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IDAHO PUBLIC  
UTILITIES COMMISSION

**DONOVAN E. WALKER**  
Lead Counsel  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

October 25, 2011

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case No. IPC-E-11-20  
*IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY  
FOR APPROVAL AND/OR ACKNOWLEDGEMENT OF THE TERMINATION  
OF THE FIRM ENERGY SALES AGREEMENT, REMOVAL FROM THE  
INTERCONNECTION QUEUE, AND DISPOSITION OF THE CLUSTER  
GROUP NETWORK UPGRADE FUNDS FOR MAGIC WIND, LLC*

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Application in the above matter.

Very truly yours,

Donovan E. Walker

DEW:csb  
Enclosures

**DONOVAN E. WALKER (ISB No. 5921)**  
**JASON B. WILLIAMS (ISB No. 8718)**  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
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UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
IDAHO POWER COMPANY FOR APPROVAL ) CASE NO. IPC-E-11-20  
AND/OR ACKNOWLEDGEMENT OF THE )  
TERMINATION OF THE FIRM ENERGY ) APPLICATION  
SALES AGREEMENT, REMOVAL FROM THE )  
INTERCONNECTION QUEUE, AND )  
DISPOSITION OF THE CLUSTER GROUP )  
NETWORK UPGRADE FUNDS FOR MAGIC )  
WIND, LLC. )  
\_\_\_\_\_ )

Idaho Power Company ("Idaho Power" or "Company"), in accordance with RP 52, hereby respectfully applies to the Idaho Public Utilities Commission ("Commission") for an Order approving and/or acknowledging (1) the termination of the Firm Energy Sales Agreement ("FESA") between Idaho Power and Magic Wind, LLC ("Magic Wind"); (2) removal of Magic Wind from Idaho Power's interconnection queue; and (3) the disposition of amounts prepaid by Magic Wind for the Company's transmission system network upgrades ("Network Upgrades") associated with the "cluster group" of generators that was the subject of Case No. IPC-E-06-21.

In support of this Application, Idaho Power represents as follows:

**I. BACKGROUND**

1. Magic Wind is a proposed 20 megawatt ("MW") wind generating Public Utility Regulatory Policies Act of 1978 ("PURPA") qualifying facility ("QF") project. Initially, on October 20, 2005, Magic Wind filed a Motion to Determine Exemption Status seeking a Commission determination that Magic Wind was exempt from the QF rate eligibility cap established in Commission Order No. 29839, Case No. IPC-E-05-34, where the Commission lowered the published rate eligibility cap for QF wind projects to 100 kilowatts ("kW"). On August 15, 2006, the Commission, in Order No. 30109, determined that Magic Wind was entitled to receive exemption from the published rate eligibility cap of 100 kW established in Order No. 29839.

2. On October 11, 2006, Idaho Power and Magic Wind entered into an FESA pursuant to PURPA, and the Commission's implementation thereof. Under the terms of the FESA, Magic Wind elected to contract with Idaho Power for a 20-year term. Magic Wind further elected to contract with the Company using the published avoided cost rates and, under normal operating conditions, agreed not to generate more than 10 average megawatts on a monthly basis.

3. Idaho Power submitted the FESA for Commission review and determination on October 27, 2006, in Case No. IPC-E-06-26. The FESA stated that Magic Wind's first energy date would be July 31, 2007, and that its Scheduled Operation Date would be December 31, 2007. At the time the FESA was submitted to the Commission, the Cassia Wind docket, Case No. IPC-E-06-21, was still pending before the Commission. The Cassia Wind docket involved requests from generators, most of which were PURPA generators, that were requesting to integrate approximately

200 MW of new wind generation on Idaho Power's 138 kilovolt transmission system in the Twin Falls, Idaho, area (the "Cluster Group"). Pursuant to transmission interconnection procedures, and consistent with Federal Energy Regulatory Commission ("FERC") rules, Idaho Power placed the interconnection requests, including the request from Magic Wind, into its interconnection "queue." The Commission approved the FESA, which was subject to the outcome of the Cassia Wind docket, in Order No. 30206 on December 21, 2006.

