this Joint Motion to lower the eligibility cap for published avoided cost rates prior to
4 executing the PPA submitted by Bravo Wind, LLC.

5 11. Idaho Power provided Bravo Wind, LLC with no advance notice of its intent to
6 request that the Commission make the PPA sought by Bravo Wind, LLC unavailable.

7 LEGAL CLAIM

8 Complainant's Claim for Relief

9 **Idaho Power is in violation of PURPA, FERC's regulations and orders, and the**
10 **Commission's orders by failing to provide Bravo Wind, LLC with a power purchase**
11 **agreement with published avoided cost rates in Order No. 31025.**

12 12. Bravo Wind, LLC re-alleges and incorporates all preceding paragraphs.

13 13. Bravo Wind, LLC has attempted in good faith to engage in negotiations to obtain
14 a fully executed power purchase agreement to deliver energy and capacity to Idaho Power from
15 the Bravo Wind, LLC wind project and provided Idaho Power with an executed PPA for the
16 project.

17 14. Bravo Wind, LLC committed itself to sell energy and capacity from its QF to
18 Idaho Power at a time when the rates in Order No. 31025 were applicable to its QF, LLC, and,
19 consequently, Bravo Wind, LLC committed Idaho Power to buy from the QF at those rates.

20 15. These commitments result in non-contractual, but binding, legally enforceable
21 obligations. 18 C.F.R. § 292.304(d)(2)(ii); *JD Wind 1, LLC*, 129 FERC ¶ 61,148, at pp. 10-11.

22 16. By negotiating in bad faith and by failing to execute a PPA, Idaho Power is in
23 violation of PURPA, FERC's implementing regulations, and the Commission's orders. *See* 16

1 U.S.C. § 824a-3(a)(2); 18 C.F.R. § 292.304(d)(2)(ii); *Blind Canyon Aquaranch v. Idaho*
2 *Power Company*, Case No. IPC-E-94-1, Order No. 25802 (November 1994).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Bravo Wind, LLC respectfully requests that the Commission issue an
5 Order:

- 6 1. Declaring that Idaho Power is in violation of PURPA, FERC's implementing
7 regulations, and the Commission's orders.
- 8 2. Requiring Idaho Power to execute a standard PURPA power purchase agreement
9 with Bravo Wind, LLC at Idaho Power's avoided cost rates on file for QFs under 10 aMW in
10 Order No. 31025.
- 11 3. Granting any other relief that the Commission deems necessary.

Respectfully submitted this 8th day of November 2010.

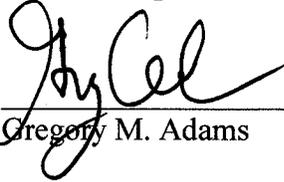
RICHARDSON AND O'LEARY, PLLC


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 BRAVO WIND, 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