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IDAHO PUBLIC
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) REPLY COMMENTS OF
SALES AGREEMENT, REMOVAL FROM THE) IDAHO POWER COMPANY
INTERCONNECTION QUEUE, AND)
DISPOSITION OF THE CLUSTER GROUP)
NETWORK UPGRADE FUNDS FOR MAGIC)
WIND, LLC.)
_____)

Pursuant to the Idaho Public Utilities Commission's ("Commission") Notice of Application, Order No. 32395, and the Comments of Magic Wind and Commission Staff, Idaho Power hereby submits the following Reply Comments.

COMMENTS

Idaho Power hereby submits these comments in order to place two items before the Commission: (1) a correction to the proposed refund amount, and (2) explanations provided to Magic Wind by Idaho Power in discovery responses in this matter that address the rationale and authority for considering a portion of Magic Wind's deposit as non-refundable and not including interest.

DATED at Boise, Idaho, this 22nd day of December 2011.

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

DONOVAN E. WALKER
Attorney for Idaho Power Company

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-11-20

IDAHO POWER COMPANY

ATTACHMENT NO. 1

Magic Wind funding received 04/09/10:

-562,536.75

Cluster group costs thru 09/30/10:

	Total MW Capacity	Magic Wind MW Capacity	Total Costs	Magic Wind \$ Allocation
Phase 4	17	8.1	54,793.94	26,107.70
Phase 5	152.34	11.9	646,000.09	50,462.13
				76,569.83

Refund due to Magic Wind:

-485,966.92

Costs by Category:

	Phase 4	Phase 5
Labor	909.07	23,524.48
Materials	47,139.17	484,335.05
Purchased Services	0.00	2,277.42
Overheads	6,745.70	85,143.29
Employee Business Expenses	0.00	236.23
Real Estate & Acquisition Costs	0.00	50,484.52
	<u>54,793.94</u>	<u>646,000.99</u>

Magic Wind funding received 04/09/10:

-562,536.75

Cluster group costs thru 09/30/10:

	Total MW Capacity	Magic Wind MW Capacity	Total Costs	Magic Wind \$ Allocation
Phase 4	17	8.1	54,793.94	26,107.70
Phase 5	152.34	11.9	669,234.96	52,277.12
				78,384.82

Refund due to Magic Wind:

-484,151.93

Costs by Category:

	Phase 4	Phase 5
Labor	909.07	42,926.21
Materials	47,139.17	484,370.01
Purchased Services	0.00	2,277.42
Overheads	6,745.70	88,770.53
Employee Business Expenses	0.00	406.27
Real Estate & Acquisition Costs	0.00	50,484.52
	<u>54,793.94</u>	<u>669,234.96</u>

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-11-20

IDAHO POWER COMPANY

ATTACHMENT NO. 2

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR) CASE NO. IPC-E-11-20
TERMINATION OF ITS FIRM ENERGY)
SALES AGREEMENT WITH MAGIC) IDAHO POWER COMPANY'S
WIND, LLC.) RESPONSE TO THE FIRST
) PRODUCTION REQUEST OF
) MAGIC WIND, LLC, TO IDAHO
) POWER COMPANY
)

COMES NOW, Idaho Power Company ("Idaho Power" or "Company"), and in response to the First Production Request of Magic Wind, LLC, to Idaho Power Company dated November 18, 2011, herewith submits the following information:

REQUEST NO. 1: At Page 8—9, Paragraph 16 (a), of the Application on file herein, the Company proposes to deduct from the Magic Wind deposit of \$562,536 the sum of \$76,569.33, which the Company considers non-refundable. Please explain in full the rationale and legal authority for considering that sum non-refundable.

RESPONSE TO REQUEST NO. 1: The rationale and authority for considering a sum paid by Magic Wind, LLC (“Magic Wind”) as non-refundable is discussed and set forth in length in Case No. IPC-E-06-21, and more particularly in the Joint Motion to Approve Stipulation, the Stipulation, and Order No. 30414 from that case. The terms of the cost sharing arrangements set forth in the above-referenced Stipulation are applicable to all projects contained in the Twin Falls interconnection queue “Cluster Group” referenced in those proceedings. The provisions of the Generator Interconnection Agreement (“GIA”) between Idaho Power and Magic Wind references and incorporates this rationale and authority into the terms of the GIA for those parties. Additionally, the same cost sharing rationale and principles were applied to three other projects outside of the Twin Falls Cluster Group (Hot Springs – Case No. IPC-E-06-34, Bennett Creek – Case No. IPC-E-06-35, and Sawtooth Wind – Case No. IPC-E-09-25), and approved by the Idaho Public Utilities Commission (“Commission”) in Order No. 30453 for Hot Springs and Bennett Creek and Order No. 32136 for Sawtooth Wind.

