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**DONOVAN E. WALKER**
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March 24, 2011

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074

Re: Case Nos. IPC-E-10-59 – Rainbow Ranch Wind, LLC
IPC-E-10-60 – Rainbow West Wind, LLC

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Reply Comments in the above matters.

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER AND RAINBOW RANCH WIND, LLC | CASE NO. IPC-E-10-59<br><br>IDAHO POWER COMPANY'S REPLY COMMENTS |
| IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER AND RAINBOW WEST WIND, LLC | CASE NO. IPC-E-10-60<br><br>IDAHO POWER COMPANY'S REPLY COMMENTS |

Idaho Power Company ("Idaho Power"), in response to Order No. 32190 and the Comments of the Idaho Public Utilities Commission ("IPUC" or "Commission") Staff, hereby submits the following Reply Comments:

## I. INTRODUCTION

On December 16, 2010, Idaho Power filed with the Commission an Application for a determination regarding the Firm Energy Sales Agreements ("Agreement")

between Idaho Power and Rainbow Ranch Wind, LLC, and Rainbow West Wind, LLC ("Rainbow Wind" or "Projects"). On February 24, 2011, the Commission issued Notice of those Applications and Notice of Modified Procedure, Order No. 32190, setting forth a comment deadline of March 17, 2011, and a reply comment deadline of March 24, 2011.

Commission Staff filed Comments on March 17, 2011, recommending that the Commission not approve any of the Agreements between Idaho Power and the Projects because Staff does not consider any of the Agreements to be effective prior to the December 14, 2011, effective date of the Commission's Order No. 32176, which lowered the published avoided cost rate eligibility cap for wind and solar Qualifying Facilities ("QF") from 10 average megawatts ("aMW") to 100 kilowatts ("kW").

In these Reply Comments, Idaho Power submits factual information regarding the Company's processes for receiving requests, negotiating, and executing power purchase agreements pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"); factual information regarding the processing of the Projects' PURPA power purchase agreements; and contextual information regarding the review of the Projects' power purchase agreements by the Commission.

## II. SUMMARY OF IDAHO POWER'S PROCESSES FOR PURPA AGREEMENTS

### A. Initial Project Inquiries.

Idaho Power continuously receives numerous inquiries from various potential generation projects. Upon this initial contact, typically, a general discussion is had with each of the potential projects to explain the Power Purchase Agreement ("PPA") and Generation Interconnection Agreement ("GIA") process, which are two separate and

required processes that must be completed in order to sell generation to Idaho Power. The potential project is advised that to begin the official process of either the PPA or the GIA, that written documents and information will be required from the project.

In the case of the GIA process, a completed Generation Interconnection Application is required. In the case of a PURPA PPA, a document specifying information such as the location, contracting party, resource type, estimated nameplate rating, general description of the project, estimated on-line date, and other pertinent information is required so that a draft PPA may be created.

**B. Generator Interconnection and Transmission Availability.**

The GIA process is conducted by Idaho Power's Delivery business unit. Federal Energy Regulatory Commission ("FERC") regulations require Idaho Power to maintain separations between certain Idaho Power business units, in this case between Delivery, or the Company's Transmission Provider function, and Power Supply, or the Company's Merchant function. The first step in the interconnection process is the submission of a Generator Interconnection Application. Submittal by the project and acceptance of this application as complete establishes the proposed project's position in the interconnection queue and begins the engineering process of determining the feasibility and costs of interconnecting the proposed project to Idaho Power's electrical system. Additionally, the potential upgrades and/or availability of transmission capacity to move the projects energy from the point of interconnection within Idaho Power's system to Idaho Power's customer loads must also be determined.

After receipt and acceptance of the Generator Interconnection Application from the potential generation project Idaho Power Delivery works through a process of

inquires and meetings to obtain the required information to perform a Feasibility Study, a System Impact Study, and a Facility Study. The interconnection and transmission process is governed by Idaho Power's Tariff Schedule 72, filed with and approved by the Commission, and provisions of its Open Access Transmission Tariff ("OATT") filed with and approved by FERC. The potential project is informed of the progress of each step in this process. In addition, the potential project has various decision points and financial deposit requirements throughout this process. Failure by the potential generation project to make these decisions or make the deposit payments in a timely manner can lead to delays or termination of the interconnection process pursuant to Idaho Power's Tariff Schedule 72 and OATT.

**C. PURPA Power Purchase Agreement.**

Once a potential generation project has submitted written information on their proposed project that demonstrates the project is eligible for a PURPA purchase power agreement and wishes to move forward with the development of the proposed project, Idaho Power begins the process of drafting a PPA for the proposed project. Quite often a proposed project will send in incomplete and/or non-definitive information, which requires inquiries and exchanges between the Company and the project in order to obtain the information necessary to prepare a draft agreement. In many cases the potential projects never provide definitive information and never move forward with draft purchase power agreement discussions.

