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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**
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**
	)	**COMMENTS OF THE COMMISSION STAFF**

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. 32191 on February 24, 2011, in Case Nos. IPC-E-10-61 and IPC-E-10-62, submits the following comments.

BACKGROUND

On December 29, 2010, Idaho Power Company filed Applications requesting acceptance or rejection of two 20-year Firm Energy Sales Agreements (Agreements) between Idaho Power and Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC. The two projects (Facilities) are both located near Lynn, Utah. The projects will be "qualifying facilities" (QFs)

under the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). Idaho Power requests that its Applications be processed by Modified Procedure.

On December 28, 2010, Idaho Power and each of the two 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. Applications at 4. The nameplate rating of each Facility is 21 MW. Under normal and/or average conditions, each Facility will not exceed 10 aMW on a monthly basis. Idaho Power warrants that the Agreements comport with the terms and conditions of the various Commission Orders applicable to PURPA agreements for wind resources. Order Nos. 30415, 30488, 30738 and 31025.

Each Facility has selected June 1, 2013, as its Scheduled First Energy Date and December 1, 2013, as its Scheduled Operation Date. Applications at 5. 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. 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 for delivery to construct the interconnection facilities, and transmission upgrades if required, in time to allow each Facility to achieve its December 1, 2013, Scheduled Operation Date.

The Applications state that each Facility "is currently in the beginning stages of the generator interconnection process. [Each] Facility is located outside of Idaho Power's service territory and thus must complete the interconnection process with a different host utility." *Id.* at 6. The Agreements require each Facility to acquire interconnection and continuous firm transmission capacity to a Point of Delivery on Idaho Power's system. Idaho Power asserts 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. *Id.* 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. The parties have each agreed to liquidated damage and security provisions of $45 per kW of nameplate capacity. Agreement, ¶¶ 5.3.2, 5.8.1.

Idaho Power states that each Facility has also been made aware of and accepted the provisions in each Agreement and Idaho Power's approved Schedule 72 regarding non-compensated curtailment or disconnection of its 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." Applications at 7.

The Agreements will not become effective until the Commission has approved all of the terms and conditions and declares that all payments made by Idaho Power to the Facilities for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreement ¶ 21.1.

Idaho Power's Applications specifically note the Joint Petition it 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. Applications at 2. Idaho Power states that it is aware of and in compliance with its ongoing obligation under federal law, FERC regulations, and Commission Orders to enter into power purchase agreements with PURPA QFs. *Id.* at 3. However, Idaho Power asserts in each of its Applications that the Commission has specifically directed the utility "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 [its] QF contracts." *Id.* Idaho Power further states 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.

STAFF ANALYSIS

Both of the Agreements submitted for approval are identical except for the names of the facilities and the LLCs under which each is being developed. Both of the projects are also proposed to be built in the same general vicinity as shown on the map included as Attachment A.

The two facilities collectively are expected to generate 128,887 MWhs annually. Under the non-levelized rates in the Agreements, the annual energy payments by Idaho Power for the expected generation will be approximately $8.3 million in 2014 increasing to approximately $15.9 million in 2033, or a cumulative total of $236.4 million over the 20-year term of the Agreements. The collective net present value of the energy payments over the life of the Agreements will be approximately $83.8 million.

With the exception of rates, all of the other terms and conditions included in the Agreements are consistent with recent Commission orders. There are no disputes between the parties over any terms and conditions.

Temporary Lowering of the Eligibility Cap for Published Rates

On November 5, 2010, Idaho Power Company, Avista Corporation, and PacifiCorp dba Rocky Mountain Power (Utilities) filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues related to PURPA. While the investigation is underway, the Petitioners also requested that the Commission "lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW (to) be effective immediately. . . ." Petition at 7. On December 3, 2010, the Commission issued Order No. 32131, Notice of Joint Petition, Notice of Intervention Deadline, Notice of Oral Argument. In the Order, the Commission declined to immediately reduce the published avoided cost rate eligibility cap, but did establish a schedule for processing the Utilities' request to reduce the eligibility cap via Modified Procedure and to schedule an oral argument. In particular, the Commission stated its desire to receive comments regarding the following:

(1) the advisability of reducing the published avoided cost eligibility cap;

(2) if the eligibility cap is reduced, the appropriateness of exempting non-wind QF projects from the reduced eligibility cap; and

(3) the consequences of dividing larger wind projects into 10 aMW projects to utilize the published rate.

In its Order, the Commission went on to state "**Finally, it is our intent that our decision regarding the 'Joint Motion' to reduce the published avoided cost eligibility cap shall become effective on December 14, 2010.**" Reference Order No. 32131 at 5-6, emphasis added. By stating its intent, parties were given clear, unambiguous, advance notice that the eligibility cap may be reduced.

Written comments were submitted by the parties on December 22, 2010, written reply comments were submitted on January 19, 2011, and Oral Argument was heard on January 27, 2011. On February 7, 2011, the Commission issued Order No. 32176 which temporarily reduced the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar QFs only. In accordance with its stated intent in Order No. 32131, Order No. 32176 confirmed that the reduction in the eligibility cap would be effective December 14, 2010. Reference Order No. 32176 at 11-12.

Both of the Agreements presented for Commission approval were signed by the project developer on December 20, 2010, and signed by Idaho Power on December 28, 2010. The Agreements were filed with the Commission on December 29, 2010. The Agreements contain rates from Order No. 31025, the published rates currently in effect. However, as a result of Order No. 32176, wind and solar QF contracts executed on or after December 14, 2010 for facilities larger than 100 kW are ineligible for those rates.