4. In June 2006, Idaho Power completed engineering studies which showed it would cost approximately \$60 million in network upgrades to interconnect the Cluster Group to the Company's transmission system. Case No. IPC-E-06-21 dealt with issues related to the appropriate allocation of Network Upgrade costs among individual projects within the Cluster Group and the Company's other customers.

5. On June 13, 2007, a settlement stipulation was submitted in the Cassia Wind docket, Case No. IPC-E-06-21 ("Stipulation"). The Stipulation set forth the methodology by which Network Upgrade costs would be allocated among the individual Cluster Group projects and the Company's other customers. As part of the Stipulation, the Company estimated through a "redispatch study" that the total interconnection costs could be reduced from \$60 million to \$11 million if projects agreed to the potential redispatch of their project's output. The Commission approved the Stipulation in Order No. 30414 on August 29, 2007.

6. Pursuant to the Stipulation, the Cluster Group members and Idaho Power agreed that cost allocation for Network Upgrades would be paid as follows:

(a) Phase 1. Idaho Power would assume 100 percent cost responsibility; and

(b) Phases 2, 3, 4, and 5.

(i) Twenty-five percent of the costs would be provided by Cluster Group members as a non-refundable contribution in aid of construction ("CAIC");

(ii) Twenty-five percent of the costs would be funded by Idaho Power and included in Idaho Power's rate base; and

(iii) Fifty percent of the costs would be funded by the Cluster Group members as an advance in aid of construction ("AIAC") and refunded back to the Cluster Group members over a 10-year period contingent upon the Cluster Group member's individual power purchase agreements remaining in good standing. See Case No. IPC-E-06-21, Stipulation at pp. 6-8. In addition, the total cost for the Network Upgrades were to be allocated among each member of the Cluster Group based upon each project's operating characteristics, each project's position in the Company's interconnection queue, and each project's interconnection capacity. *Id.* at p. 5. Further, the Stipulation contained provisions acknowledging that the Cluster Group members recognized "that the final cost of [their] share of the Network Upgrades will not be known until construction is complete. [The Cluster Group] also recognizes that [their] share of the final Network Upgrade cost will increase or decrease . . . depending on whether other projects, both earlier and later in the Idaho Power Queue are constructed." *Id.* at p. 6.

7. Idaho Power sent a letter to the individual Cluster Group members (including Magic Wind) on February 2, 2010, that included a draft Facility Study Report and which instructed the Cluster Group members that Idaho Power would issue invoices when the final Facility Study Report for the required Network Upgrades was issued.

Idaho Power sent the final Facility Study Report to the Cluster Group members (including Magic Wind) on March 9, 2010. Invoices were sent to each member of the Cluster Group for their allocable share of the Network Upgrades on March 10, 2010, with payment due on April 9, 2010. Idaho Power received Magic Wind's allocable share per the Stipulation of the Network Upgrades pre-payment, in the amount of \$562,536.75, on April 9, 2010.

8. As noted above, the FESA as originally submitted and approved by the Commission provides that the operation date for Magic Wind's project was December 31, 2007. See Case No. IPC-E-06-26, Appendix B to the FESA. Magic Wind failed to come on-line by December 31, 2007. At Magic Wind's request, Idaho Power agreed to revise the Scheduled Operation Date to September 30, 2010. See Case No. IPC-E-06-26, December 2008 Revised Operation Date Letter. Magic Wind also failed to bring its project on-line by the revised September 30, 2010, Scheduled Operation Date. Pursuant to the terms of the FESA, the project must be on-line within ten months of the Scheduled Operation Date or it is an event of default. With the addition of ten months to the September 30, 2010, Scheduled Operation Date, the project was required to come on-line by July 31, 2011. Magic Wind failed to meet the July 31, 2011, operation date and is now in default of the FESA.

