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March 31, 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-10-61 – Grouse Creek Wind Park, LLC
IPC-E-10-62 – Grouse Creek Wind Park II, 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 matter.

Very truly yours,

Jason B. Williams

JBW:csb
Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER AND GROUSE CREEK WIND PARK, LLC	CASE NO. IPC-E-10-61 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 GROUSE CREEK WIND PARK II, LLC	CASE NO. IPC-E-10-62 IDAHO POWER COMPANY'S REPLY COMMENTS

Idaho Power Company ("Idaho Power"), in response to Order No. 32191, the Comments of the Idaho Public Utilities Commission ("Commission") Staff, and the Comments of Grouse Creek Wind Park, LLC, and Grouse Greek Wind Park II, LLC ("Grouse Creek" or "Projects") hereby submits the following Reply Comments:

I. INTRODUCTION

On December 29, 2010, Idaho Power filed with the Commission Applications for a determination regarding the Firm Energy Sales Agreements ("Agreements") between

Idaho Power and Grouse Creek. On February 24, 2011, the Commission issued Notice of those Applications and Notice of Modified Procedure, Order No. 32191, setting forth a comment deadline of March 24, 2011, and a reply comment deadline of March 31, 2011.

Commission Staff filed Comments on March 24, 2011, recommending that the Commission not approve either 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"). On March 24, 2011, the Projects submitted comments advocating approval of the Agreements.

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 for a developer 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. Grouse Creek, however, are unique projects in that because they are not within the Idaho Power service territory or connecting directly to the Idaho Power electrical system, the Projects must work with other utilities and transmission providers to deliver the energy from the Projects' sites to Idaho Power. Idaho Power requires some level of assurance that off-system generators such as the Projects will be able to secure interconnection and transmission as part of its QF project process.

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.

Any generator desiring to connect to Idaho Power's system must arrange for appropriate interconnection and transmission services. As these proposed Projects are not within the Idaho Power service territory and will not be directly connecting to the Idaho Power electrical system, the Projects must work with third-party transmission providers in order to deliver energy to Idaho Power. In this case, the Projects had to work with a host utility (Raft River Rural Electric Cooperative) to complete the host utility's generator interconnection process. In addition, the Projects must acquire firm transmission capacity from all transmitting entities between the Projects' interconnection point to the host utility's system and the point of delivery on Idaho Power's electrical

system. Idaho Power's ability to accept the energy at the proposed point of delivery is contingent upon the off-system generators acquiring firm transmission to the point of delivery. Upon notification from the Projects of the desired delivery point on Idaho Power's electrical system and confirmation that the Projects are able to interconnect to the host utility and acquire firm transmission capacity to the designated point of delivery, Idaho Power then submits a transmission service request ("TSR") for network resource energy deliveries at the designated point of delivery. Because QFs are designated as Idaho Power network resources, the TSR is submitted to the Idaho Power transmission group by the Company's power supply business unit on behalf of the proposed project. The Idaho Power transmission group then responds to the TSR with notification that network transmission capacity is available and/or additional studies and potential network upgrades will be required. Pursuant to Federal Energy Regulatory Commission ("FERC") regulations, Idaho Power must maintain a separation between its transmission and power supply business units.

An off-system generator, such as the Projects, is notified of the various responses to the TSR only after the generators have agreed to the study process and cost responsibility for the studies. Upon agreement, the studies are initiated and specific upgrades are identified, if necessary. After sharing the results of the studies and upgrades with the developers, the generator must agree to pay for any system upgrades. Once an agreement is reached for system upgrades, Idaho Power orders the necessary upgrade equipment and construction is scheduled.

C. PURPA Power Purchase Agreements.

Once a potential generation project has submitted written information on its proposed project that demonstrates the project is eligible for a PURPA PPA 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 developer 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 PPA discussions. In addition, for off-system generators, such as the Projects, Idaho Power requests information and confirmation of the status of off-system interconnection and transmission processes prior to drafting of a specific PPA to ensure the generator is committing sufficient resources to enable it to deliver energy to Idaho Power's system.

