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IDAHO PUBLIC
UTILITIES COMMISSION

April 7, 2011

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

RE: **IPC-E-10-61**

Dear Ms. Jewell:

We are enclosing for filing in the above-referenced docket an original and seven (7) copies of Grouse Creek Wind Park, LLC's **MOTION TO SET TIME FOR ORAL ARGUMENT**.

An additional copy is enclosed for you to stamp for our records.

Sincerely,

Gregory M. Adams
Richardson & O'Leary PLLC

encl.

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Attorneys for Grouse Creek Wind Park, LLC
and Grouse Creek Wind Park II, LLC

BEFORE THE IDAHO

PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE) **CASE NO. IPC-E-10-61** ✓
APPLICATION OF IDAHO POWER)
COMPANY FOR A DETERMINATION) MOTION TO SET TIME FOR ORAL
REGARDING THE FIRM ENERGY) ARGUMENT
SALES AGREEMENT FOR THE SALE)
AND PURCHASE OF ELECTRIC)
ENERGY BETWEEN IDAHO POWER)
COMPANY AND GROUSE CREEK)
WIND PARK, LLC)

IN THE MATTER OF THE) **CASE NO. IPC-E-10-62**
APPLICATION OF IDAHO POWER)
COMPANY FOR A DETERMINATION) MOTION TO SET TIME FOR ORAL
REGARDING THE FIRM ENERGY) ARGUMENT
SALES AGREEMENT FOR THE SALE)
AND PURCHASE OF ELECTRIC)
ENERGY BETWEEN IDAHO POWER)
COMPANY AND GROUSE CREEK)
WIND PARK II, LLC)

COMES NOW, Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC,
each of which is managed by Wasatch Wind Intermountain (the "Grouse Creek QF", the
"Grouse Creek II QF," or collectively the "Grouse Creek QFs"), and pursuant to the Idaho Public

Utilities Commission's ("Commission's") Rules of Procedure, Rules 56 and 203, IDAPA 31.01.01.56 and 31.01.01.203, moves the Commission to set a time for oral argument.¹ The Commission may issue a notice of oral argument in the above-captioned matters pursuant to Rules of Procedure 204 and 241, IDAPA 31.01.01.204 and 31.01.01.241.01. Counsel for the Grouse Creek QFs has conferred with counsel for Idaho Power and for Commission Staff. Idaho Power is opposed to oral argument, but Commission Staff expressed no support or opposition.

In support of this request, the Grouse Creek QFs state as follows:

1. The Commission's Notice of Application and Notice of Modified Procedure (Order No. 32191) set a deadline of March 24, 2011, for the filing of Comments by any person desiring to state a position on the Applications, and a deadline of March 31, 2011, for Idaho Power to file Reply Comments.

2. The Commission's Order No. 32191 stated that persons requesting a hearing should request a hearing in Comments due on March 24, 2011.

3. On March 24, 2011, the Grouse Creek QFs and Commission Staff filed Comments. The Grouse Creek QFs' Comments included as an attachment the *Affidavit of Christine Mikell*, which contained several exhibits evidencing the development efforts and the communications between Idaho Power and the Grouse Creek QFs. Expecting no conflicting interpretations of the underlying evidence submitted, the Grouse Creek QFs did not request a hearing at that time.

¹ The relevant facts for each of these cases are substantially similar. The Grouse Creek QFs have therefore filed identical requests for oral argument in each case, and propose a single oral argument to address both cases.

4. On March 31, 2011, Idaho Power filed Reply Comments.

5. The Company, in its Reply Comments, appears to have inadvertently included statements of fact that are materially inconsistent with evidence in the record.

6. Idaho Power stated, “Discussions between Wasatch Wind and Idaho Power on a single 150 MW project continued until April 2010, when Wasatch Wind informed Idaho Power that it was now considering a single 65 MW project” *Idaho Power’s Reply Comments*, Case Nos. IPC-E-10-61, IPC-E-10-62, p. 7 (March 31, 2011).

7. There is no evidence that Wasatch Wind ever requested a contract from Idaho Power for a 150 MW project, and the evidence of the initial request on February 26, 2010 was for “either a 10 aMW or something less than 80 MW Qualifying Facility under PURPA.” *See Affidavit of Christine Mikell*, at Exhibit A, p. 2; *see also id.* at Exhibit A, p. 1 (containing the email response of Mr. Randy Allphin of Idaho Power acknowledging receipt of this request). Indeed, at that time, Wasatch Wind had already determined with BPA that it would be impossible to deliver more than 93 MW to Idaho Power on the applicable transmission line, *id.* at ¶¶ 17, 19, and a request for a contract for 150 MW would therefore make no sense. Although Wasatch Wind did initially plan a project up to 150 MW with BLM and the private landowner, it does not ever recall requesting a contract from Idaho Power for a project sized at 150 MW.