9. On August 3, 2011, the Company and Magic Wind submitted to the Commission a copy of the Letter of Understanding and Agreement Relating to Contract Default, Scheduled Operation Date, and Generator Interconnection Agreement ("Letter Agreement") whereby the parties agreed that the Magic Wind project would be given one last extension of its Scheduled Operation Date to September 30, 2012, so long as Magic Wind posted a delay security in the amount of \$45 per kilowatt of the project's

nameplate capacity by no later than September 30, 2011. See Letter Agreement, attached hereto as Attachment No. 1, and incorporated by this reference. In addition, the Letter Agreement required Magic Wind to pay or otherwise make credit arrangements with Idaho Power to pay the \$500,000 construction deposit for its interconnection, which was past due from June 30, 2011, no later than September 30, 2011. The Letter Agreement further stated that if Magic Wind failed to post the delay security or the construction deposit by September 30, 2011, that the FESA would be terminated without further notice. Magic Wind did not post either the required delay security or the required construction deposit by September 30, 2011.

10. On October 4, 2011, Idaho Power sent Magic Wind a notice of the termination of the FESA pursuant to the Letter Agreement. As of September 30, 2010, \$76,569.83 has been spent on Network Upgrades from Magic Wind's \$562,536.75 prepayment of the allocated Cluster Group costs.

## **II. TERMINATION OF THE FESA, REMOVAL FROM THE INTERCONNECTION QUEUE, AND DISPOSITION OF NETWORK UPGRADE PAYMENTS**

11. Idaho Power has terminated the FESA with Magic Wind. As indicated above, Idaho Power's interaction with Magic Wind has a long history involving multiple extensions of the power purchase agreement. In addition, because the FESA was approved by the Commission in Order No. 30206, Idaho Power respectfully seeks via this Application Commission acknowledgement and/or approval of the termination of the Commission-approved FESA.

12. Idaho Power also seeks Commission acknowledgement and/or approval for Idaho Power to remove Magic Wind from its interconnection queue. QF generator interconnection to Idaho Power's electrical system is governed by the Company's Idaho

Tariff Schedule 72 on file with the Commission. Schedule 72 incorporates, by reference, the Company's applicable Large Generator or Small Generator Interconnection Procedures posted on the Company's OASIS website. In addition, QF generators are required to sign a Generator Interconnection Agreement ("GIA"), a uniform agreement that is contained within Schedule 72, detailing additional terms and conditions between the Company and generators. The interconnection procedures, Schedule 72, and the GIA are all very similar to the interconnection procedures contained in the Company's FERC Open Access Transmission Tariff ("OATT") and FERC-regulated GIAs that the Company has for non-QF generators. Although QF generators are under state jurisdiction, and Schedule 72, and non-QF generators are subject to federal jurisdiction, and the OATT, the Company's business practices are designed to treat all similarly situated generators in a similar manner.

13. Generators are assigned a spot in the Company's interconnection queue based upon the date and time of the interconnection request by the generator. A generator's position in the interconnection queue is maintained unless a generator defaults in the payment of required fees under the Large or Small Generator Interconnection Procedures, Schedule 72, and/or the executed GIA. Generators in the queue are responsible for paying network upgrade charges required by the addition of their generation to the system. When a generator is removed from the Company's interconnection queue, it potentially frees up available transmission capacity for use by generators later, or junior, in the queue.

14. Magic Wind submitted a request to the Company's interconnection queue in May of 2005. Because it has failed to timely submit the required construction deposits necessary for its interconnection to move forward, and ultimately failed to pay

both the necessary delay security and interconnection construction deposits pursuant to the Letter Agreement, Magic Wind has now forfeited its position in the Company's interconnection queue. The removal of Magic Wind from the interconnection queue will have a direct impact on the amounts that generators with a junior queue position to Magic Wind will be required to pay for network upgrades, including other members of the Cluster Group. Because other members of the Cluster Group will be directly impacted by the removal of Magic Wind from the Company's interconnection queue, Idaho Power hereby seeks acknowledgement and/or approval of such removal from the Commission.