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 terms and conditions of a proposed project's PPA are 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 copies of the 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. GROUSE CREEK'S POWER PURCHASE AGREEMENT PROCESS

Idaho Power records indicate initial contacts with Wasatch Wind, the developer behind the Projects, began in late February 2010. The initial Wasatch Wind project was a single 150 megawatt ("MW") project spread across 4,000 acres of private and public land located in northern Utah. Grouse Creek Comments at 8. Discussions between Wasatch Wind and Idaho Power on the single 150 MW project continued until April 2010, when Wasatch Wind informed Idaho Power that it was now considering a single 65 MW project instead of the previously discussed 150 MW project. Because this proposed project was a QF larger than 10 aMW, Idaho Power prepared pricing for the proposed project based upon its Integrated Resource Plan ("IRP")-based pricing methodology, pursuant to Commission requirements. *See* Order No. 32176. Idaho Power analyzed this proposal pursuant to the IRP-based methodology and provided Wasatch Wind with the results, including a proposed price.

Three months later, Wasatch Wind once again changed the configuration of its proposed project and informed Idaho Power on July 14, 2011, that it "intended to reduce its overall footprint and wished to discuss power sales contracts for two single 10 aMW projects, instead of a large 65 MW project." Grouse Creek Comments at 13. Idaho Power records indicate that initially Wasatch Wind was anticipating two projects, one

with a 30 MW nameplate capacity and the other with a 21 MW nameplate capacity. Consistent with its existing processes, Idaho Power began drafting PPAs for these two projects. During negotiations, Wasatch Wind continued to object to certain terms in the PPAs related to Idaho Power's standard security deposit requirements. Grouse Creek Comments at 15. In addition, and consistent with prudent utility business practices, Idaho Power required confirmation from Wasatch Wind that since its proposed projects were located off Idaho Power's system, Idaho Power required certain commitments from the Projects to ensure they were able to deliver energy to Idaho Power's system. After deliberation and assurances from Wasatch Wind that it would have firm transmission available to deliver energy to Idaho Power's system, Idaho Power agreed to relax this precondition of the PPA and continued to negotiate in good faith with the Projects. Notably, and as indicated in their comments, the Projects have still not entered into a definitive transmission service agreement with Bonneville Power Administration ("BPA") to enable it to deliver energy to Idaho Power's system. Grouse Creek Comments at 3 (stating "BPA has indicated that it will forward a 20-year PTP [point-to-point] transmission service agreement for each project by the end of March 2011").

Discussions continued between the parties and on December 2, 2010, Wasatch Wind sent marked-up versions of previously sent draft PPAs sent by Idaho Power. Grouse Creek Comments at 17. These mark-ups were the first time Idaho Power was definitively informed of the Projects' size and configuration (i.e., two, 21 MW projects). Detailed negotiations continued between the parties over the next couple of weeks. On December 9, 2011, Wasatch Wind provided Idaho Power with the Projects' proposed

on-line dates, information which was essential in order to finalize the PPAs. On December 14, 2010, Idaho Power sent an information request to Wasatch Wind seeking information necessary to finalize the PPAs. On December 15, 2010, Idaho Power sent Wasatch Wind an e-mail confirming the first energy and commercial operation dates. On December 16, 2010, Idaho Power received an e-mail from Wasatch Wind confirming the first energy and commercial operation dates. On that same day, Idaho Power provided execution copies of the PPA that were picked-up from Idaho Power's office by the Projects' counsel. On December 21, 2011, Grouse Creek executed the PPAs and sent them via overnight mail to Idaho Power. Idaho Power executed the PPAs on December 28, 2010, and filed them at the Commission the next day.

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 PPAs. The Commission's independent review of the Agreements 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 Agreements be allowed as prudently incurred

expenses for ratemaking purposes; and (3) a Commission determination as to whether such Agreements are in the public interest.

As stated in its Applications, 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 MW, 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 Commission-mandated 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."); s*ee 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") ("*Sierra-Mobile* doctrine"). 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 the published avoided cost 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 31st day of March 2011.

JASON B. WILLIAMS
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of March 2011 I served a true and correct copy of 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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