The cost sharing for network transmission upgrades approved by the Commission for Magic Wind, as well as for all members of the Cluster Group, is divided into three categories: (i) 25 percent of the costs paid by the project as a ***non-refundable*** contribution in aid of construction (“CIAC”); (ii) 25 percent of the costs paid by Idaho Power’s customers, included in rate base; and (iii) the remaining 50 percent of

the costs paid by project as an advance in aid of construction ("AIAC") and refunded back to the project over a 10-year period contingent upon the project's power purchase agreement(s) remaining in good standing. As stated, this is the same for Magic Wind as it was for the various other members of the Cluster Group.

Arguably, Magic Wind is not entitled to a refund of any amounts that it has paid since 25 percent of the costs paid by Magic Wind are non-refundable and the other 50 percent is only refundable over a 10-year period contingent upon maintaining its power purchase agreement in good standing, which is now terminated. However, because Magic Wind defaulted on its power purchase agreement, and the same was terminated prior to the completion of the interconnection or the remaining network upgrades, the Company has proposed refunding all of the network upgrade deposit – minus the actual amounts spent. Additionally, even if it is assumed that the 50 percent portion of costs is automatically refundable, the entire 25 percent portion is, and always has been, deemed non-refundable. The actual amounts spent (the \$76,569.33 referenced above) are only a portion of the 25 percent non-refundable allocation. The total network upgrade cost allocation to Magic Wind is \$853,791. Twenty-five percent of this amount is approximately \$213,000.

As mentioned above, the rationale and authority for considering a sum paid by Magic Wind as non-refundable is discussed and set forth at length in Case No. IPC-E-06-21, and more particularly in the Joint Motion to Approve Stipulation, the Stipulation, and Order No. 30414 from that case. Please see page 2 of 4 of Attachment 6 to the GIA between Idaho Power and Magic Wind. Item No. 6 in the above-mentioned Attachment 6 sets forth the same 25 percent/25 percent/50 percent cost sharing for

network upgrades referenced above. In every instance where this cost sharing breakdown has been referenced, approved, and/or discussed by the Commission, the 25 percent apportioned to the project is referenced as "non-refundable." Please see the Commission Findings on pages 9-11 of Order No. 30414 for a discussion of the rationale for this arrangement. More particularly, the Commission states:

The cost sharing approach reflected in the Stipulation (i.e., 25% non-refundable QF contribution in aid of construction (CIAC)) creates an incentive for QFs to consider economic efficiencies in the siting of their generating facilities and reduces the potential for the shifting of costs from QFs to the Company and its customers that might occur if no transmission upgrade costs were assessed against the QF. The Commission recognizes the systemwide benefits that accrue to all customers on an integrated transmission grid. The assignment of costs in this case balances the benefits accruing to customers of the grid with the cost responsibility of the QF necessitating the timing and construction of the upgrade.

Order No. 30414 at p. 10.

While this answer is not an exhaustive explanation of every reference and every rationale, justification, and authority for why a portion of Magic Wind's deposit is non-refundable, it is deemed sufficient to establish that, at the very least, the portion of the deposit that has been actually spent and committed towards the network upgrades is non-refundable as proposed by Idaho Power. Additionally, the applicable legal documents and authorities establish that the actual non-refundable portion is the full 25 percent of the projects allocated total network upgrade allocation, which in the case of Magic Wind is approximately \$213,000.

The response to this Request was prepared by Donovan E. Walker, Lead Counsel, Idaho Power Company.

REQUEST NO. 2: At Page 8—9, Paragraph 16 (b), of the Application on file herein, the Company proposes to make a refund without interest. Please explain in full the rationale and legal authority for refunding the prepayment without interest.

RESPONSE TO REQUEST NO. 2: As referenced in the Company's response to Magic Wind's Production Request No. 1 above, please see Case No. IPC-E-06-21, and more particularly the Joint Motion to Approve Stipulation, the Stipulation, and Order No. 30414 from that case for a discussion of the rationale and authority requested. Additional rationale and authority is found in the GIA between Magic Wind and Idaho Power. Page 3 of 4 of Attachment 6 to Magic Wind's GIA, item No. 8, addresses interest on refunds. This provision provides that interest will be paid on the monthly refund payments for the 50 percent advance in AIAC amounts in accordance with 18 C.F.R. 35.19a(a)(2)(iii). There is no provision for paying interest upon the proposed refund of the unspent deposit amounts upon the project's default and termination of their power purchase agreement and removal from the interconnection queue.

The response to this Request was prepared by Donovan E. Walker, Lead Counsel, Idaho Power Company.