15. As noted above, interconnection costs associated with the integration of the Cluster Group onto Idaho Power's electrical system were resolved via Stipulation and approved by the Commission in Order No. 30414. The Stipulation and the Company's business processes required each member of the Cluster Group to prepay their allocable share of the Network Upgrades. Prepaid amounts are used to make firm commitments with third-party vendors to purchase the equipment necessary for Network Upgrades as well as firmly commit other engineering and labor resources to construct the Network Upgrades. Magic Wind's allocated share of the Network Upgrade costs is \$562,536. As of September 30, 2010, \$76,569.83 has been spent on Network Upgrades for the Magic Wind project.

16. Idaho Power seeks Commission approval and/or acknowledgement of the following process for the disposition of the prepaid Magic Wind funds and to reallocate Cluster Group Network Upgrades as follows:

(a) Consistent with the Stipulation in Order No. 30414, Idaho Power considers the \$76,569.83 spent on the Cluster Group Network Upgrades as non-

refundable to Magic Wind as this is money that has already been spent on the Network Upgrades;

(b) Idaho Power proposes to refund to Magic Wind \$485,967 of its prepayment amount submitted on April 9, 2010, for the Network Upgrades, without interest; and

(c) As a result of removing Magic Wind from the interconnection queue and refunding \$485,967 of its prepaid amount for Network Upgrades, that amount must be reallocated to the other members of the Cluster Group. Idaho Power proposes to reallocate the Network Upgrade costs that result from the refund to Magic Wind to the other members of the Cluster Group proportionately in accordance with the provisions of the Stipulation. This reallocation is consistent with and contemplated by the Stipulation as the Cluster Group members acknowledged that Network Upgrade costs “will increase or decrease . . . depending on whether other projects, both earlier and later in the Idaho Power Queue are constructed.” Stipulation at p. 6.

### **III. MODIFIED PROCEDURE**

17. Idaho Power believes that a hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure; i.e., by written submissions rather than by hearing. RP 201 *et seq.* If, however, the Commission determines that a technical hearing is required, the Company stands ready to prepare and present its testimony in such hearing.

### **IV. COMMUNICATIONS AND SERVICE OF PLEADINGS**

18. Communications and service of pleadings, exhibits, orders, and other documents relating to this proceeding should be sent to the following:

Donovan E. Walker, Lead Counsel  
Jason B. Williams, Corporate Counsel  
Idaho Power Company  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)

Randy C. Allphin  
Energy Contract Administrator  
Idaho Power Company  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707  
[rallphin@idahopower.com](mailto:rallphin@idahopower.com)

#### **V. REQUEST FOR RELIEF**

19. Idaho Power respectfully requests that the Commission issue an Order: (1) authorizing that this matter may be processed by Modified Procedure; (2) approving and/or acknowledging Idaho Power's termination of the Commission-approved FESA between Idaho Power and Magic Wind; (3) approving and/or acknowledging Idaho Power's removal of Magic Wind from the Company's interconnection queue; and (4) approving and/or acknowledging Idaho Power's proposed procedure for the disposition of Magic Wind's prepaid funds for Network Upgrades and the reallocation of the Network Upgrade costs to other members of the Cluster Group pursuant to the Stipulation and the Commission's Order.

Respectfully submitted this 25<sup>th</sup> day of October 2011.



---

DONOVAN E. WALKER  
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25<sup>th</sup> day of October 2011 I served a true and correct copy of APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

### **Commission Staff**

Kristine A. Sasser  
Deputy Attorney General  
Idaho Public Utilities Commission  
472 West Washington (83702)  
P.O. Box 83720  
Boise, Idaho 83720-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [Kris.Sasser@puc.idaho.gov](mailto:Kris.Sasser@puc.idaho.gov)

### **Idaho Wind Partners 1, LLC**

Steve Eisenberg  
RP Wind ID LLC, Managing Member  
82 Elm Street  
P.O. Box 2049  
Manchester Center, Vermont 05255

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [steve.eisenberg@reunionpower.com](mailto:steve.eisenberg@reunionpower.com)

*On Behalf of Burley Butte, Pilgrim Stage, Thousand Springs, Golden Valley, Milner Dam, and Salmon Falls Projects*