As a matter of law, Staff considers the effective date of a contract to be that date upon which both parties have signed the agreement. A signature by only one party, Staff believes, does not create an enforceable contract nor establish an effective date. Consequently, for the submitted Agreements, Staff considers the effective date to be December 28, 2010.

Because the effective date of each of the Agreements is not prior to December 14, 2010, the date on which the lowered eligibility cap became effective, and because the size of each proposed wind project clearly exceeds 100 kW, the current eligibility cap for wind and solar facilities to obtain a published rate contract, Staff considers the rates contained in the Agreements to be in violation of Commission Order No. 32176. Consequently, Staff recommends denial of both of the Agreements.

In order for the rates in the Agreements to comply with Commission Orders, Staff believes that they would have to be determined using the IRP methodology. Staff suggests that the Commission deny approval of the Agreements without prejudice and permit revised agreements to be submitted containing rates computed under the prescribed IRP methodology. Alternatively, the Agreements could be voluntarily withdrawn, then held pending the outcome of the initial phase of Case No. GNR-E-11-01 in which the Commission will determine the disposition of its prior decision to temporarily lower the eligibility cap from 10 aMW to 100 kW.

STAFF RECOMMENDATION

Staff recommends that the Commission not approve either of the two Agreements.

Respectfully submitted this 24TH day of March 2011.

Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling

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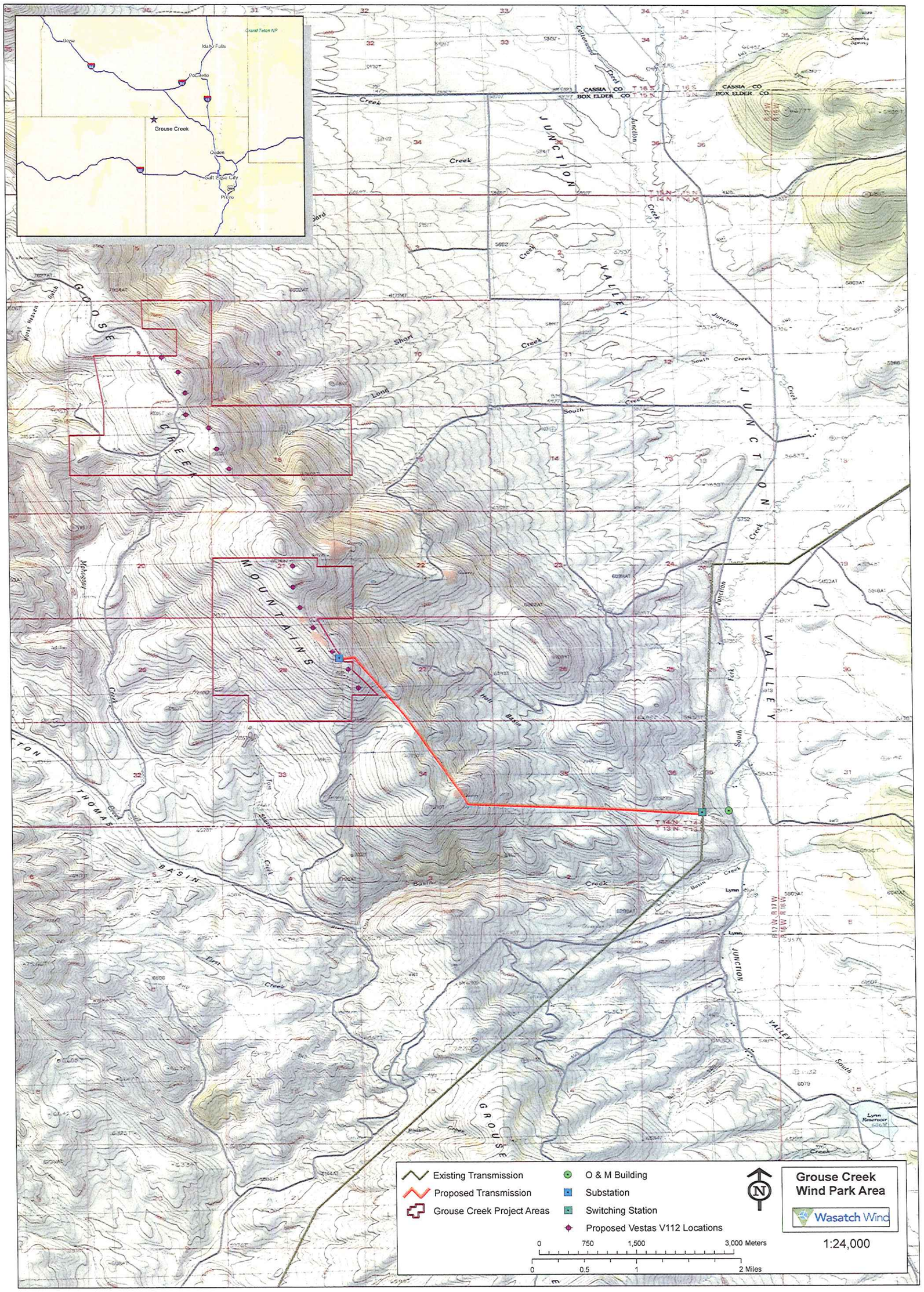

Attachment A
Case No. IPC-E-10-61_62
Staff Comments
03/24/11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 24TH DAY OF MARCH 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF,** IN CASE NOS. IPC-E-10-61_62, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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