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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR A) CASE NO. IPC-E-11-01
DETERMINATION REGARDING A FIRM)
ENERGY SALES AGREEMENT WITH) COMMENTS OF THE
WESTERN DESERT ENERGY, LLC FOR THE) COMMISSION STAFF
SALE AND PURCHASE OF ELECTRIC)
ENERGY.)

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 Application and Notice of Modified Procedure issued in Order No. 32203 on March 10, 2011, in Case No. IPC-E-11-01, submits the following comments.

BACKGROUND

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. Idaho Power requests that its Application be processed by Modified Procedure.

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. Application 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 each 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.

STAFF ANALYSIS

The Facility is expected to generate 12,930 MWhs annually. Under the non-levelized rates in the Agreement, the annual energy payments by Idaho Power for the expected generation will be approximately \$ 0.8 million in 2013 increasing to approximately \$1.5 million in 2031, or a cumulative total of \$23.3 million over the 20-year term of the Agreement. The net present value of the energy payments over the life of the Agreement will be approximately \$8.7 million.

With the exception of rates, all of the other terms and conditions included in the Agreement 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.

The Agreement presented for Commission approval was signed by the project developer on January 22, 2011, and signed by Idaho Power on January 28, 2011. The Agreement was filed with the Commission on February 2, 2011. The Agreement contains 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 Agreement, Staff considers the effective date to be January 28, 2011.


Because the effective date of the Agreement is not prior to December 14, 2010, the date on which the lowered eligibility cap became effective, and because the size of the 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 Agreement to be in violation of Commission Order No. 32176. Consequently, Staff recommends denial of the Agreement.

In order for the rates in the Agreement 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 Agreement without prejudice and permit a revised agreement to be submitted containing rates computed under the prescribed IRP methodology. Alternatively, the Agreement 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.

RECOMMENDATION

Staff recommends that the Commission not approve the Agreement.

Respectfully submitted this 7TH day of April 2011.



Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 7TH DAY OF APRIL 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-11-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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