The schedule for processing a PPA can be affected by multiple factors, including the proposed project's responsiveness to information requests, the proposed project's provision of key decisions at key decision points, and the quantity of proposed projects

being processed by the Company. In the case of multiple PPA requests received by the Company, Idaho Power processes the requests on a "first-come, first-served" basis. This does not mean that multiple projects are not being processed at the same time. Multiple requests and draft contracts are often being processed simultaneously and are in various stages of the contract process.

Once the proposed project's draft PPA is agreed upon by the parties and in final draft form, an internal Idaho Power Sarbanes Oxley ("SOX") review is required. This review is required to achieve compliance with the SOX regulatory requirements. It involves a review and approval of the draft agreement by Idaho Power management, accounting, financial reporting (FAS133, Fin 46, etc), legal, and confirmation of the appropriate Idaho Power executive authorized to execute the agreement. As this review requires the involvement of numerous areas within the Company an expected completion time of this review is approximately 10 business days. Very rarely does this review result in any material changes to the draft PPA. Instead, the review process provides confirmation from all the necessary divisions within the Company that the contract meets each area's SOX requirements to enable Idaho Power to execute the PPA.

Upon completion of the internal SOX review, three executable copies of the PPA are prepared and sent to the project for signature and execution. The project is notified that the PURPA agreement must be executed within 10 days. In addition, the project is also notified that if any rules or regulations applicable to the agreement are modified or changed prior to both parties executing the agreement, that Idaho Power will be required to modify the agreement accordingly.

Upon return of the three agreements, signed and executed by the project, Idaho Power then schedules a time with the appropriate Idaho Power executive to sign and execute the agreement. Generally this is accomplished within one to two business days of when the executed agreement is received back from the project, but is dependent on the limited availability of the required Company executive with the requisite authority to execute contracts containing such large monetary obligations as those contained in the typical 20-year PURPA PPA.

Upon execution of the agreement by both parties, the executed agreement is forwarded to Idaho Power's legal department for preparation of an application and filing of the agreement with the Commission for its review. Generally, this application is prepared and submitted within five business days of the date that the Agreement is fully executed.

## III. RAINBOW WIND'S POWER PURCHASE AGREEMENT PROCESS

Idaho Power records indicate initial contacts with the Projects, where initial contracting information requests were sent to the Projects, on November 5, 2010. Requested information was received back from the Projects on November 9, 2010. Multiple discussions commenced with the Projects, and first draft contracts were provided to the Projects on November 23, 2010. Idaho Power continued to receive e-mail and communications from the Projects as late as December 9, 2010, that the Projects were still attempting to determine the project sizes and finalize the agreements.

Idaho Power began its internal SOX review process on December 8, 2010. On December 13, 2010, the unsigned, final execution versions of the contracts were hand delivered to the Projects. The Projects signed the agreements and returned them to

Idaho Power later that afternoon on December 13, 2010. Idaho Power signed the agreements on December 14, 2010, and filed them with the Commission for review on December 16, 2010. Idaho Power had no opportunity to execute the contracts prior to the December 14, 2010, effective date of Order No. 32176 because the contracts were not returned to Idaho Power by the Projects until late in the afternoon on December 13, 2010. Idaho Power did sign the agreements the next day at the first opportunity it had with the appropriate Company executive.

## IV. IDAHO POWER'S APPLICATION FOR REVIEW OF THE AGREEMENT

As the Company did with all PURPA contracts that were executed subsequent to the filing of the Joint Petition of the three Idaho electric utilities in Case No. GNR-E-10-04, Idaho Power filed the Projects' PURPA contracts for review with the Commission specifically seeking the Commission's acceptance or rejection of the agreements. Idaho Power specifically did not ask for the Commission's approval, nor did the Company specifically ask for the Commission's rejection. Instead, the Company asked for and seeks the Commission's independent review of the agreement. The Commission's independent review of the agreement serves several functions including: (1) Commission approval as required by the terms of the contract in order for it be effective; (2) if accepted by the Commission, the Company seeks authorization that all payments for purchases of energy under the agreement be allowed as prudently incurred expenses for ratemaking purposes; and (3) a Commission determination as to whether such agreement(s) is/are in the public interest.

As stated in its Application, Idaho Power clearly understands its obligation under federal law, FERC regulations, and this Commission's Orders, that it has not been

relieved of, to enter into power purchase agreements with PURPA QFs. As stated in the Joint Petition filing, Idaho Power has received a very large amount, in terms of both number of projects and volume of MWs, of requests from PURPA QF developers in a very short time frame demanding to enter into published avoided cost rate PURPA contracts. The Company diligently and in good faith processed these requests, in the ordinary course of business and on an expedited basis, and filed the same for review with this Commission, as is its legal obligation. The Company executed these contracts in good faith and if those contracts are approved by the Commission, will honor and comply with the requirements therein.