### **Exelon Wind, LLC**

Richard Free  
Director, Utility & Regulatory Process Support  
4601 Westown Parkway, Suite 300  
West Des Moines, Iowa 50266

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [richard.free@exeloncorp.com](mailto:richard.free@exeloncorp.com)

*On Behalf of Cassia Wind, Cassia Gulch, and Tuana Springs Projects*

### **Fossil Gulch Wind Farm, LLC**

Ken Wegner  
2400 Industrial Lane, Suite 2100  
Broomfield, Colorado 80020

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email [kwegener@coloradosantafe.com](mailto:kwegener@coloradosantafe.com)

*On Behalf of Fossil Gulch Project*

**Magic Wind, LLC**

Armand Eckert  
716-B East 4900 North  
Buhl, Idaho 83316

*On Behalf of Magic Wind Project*

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email [armand@safelink.net](mailto:armand@safelink.net)

**Twin Falls Canal Company**

Brian Olmstead, General Manager  
Twin Falls Canal Company  
P.O. Box 326  
Twin Falls, Idaho 83303

*On Behalf of Low Line Midway Hydro Project*

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email [olmstead@tfcanal.com](mailto:olmstead@tfcanal.com)

**DF-AP#1 %Andgar Corp.**

Kyle Juergens  
6920 Salashan Parkway A102  
Ferndale, Washington 98248

*On Behalf of Big Sky Dairy Digester Project*

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email

**Cargill Global Emissions**

Sanchayita Ray  
9350 Excelsior Boulevard, MS 139-4-A  
Hopkins, Minnesota 55343

*On Behalf of Dry Creek Dairy Project*

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email [sanchayita\\_ray@cargill.com](mailto:sanchayita_ray@cargill.com)



Donovan E. Walker

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-20**

**IDAHO POWER COMPANY**

**ATTACHMENT NO. 1**



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IDAHO PUBLIC  
UTILITIES COMMISSION

**DONOVAN E. WALKER**  
Lead Counsel  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

August 3, 2011

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83720

Re: Case No. IPC-E-06-26  
Magic Wind Park LLC – Letter of Understanding and Agreement Relating  
to Contract Default, Scheduled Operation Date, and Generator  
Interconnection Agreement.

Dear Ms. Jewell:

Enclosed please find a copy of a Letter of Understanding and Agreement  
between Idaho Power and Magic Wind Park LLC. Please file the enclosed Letter  
Agreement in the contract file for this matter.

Sincerely,



Donovan E. Walker

DEW:csb  
Enclosure

cc: Dean J. Miller (w/encl.)  
Donald L. Howell, II, IPUC (w/encl.)  
Rick Sterling, IPUC (w/encl.)  
Randy C. Alphin, IPC (w/encl.)

COPY

**DONOVAN E. WALKER**  
Lead Counsel  
dwalker@idahopower.com

August 2, 2011

VIA E-MAIL: joe@mcdevitt-miller.com

Dean J. Miller  
McDevitt & Miller, LLP  
420 West Bannock Street  
P.O. Box 2664  
Boise, Idaho 83701

Re: **Magic Wind Park LLC – Letter of Understanding and Agreement Relating to Contract Default, Scheduled Operation Date, and Generator Interconnection Agreement – IPUC Case No. IPC-E-86-26**

Mr. Miller:

As we discussed in our phone conference on June 28, 2011, this Letter of Understanding and Agreement is meant to express, in writing, the mutual agreement and understandings reached between Idaho Power Company ("Idaho Power") and Magic Wind Park LLC ("Magic Wind") regarding the Event of Default for failing to meet the Scheduled Operation Date required in Magic Wind's Commission-approved Firm Energy Sales Agreement ("FESA") pursuant to the Public Utility Regulatory Policies Act of 1978.

