

DECISION MEMORANDUM

**TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL**

DATE: FEBRUARY 28, 2011

**SUBJECT: IDAHO POWER'S APPLICATION FOR A DETERMINATION REGARDING A
POWER PURCHASE AGREEMENT WITH WESTERN DESERT ENERGY,
CASE NO. IPC-E-11-01**

On February 2, 2011, Idaho Power Company filed an Application requesting acceptance or rejection of a 20-year Firm Energy Sales Agreement (Agreement) between Idaho Power and Western Desert Energy, LLC. The project (Facility) is located near Oreana, Idaho. The project will be a "qualifying facility" (QF) under the applicable provisions of the federal PURPA.

THE AGREEMENT

On January 28, 2011, Idaho Power and Western Desert entered into an Agreement wherein Western Desert proposes to design, construct, install, own, operate, and maintain a 5 MW (maximum capacity) wind generating Facility. Under the terms of the Agreement, the Facility agrees 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. Application at 4. Under normal and/or average conditions, the Facility will not exceed 10 aMW on a monthly basis. Idaho Power warrants that the Agreement comports with the terms and conditions of the various Commission Orders applicable to PURPA agreements for wind resources. Order Nos. 30415, 30488, 30738 and 31025.

The Facility has selected September 1, 2012, as its Scheduled First Energy Date and December 1, 2012, as its Scheduled Operation Date. Applications at 5. Idaho Power asserts that various requirements have been placed upon the Facility in order for Idaho Power to accept the Facility's energy deliveries. Idaho Power states that it will monitor the Facility's compliance with initial and ongoing requirements through the term of the Agreement. Idaho Power asserts that the Facility has been advised that delays in the interconnection or transmission process do not constitute

excusable delays and if the Facility fails to achieve its Scheduled Operation Date delay damages will be assessed. *Id.* at 6. The parties have agreed to liquidated damage and security provisions of \$45 per kW of nameplate capacity. Agreement, ¶¶ 5.3.2, 5.8.1.

By its own terms, the Agreement 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 Facility for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Agreement ¶ 21.1.

Idaho Power's Application specifically notes 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. Application at 2. 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 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.

Idaho Power requests that its Application be processed by Modified Procedure pursuant to Commission Rules of Procedure 201-204. IDAPA 31.01.01.201-.204.

STAFF RECOMMENDATION

Staff recommends that the Application be processed by Modified Procedure with a comment deadline of April 7, 2011.

COMMISSION DECISION

Does the Commission agree with the recommendation that the Power Purchase Agreement be processed under Modified Procedure with a comment deadline of April 7, 2011?

Kristine A. Sasser
Deputy Attorney General