However, the request for review of the Projects' Agreements, as well as several other executed PURPA agreements that were filed subsequent to the November 5, 2010, Joint Petition in Case No. GNR-E-10-04, were made with the specific reservation of rights and incorporation of the averments set forth in that Joint Petition regarding the possible negative effects to the both the utility and its customers of additional and unfettered PURPA QF generation on system reliability, utility operations, the costs of incorporating and integrating such a large penetration level of PURPA QF generation into the utility's system, and, most importantly, the dramatic increase in costs that must be borne by the Company's customers because of the disaggregation of large projects into 10 aMW increments and the inflated avoided cost rates obtained thereby from the use of the Surrogate Avoided Resource methodology.

Even though Idaho Power was legally obligated to continue to negotiate, execute, and submit PURPA QF contracts for Commission review containing published rates for projects at and below 10 aMW, the Company is also obligated to reiterate 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 Plan ("IRP") planning process and creates system reliability and operational issues, but it also increases the price its customers must pay for their energy needs above the Company's actual avoided costs.

The Commission, in its role as the regulatory authority for all investor owned, public utilities in the state of Idaho, has an independent obligation and duty to assure that all contracts entered into by the public utilities it regulates are ultimately in the public interest. In the state of Idaho, contracts are afforded constitutional protection against interference from the State. Idaho Const. Art. I, § 16. However, despite this constitutional protection, the Commission may annul, supersede, or reform the contracts of the public utilities it regulates in the public interest. *Agricultural Products Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 29, 557 P.2d 617, 623 (1976) ("Interference with private contracts by the state regulation of rates is a valid exercise of the police power, and such regulation is not a violation of the constitutional prohibition against impairment of contractual obligations."); *see also Federal Power Comm's v. Sierra Pac. Power Co.*, 350, U.S. 348, 76 S.Ct. 368, 100 L.Ed. 388 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373, 100 L.Ed. 373 (1956) (U.S. Supreme Court finding that rates fixed by contract could be modified only "when necessary in the public interest"). The Commission may interfere in such a way with the contracts of a public utility only to prevent an adverse affect to the public interest. *Agricultural Products*, 98 Idaho at 29. "Private contracts with utilities are regarded as entered into

subject to reserved authority of the state to modify the contract in the public interest." *Id.*

Idaho Power proceeded reasonably and in good faith in the negotiation and eventual signing and execution of a published rate, 10 aMW PURPA contracts with the Projects as required by the then current applicable law, rules, and regulations. Idaho Power will continue to meet its legal and regulatory requirements and obligations with regard to the Commission's implementation of PURPA. However, as also required by the Commission, Idaho Power has an additional obligation when contracting with QF projects, recently reiterated to it by the Commission: "We intend for the Company to assist the Commission in its gatekeeper role of assuring that utility customers are not being asked to pay more than the Company's avoided cost for QF contracts. We expect Idaho Power to rigorously review such contracts." Order No. 32104.

## V. CONCLUSION

While meeting its legal obligations to contract with QF projects pursuant to the Commission's implementation of PURPA, the Company also asks that the Commission review such contracts to assure that they comport with the public interest. The public interest implications raised in the GNR-E-10-04 proceeding are of similar magnitude as those contemplated and required by the *Sierra-Mobile* doctrine and *Agricultural Products* and its progeny, as to invoke and authorize the Commission – in the exercise of its legislative, state police power and authority to protect the public in the contractual rates that it sets and the public utility contracts that it reviews for the purchase of energy from QF projects under PURPA. Idaho Power respectfully reiterates its request for the

Commission to review the Projects' contracts as to whether they are in the public interest and issue its Order either accepting or rejecting the same.

DATED at Boise, Idaho, this 24th day of March 2011.

DONOVAN E. WALKER
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of March 2011 I served a true and correct copy of the within and foregoing IDAHO POWER COMPANY'S REPLY COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

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|---|---|
| **Commission Staff**<br>Kristine Sasser<br>Deputy Attorney General<br>Idaho Public Utilities Commission<br>472 West Washington<br>P.O. Box 83720<br>Boise, Idaho 83720-0074 | _X_ Hand Delivered<br>____ U.S. Mail<br>____ Overnight Mail<br>____ FAX<br>_X_ Email Kris.Sasser@puc.idaho.gov |
| **Rainbow Ranch Wind & Rainbow West Wind, LLCs**<br>Brian D. Jackson<br>American Wind Group LLC- Manager<br>2792 Desert Wind Road<br>Oasis, Idaho 83647-5020 | ____ Hand Delivered<br>_X_ U.S. Mail<br>____ Overnight Mail<br>____ FAX<br>_X_ Email brian@americanwind.net |

Donovan E. Walker