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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) CASE NO. IPC-E-10-47
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
IDAHO POWER AND DEEP CREEK WIND)
PARK, LLC)

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) CASE NO. IPC-E-10-48
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
IDAHO POWER AND COTTONWOOD WIND)
PARK, LLC)

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) CASE NO. IPC-E-10-49
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN)
IDAHO POWER AND ROGERSON FLATS)
WIND PARK, LLC)

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) CASE NO. IPC-E-10-50
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT BETWEEN) COMMENTS OF THE
IDAHO POWER AND SALMON CREEK WIND) COMMISSION STAFF
PARK, LLC)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kristine A. Sasser, Deputy Attorney General, and in response to the Notice of Applications and Notice of Modified Procedure issued in Order No. 32154 on January 10, 2011, in Case Nos. IPC-E-10-47, IPC-E-10-48, IPC-E-10-49 and IPC-E-10-50, submits the following comments.

BACKGROUND

On December 10, 2010, Idaho Power Company filed Applications requesting an Order accepting or rejecting four 20-year Firm Energy Sales Agreements (Agreements) between Idaho Power and Deep Creek Wind Park, LLC; Cottonwood Wind Park, LLC; Rogerson Flats Wind Park, LLC; and Salmon Creek Wind Park, LLC. The four projects (Facilities) are all located near Rogerson, Idaho. The identical Applications recite that each wind generating project will have a maximum capacity amount of 20 MW. The projects will all be “qualifying facilities” (QFs) under the applicable provisions of the federal PURPA.

On December 10, 2010, Idaho Power and each of the four wind projects entered into their respective Agreements. Under the terms of the Agreements, the wind projects each agree to sell electric energy to Idaho Power for a 20-year term using the current non-levelized published avoided cost rates as currently established by the Commission in Order No. 31025 for energy deliveries of less than 10 aMW. Idaho Power warrants that the Agreements comport with the terms and conditions of the various Commission Orders applicable to PURPA agreements for a wind resource. Order Nos. 30415, 30488, 30738 and 31025.

Each Facility has selected May 30, 2012, as its Scheduled First Energy Date and June 30, 2012, as its Scheduled Operation Date. Agreement, Appendix B. Idaho Power asserts that various requirements have been placed upon the Facilities in order for Idaho Power to accept the Facilities’ energy deliveries. Idaho Power states that it will monitor the Facilities’ compliance with initial and ongoing requirements through the term of the Agreements. The parties have each agreed to liquidated damages and security provisions of \$45 per kW of nameplate capacity. Agreement, ¶¶ 5.3.2, 5.8.1.

STAFF ANALYSIS

Staff has reviewed the Agreements and confirms that they comport with all of the terms and conditions of the various Commission Orders applicable to PURPA agreements. The

Agreements contain the same rates, terms and conditions as other recently-approved contracts, thus Staff does not believe that any discussion of these items is necessary. However, while not new, the Agreements do contain a couple of provisions that Staff believes are worthy of mention because of the relatively recent approval of numerous contracts for purchase of wind generation by Idaho Power.

The Agreements specify a Scheduled Operation Date of June 30, 2012. Idaho Power asserts that it has advised each Facility of the Facility's responsibility to work with Idaho Power's Delivery business unit to ensure that sufficient time and resources will be available to construct the interconnection facilities, and transmission upgrades if required, in time to allow each Facility to achieve its Scheduled Operation Date. The Applications state that each Facility has been advised that delays in the interconnection or transmission process do not constitute excusable delays, and if a Facility fails to achieve its Scheduled Operation Date, delay damages will be assessed.

Application at 6. The Applications further maintain that each Facility has acknowledged and accepted the risk inherent in proceeding with its Agreement without knowledge of the requirements of interconnection and possible transmission upgrades. *Id.* at 7. Although the risk of delay and uncertain costs associated with interconnection and transmission upgrades has been addressed in the Agreements, Staff has some concerns that this risk is not being mitigated *prior* to the parties signing the power sales Agreements. One way to mitigate this risk would be to require that a Generation Interconnection Agreement (GIA), in which interconnection and transmission upgrade costs are specified with certainty, be submitted concurrently with the power sales Agreement. If disputes arise in the future over delays or costs related to interconnection and transmission, the Commission may wish to consider concurrent filings.

Another feature of the Agreements worth pointing out is provisions regarding non-compensated curtailment or disconnection of a Facility should certain operating conditions develop on Idaho Power's system. The Applications note that the parties' intent and understanding is that "non-compensated curtailment would be exercised when the generation being provided by the Facility in certain operating conditions exceeds or approaches the minimum load levels of [Idaho Power's] system such that it may have a detrimental effect upon [Idaho Power's] ability to manage its thermal, hydro, and other resources in order to meet its obligation to reliably serve loads on its system." *Id.* Staff has no objection to the contract provisions, but believes that if non-compensated curtailment becomes a frequent event, the economic viability of numerous QFs could be adversely affected.

Idaho Power's Applications specifically note the Joint Petition filed with the Commission on November 5, 2010, requesting an immediate reduction in the published avoided cost rate eligibility cap from 10 aMW to 100 kW. Application at 2. Reference Case No. GNR-E-10-04. The Commission is processing the case by Modified Procedure with comment deadlines and a date for oral argument having already passed. Order No. 32131. The Commission has indicated that any decisions it makes in the GNR-E-10-04 case will be effective as of December 14, 2010. Each of the four Agreements submitted for approval were executed by the Sellers on December 9, 2010 and by Idaho Power on December 10, 2010. The Agreements were filed for Commission approval on December 10, 2010. Because the Agreements were executed prior to December 14, 2010, Staff does not believe they should be impacted by any decisions the Commission issues in the GNR-E-10-04 case.

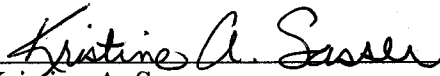
In its Applications, Idaho Power states that it is aware of and in compliance with its ongoing obligation under federal law, FERC regulations, and Idaho Public Utilities Commission Orders to enter into power purchase agreements with PURPA QFs. *Id.* at 3. However, Idaho Power asserts in each of its wind park Applications that "the request in this Application . . . is made with the specific reservation of rights and incorporation of the averments set forth in the Joint Petition regarding the possible negative effects to the [sic] both the utility and its customers of additional and unfettered PURPA QF generation on system reliability, utility operations, and costs of incorporating and integrating such a large penetration level of PURPA QF generation into the utility's system." Idaho Power's Applications further maintain "that the continuing and unchecked requirement for the Company to acquire additional intermittent and other QF generation regardless of its need for additional energy or capacity on its system not only circumvents the Integrated Resource Planning process and creates system reliability and operational issues, but it also increases the price its customers must pay for their energy needs." *Id.* at 4.

Although Staff understands and sympathizes with some of the concerns expressed by Idaho Power in its Applications, Staff does not believe there are sufficient grounds for the Commission to provide any relief due to the fact that the Agreements were fully executed and submitted prior to December 14, 2010, the proposed effective date of the Commission's forthcoming order in Case No. GNR-E-10-04.

STAFF RECOMMENDATION

Staff recommends that the Commission approve all of the terms and conditions of the four Agreements and declare that all payments made by Idaho Power to the Facilities for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 31ST day of January 2011.



Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 31ST DAY OF JANUARY 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NOS. IPC-E-10-47_48_49_50, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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