The FESA contains a Scheduled Operation Date of December 31, 2007. By agreement of the parties, and evidenced by a December 24, 2008, letter filed with the Idaho Public Utilities Commission ("Commission"), the Scheduled Operation Date was revised to September 30, 2010. Article 5.3 of the FESA states: "Seller's failure to achieve the Operation Date within ten (10) months of the Scheduled Operation Date will be an event of default." Magic Wind did not come online by the September 30, 2010, Scheduled Operation Date, and the additional ten months since September 30, 2010, requires that the Operation Date be achieved no later than July 31, 2011. Magic Wind was notified by letter from Idaho Power on April 20, 2011, that its request for an additional extension of the Scheduled Operation Date was not acceptable to Idaho Power, and that if the project has not achieved its Operation Date by July 31, 2011, the project would be in Default under the FESA.

Article 22.2.1 of the FESA states, "If the defaulting Party shall fail to cure such default within the sixty (60) days after service of such notice, or if the defaulting Party reasonably demonstrates to the other Party that the default can be cured within a commercially reasonable time but not within such sixty (60) day period and then fails to diligently pursue such cure, then, the nondefaulting Party may, at its option, terminate this Agreement and/or pursue its legal or equitable remedies."

G.A. 8/2/11

Pursuant to our June 28, 2011 conference call and follow-up communication, and notwithstanding the foregoing, the parties' mutual understanding and agreement, having the benefit of consultation with their own respective counsel, is as follows:

The parties hereby agree that:

- (1) Magic Wind has been properly notified of its default and breach of the FESA as of June 28, 2011;
- (2) The FESA's requirement to cure said default within a commercially reasonable time does not delay the requirement to achieve the Operation Date indefinitely;
- (3) A commercially reasonable time with which to cure said default by achieving the required Operation Date shall be an additional one year and two months, to a date certain of September 30, 2012, by 5:00 p.m. Mountain Standard Time;
- (4) The commercially reasonable time period granted to Magic Wind is a fair and reasonable time with which to cure the default and breach, and Magic Wind shall not bring any legal or equitable challenge to the same, and by this agreement knowingly and intelligently waives its rights to bring any possible legal claim related thereto;
- (5) Magic Wind shall post Delay Security to secure the Operation Date commitment in the amount of \$45.00 per kilowatt ("kW") of the project's nameplate capacity (\$45 multiplied by the Maximum Capacity with the Maximum Capacity being measured in kW). This Delay Security shall be posted no later than September 30, 2011, in a form as described in Appendix A attached hereto. If Magic Wind fails to achieve the September 30, 2012, Operation Date, Idaho Power shall draw the funds from the Delay Security and the FESA will terminate. The parties agree that the damages Idaho Power and its customers incur due to Magic Wind's failure to achieve its Operation Date are difficult or impossible to calculate with certainty, and that the Delay Security is an appropriate approximation of such damages. The stated Delay Liquidated Damages and Delay Security are reasonable, and Magic Wind shall not bring any legal or equitable challenges to the same; and by this agreement knowingly and intelligently waives its rights to bring any possible legal claim related thereto.
- (6) Should Magic Wind achieve its Operation Date by or before September 30, 2012, Idaho Power shall release the full amount of the Delay Security posted hereunder thirty (30) days after the Operation Date has been achieved;
- (7) If Magic Wind does not post the required security by the date certain of September 30, 2011, by 5:00 p.m. Mountain Standard Time, the FESA will be terminated with no further notice required nor legal challenges to the termination thereof;
- (8) If Magic Wind does not achieve the Operation Date on or before September 30, 2012, by 5:00 p.m. Mountain Standard Time, the FESA will be terminated with no further notice required nor legal challenges to the termination thereof.

G. A. 8/2/11

(9) Magic Wind shall sign and execute the final Generator Interconnection Agreement ("GIA") no later than September 30, 2011.

(10) Magic Wind shall pay, or make acceptable credit arrangements with Idaho Power to pay, the \$500,000 invoice dated May 31, 2011, representing the required construction deposit pursuant to the Facility Study and the GIA, which payment was due by June 30, 2011, no later than September 30, 2011.