8. Additionally, Idaho Power stated, “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. . . . These mark-ups were the first time Idaho Power was definitively informed of the Projects’ size and configuration (i.e. two 21 MW projects).” *Idaho Power’s Reply*

Comments, Case Nos. IPC-E-10-61, IPC-E-10-62, at p. 8.

9. The record demonstrates that Wasatch Wind clearly requested two contracts for two 10 average megawatt projects in July 2010, *Affidavit of Christine Mikell*, at Exhibit at Exhibit D, p. 1, and definitively described such projects with a maximum capacity of 21 MW on October 1, 2010, well before December 2010. *See id.* at Exhibit G at pp. 1, 4, 9, 12.

10. Idaho Power itself was well aware of the changes resulting in both projects being sized at 21 MW. *See id.* at Exhibit I, p. 2 (containing Mr. Allphin's November 1, 2010 letter, which stated: "In the letter dated October 1, 2010, the project has requested the Grouse Creek Wind Park I be resized at 21 MW vs the previous information that the project be sized at 30 MW. Based on this latest information, Idaho Power will file TSR's for Grouse Creek Wind Park I for a nameplate rating of 21 MW and Grouse Creek Wind Park II for a nameplate rating of 21 MW"). Indeed, the Complaints filed on November 8, 2010, in Case Nos. IPC-E-10-29 and IPC-E-10-30 both stated the QFs would be 21 MW. *See Complaints*, Case Nos. IPC-E-10-29 and IPC-E-10-30, ¶ 5 (Nov. 8, 2010). The 21-MW maximum capacity of these projects was well settled far in advance of December 2010.

11. Additionally, the Company, in its Reply Comments, appears to have revived its argument made and then later retracted during contract negotiations, that an off-system QF must secure a Point to Point ("PTP") transmission agreement prior to Idaho Power agreeing to execute a power sales contract. *See Idaho Power's Reply Comments* at p. 8 ("Notably . . . the Projects have still not entered into a definitive transmission service agreement with Bonneville Power Administration ('BPA') to enable it to deliver the energy to Idaho Power's system").

12. The Grouse Creek QFs had objected to Idaho Power's requirement of firm transmission rights prior to contract execution as the primary concern in the Complaints, which were not litigated after Idaho Power waived the firm transmission requirement prior to contract execution. *See Affidavit of Christine Mikell*, at ¶¶ 63, 67-68, 73-74.

13. The Grouse Creek QFs understood Idaho Power to have agreed that a PTP transmission agreement need not be a prerequisite if the QF agrees to a reasonable delay security to protect Idaho Power and its ratepayers in the event a PTP transmission agreement cannot be secured. *See Grouse Creek QFs' Comments*, Case Nos. IPC-E-10-61, IPC-E-10-62, pp. 16-18 (March 24, 2010).

14. Therefore, the Grouse Creek QFs, in their filing in these cases, only briefly described some of the reasons it is impractical to require a firm transmission agreement prior to contract execution. *Affidavit of Christine Mikell*, at ¶ 33.

15. Counsel for the Grouse Creek QFs is not aware of any recent case where the Commission has required a QF to secure a firm transmission agreement prior to contract execution.

16. For the reasons stated above, the soundness of requiring firm transmission rights has not been fully addressed in these cases.

17. Because the records in these cases are lengthy and Idaho Power appears to interpret the evidence different than the Grouse Creek QFs, the Grouse Creek QFs submit that it would be beneficial for the Commission to hold oral argument in these cases.

18. The Grouse Creek QFs also submit that adoption of the firm transmission rights

requirement prior to contract execution would constitute a drastic policy change with widespread impacts, without the benefit of a full vetting of the issue. Therefore, oral argument on that issue would also be beneficial to the Commission in rendering its decision in these cases.

WHEREFORE, the Grouse Creek QFs respectfully request that this Commission grant the Motion to Set a Time for Oral Argument in these proceedings.

Respectfully submitted this 7th day of April, 2011,

RICHARDSON & O'LEARY, PLLC

A handwritten signature in black ink, appearing to read "Richardson", written over a horizontal line.

Peter J. Richardson

Gregory M. Adams

Attorneys for Grouse Creek Wind Park,
LLC and Grouse Creek Wind Park II, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of April, 2011, a true and correct copy of the within and foregoing **MOTION TO SET TIME FOR ORAL ARGUMENT** was served as shown to the following parties:

Lisa Nordstrom
Donovan Walker
Idaho Power Company
PO Box 70
Boise, Idaho 83707
dwalker@idahopower.com
lnordstrom@idahopower.com

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Randy Allphin
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PO Box 70
Boise, ID 83707
rallphin@idahopower.com

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Signed



Gregory Adams