(11) If it can be reasonably demonstrated that Idaho Power was the wrongful cause of any delays that would prevent Magic Wind from being completed and operational by the Operation Date of September 30, 2012, then the Operation Date shall be extended by the length of such delays or to some other reasonable date as mutually agreed. It is hereby stipulated by both parties that no such claim that Idaho Power was or is the cause of any such delays exists as of the date of execution of this Agreement.

(12) The Base Energy Purchase Price table included in paragraph 7.1 of the FESA was amended on December 26, 2008 and the base energy prices were extended four (4) years to accommodate the full 20 year term of that amendment. The revisions herein require that the Base Energy Purchase Price table be extended one (1) additional year to 2032 to accommodate the full 20 year term in this Letter of Understanding and Agreement. The following lines are added to that amendment:

Year	Season 1 – (73.5%)	Season 2 – (120.0%)	Season 3 - (100.0%)
2032	68.48	111.79	93.16

(13) Under IV of the FESA, Magic Wind proposed to design, construct, install, own, operate and maintain a 20 MW wind generating facility. The facility will be a qualified small power production facility under the applicable provisions of the Public Utilities Regulatory Policy Act of 1978 ("PURPA"). Magic Wind has changed the manufacturer and model of the wind turbines that it will construct. Magic Will provide data on the Facility that Idaho Power will use to confirm that, under normal and/or average conditions, generation from the Facility will not exceed 10 aMW on a monthly basis. Additionally, regardless of turbine model and or manufacturer, the project's maximum capacity/output is limited to 20 MW.

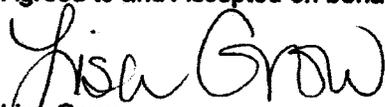
(14) If Magic does not perform the above by September 30, 2011, then the parties agree that the FESA will be therefore immediately terminated and no additional amounts will be owed. Both Idaho Power and Magic Wind therefore, shall not bring any legal or equitable challenge to the same and by this agreement knowingly and intelligently waive their rights to bring any possible legal claim related thereto against the other party to this agreement.

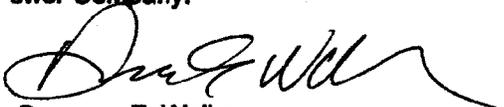
Each party's signature below, with counsel, indicates that party's acceptance of this Letter of Understanding and Agreement and the averments and contents thereof.

*C.A. 8/2/11*

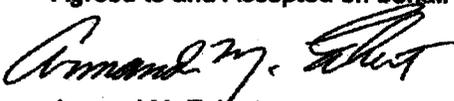
DATED this 3<sup>rd</sup> day of August, 2011.

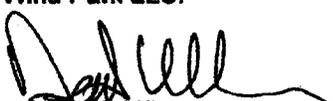
Agreed to and Accepted on behalf of Idaho Power Company:

  
Lisa Grow  
Senior Vice President, Power Supply  
Idaho Power Company

  
Donovan E. Walker  
Lead Counsel  
Idaho Power Company

Agreed to and Accepted on behalf of Magic Wind Park LLC:

  
Armand M. Eckert  
Magic Wind Park, LLC

  
Dean J. Miller  
Legal Counsel for Magic Wind Park LLC

A.A. 8/2/11

## **APPENDIX A**

### **FORMS OF LIQUID SECURITY**

The Seller shall provide Idaho Power with commercially reasonable security instruments such as Cash Escrow Security, Guarantee or Letter of Credit as those terms are defined below or other forms of liquid financial security that would provide readily available cash to Idaho Power to satisfy the Delay Security requirement within the August 2, 2011, Letter Agreement.

For the purpose of this Appendix A, the term "Credit Requirements" shall mean acceptable financial creditworthiness of the entity providing the security instrument in relation to the term of the obligation in the reasonable judgment of Idaho Power, provided that any guarantee and/or letter of credit issued by any other entity with a short-term or long-term investment grade credit rating by Standard & Poor's Corporation or Moody's Investor Services, Inc. shall be deemed to have acceptable financial creditworthiness.

1. **Cash Escrow Security** - Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the Delay Security.
2. **Guarantee or Letter of Credit Security** - Seller shall post and maintain in an amount equal to the Delay Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or (b) a Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties.