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IDAHO PUBLIC
UTILITIES COMMISSION

Chas. F. McDevitt
Dean J. (Joe) Miller

December 15, 2011

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

**Re: Case No. IPC-E-11-20
Magic Wind, LLC**

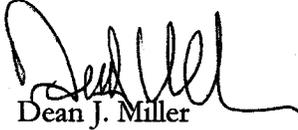
Dear Ms. Jewell:

Enclosed for filing, please find an original and seven (7) copies of Magic Wind, LLC's Comments.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP


Dean J. Miller

DJM/hh
Encl.

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Magic Wind, LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMES NOW Magic Wind LLC (Magic Wind) and submits the following Comments, in response to the Commission's Notice of Application, Order No. 32395, dated November 9, 2011.

INTRODUCTION AND BACKGROUND

From Magic Wind's perspective, this case involves the fair treatment of a project developer following termination by mutual acquiescence of a PURPA Firm Energy Sales Agreement. Due to a long series of unfortunate circumstances, Magic Wind was unable to bring the intended project on line within contractual time frames, and, in consequence, Magic Wind has not disputed termination of the FESA. However, in the unwinding of contractual relations following termination, Magic Wind is entitled to fair treatment, and Idaho Power's Application

contains two proposals that are unfair to Magic Wind. As discussed in more detail below, the issues upon which Magic Wind and Idaho Power disagree are:

1. Whether Magic Wind is entitled to a refund of the entire amount advanced for Network Upgrade costs; and
2. Whether refunds of amounts advanced for network upgrade costs should bear interest.

The relevant facts, as set forth in the Commission's Notice of Application are as follows:

On October 11, 2006, Idaho Power and Magic Wind entered into a 20-year Agreement pursuant to PURPA. Magic Wind's first energy date was scheduled to be July 31, 2007, and its Scheduled Operation Date was scheduled for December 31, 2007. The Commission approved the Agreement on December 21, 2006, Order No. 30206. Magic Wind was unable to meet their December 31, 2007, Scheduled Operation Date.

In December 2008, Idaho Power agreed to revise the Scheduled Operation Date to be September 30, 2010. Pursuant to the terms of the Agreement, the project must be online within ten (10) months of the Scheduled Operation Date to avoid an event of default. Magic Wind failed to bring the project online.

On August 3, 2011, Idaho Power and Magic Wind entered into a final agreement ("Letter Agreement") allowing Magic Wind to extend 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. In addition, the Letter Agreement required that Magic Wind 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 parties agreed that if Magic Wind failed to post the delay security or the construction deposit by September 30, 2011, the

Firm Energy Sales Agreement 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. On October 4, 2011, Idaho Power sent Magic Wind a Notice of Termination of the Firm Energy Sales Agreement.

At the time Magic Wind's Agreement was submitted to the Commission for approval, the Cassia Wind case was also pending before the Commission. *See* IPC-E-06-21. The Cassia Wind case involved requests from (mostly PURPA) generators to integrate approximately 200 MW of new wind generation on Idaho Power's 138 kilovolt transmission system in the Twin Falls area (the "Cluster Group"). 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 Idaho Power's transmission system. The Cassia Wind case dealt with issues related to the appropriate allocation of network upgrade costs among individual projects within the Cluster Group and Idaho Power's other customers.

In August 2007, the Commission approved a Settlement Stipulation in the Cassia Wind case that set forth the methodology that would be used to allocate network upgrade costs among the individual Cluster Group projects and other Idaho Power customers. Order No. 30414:

On March 9, 2010, Idaho Power sent a final Facility Study Report to the Cluster Group members (including Magic Wind). Invoices were sent to each member for their allocable share of the network upgrades. On April 9, 2010, Magic Wind tendered \$562,536.75 as payment for its allocable share.

In its Application, Idaho Power proposes to deduct from the \$562,536.75 the sum of \$76,569.83, which amount, according to Idaho Power, "has been spent on network upgrade costs for Magic Wind." (Application, Paragraph 15). Idaho Power proposes a net refund of \$485,967.

Further, Idaho Power proposes that the amount to be refunded should not bear interest.
(Application, Paragraph 16(b)).

On these two issues, Magic Wind disagrees with Idaho Power.

ARGUMENT

1. Magic Wind is Entitled to a Refund of the Full Amount Deposited, Without Deduction.

To the extent the rights and obligations of the parties are derived from written documents, the most relevant document is Attachment 6 to the Generator Interconnection Agreement (GIA) executed by Magic Wind. Attachment 6 incorporated the provisions of the Cassia Stipulation and Order No. 30414, approving that Stipulation. Attachment 6 is attached to these Comments as Exhibit A.

Neither Attachment 6, the Cassia Stipulation nor Order No. 30414, specifically address the question of refunds to projects that withdraw from the queue prior to connecting to the IPCo system.

Review of these documents make it apparent, however, that network upgrade costs are to be allocated among those projects that finally connect to the system. Projects that withdraw from the queue and are never connected should not be allocated any portion of construction costs incurred, because a withdrawn project neither receives any benefit from the IPCo transmission system, not nor imposes any costs upon it.

Provisions of Attachment 6 supporting this interpretation are:

“The Seller will pay its pro-rata share of the Network Upgrade costs actually incurred by the Company to provide firm Network resource Interconnection Service to the Generation Facility. (Emphasis added).

Seller recognizes that the final cost of its share of the Network Upgrades will not be known until construction is completed. The Seller also recognizes that its share of the final Network Upgrade cost will increase or decrease, subject to the provisions of paragraph 6, depending on whether other Requesting Projects, both earlier and later in the Joint Study Group One are constructed. (Emphasis Added).

It is the Company's intent that each QF Project in the Joint Study Group One will pay its respective pro-rata share, *based on nameplate generation capacity, of each phase of the Network Upgrade they utilize.*" (Emphasis Added).

Idaho Power's proposal to deduct from the refund due to Magic Wind an allocated share of construction costs already incurred is inconsistent with the intent of Attachment 6 which, as demonstrated above, contemplates that network upgrade costs will be allocated to projects actually connecting to the IPCo system. This is the only sensible interpretation of Attachment 6.

Further, Idaho Power's proposal is inequitable. It would require Magic Wind to pay for a benefit it will never receive. Costs for construction of Network Upgrades, should be allocated to those projects that receive the benefit of the Network Upgrades. In its Application, Idaho Power does not, because it cannot, articulate a rationale for allocating Network Upgrade costs to projects that never connect to the system. And, to the extent an amount is retained by IPCo from Magic Wind's deposit to pay for construction costs, projects that do eventually connect to the IPCo system would receive a windfall.

2. Magic Wind is Entitled to Interest on Amounts Refunded, Computed in Accordance with 18 C.F.R.35.19a.

As noted above, Idaho Power proposes that any amount to be refunded to Magic Wind be without interest. Idaho Power, in its Application does not articulate any rationale for this proposal.

In virtually every other circumstance in which a utility receives a deposit from a customer, all or a portion of which is later refunded, the utility is obligated to compensate the customer for the use of its money by the payment of reasonable interest. *See e.g.* IPUC

Customer Relations Rule 106, IDAPA 31.21.106, Interest on Deposits and Idaho Power Company Tariff No. 101, Rule L on Deposits.

The proposal is also inconsistent with Idaho Power's course of dealing with Magic Wind. In connection with the Twin Falls Study Group, Magic Wind made a deposit of \$11,765 for the required Facility Study. As reflected by Exhibit B, Idaho Power refunded the deposit, less study costs *with* interest.

Interest should be calculated using the methodology prescribed by the Federal Energy Regulatory Commission at 18 C.F.R. 35.19a Which provides:

“(2) Interest shall be computed from the date of collection until the date refunds are made as follows: (i) At a rate of seven percent simple interest per annum on all excessive rates or charges held prior to October 10, 1974; (ii) At a rate of nine percent simple interest per annum on all excessive rates or charges held between October 10, 1974, and September 30, 1979; and (iii)(A) At an average prime rate for each calendar quarter on all excessive rates or charges held (including all interest applicable to such rates or charges) on or after October 1, 1979. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's Selected Interest Rates (Statistical Release G. 13), for the fourth, third, and second months preceding the first month of the calendar quarter.

(B) The interest required to be paid under clause (iii)(A) shall be compounded quarterly.

(3) Any public utility required to make refunds pursuant to this section shall bear all costs of such refunding.”

Use of the FERC methodology is consistent with Idaho Power's practice of following FERC methods and practices in matters relating to its transmission system. It is also consistent with the Cassia Settlement Stipulation, in which the parties agreed the FERC methodology for calculating interest on refunds. *See* Cassia Settlement Stipulation, page 8, paragraph 15.

HEARING NOT REQUESTED

Magic Wind does not request a hearing. If, after review of Initial and Reply Comments, the Commission believes oral argument would be helpful to its deliberations, Magic Wind would, of course, participate.

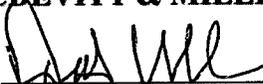
CONCLUSION

Based on the reasons and authorities cited herein, Magic Wind respectfully requests that any final order of the Commission approving termination of the Magic Wind FESA contain the following provisions:

1. That Idaho Power Company promptly refund to Magic Wind the full deposit amount of \$562,536.75.
2. That Idaho Power Company pay to Magic Wind interest on the deposit, from the date of deposit to the date of return, calculated in accordance with 18. C.F.R. 35.19a.

DATED this 15 day of December, 2011.

MCDEVITT & MILLER, LLP

By: 

Dean J. Miller

Attorneys for Magic Wind, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2011, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074
jjewell@puc.state.id.us

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

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jwillimas@idahopower.com

Hand Delivered
U.S. Mail
Fax
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Kristine Sasser
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kris.sasser@puc.idaho.gov

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

BY: Heather Houle
MCDEVITT & MILLER LLP

Attachment 6Company's Description of Special Facilities and Upgrades Required to Integrate the Generation Facility and Best Estimate of Costs

As provided in Schedule 72 this Attachment describes Upgrades, Special Facilities, including Network Upgrades, and provides an itemized best estimate of the cost of the Upgrades.

Distribution Upgrades

Idaho Power Company will upgrade 2.5 miles of Blue Gulch distribution line (BUGU042) to 336 AL on 700E from 4300N to 4550N.

Description	Owner	Estimated Cost
Upgrade 2.5 miles distribution feeder to 336 AL	IPC	\$ 500,000.00
	Total	\$ 500,000.00

Transmission Network Upgrades

Network Upgrades for this project were detailed in a separate Facility Study Report for the Joint Study Group identified in the March 14, 2008 System Impact Study Report for up to 353MW of New Generation on the 138kV Transmission System in the Twin Falls area. The final cost will be allocated to the participants remaining in Joint Study Group One upon completion of each phase of the project. See Attachment 6 for more information.

1) Regulatory Requirements:

A. A number of generation projects seeking Network Resource Interconnection Service, (as that term is defined in FERC Order 2003 and the Company's FERC approved Open Access Transmission Tariff ("OATT")) including the Generation Facility, propose to interconnect to the portion of the Company's transmission system is located in the Twin Falls, Idaho geographic area, and have submitted interconnection requests to the Company during the period January 1, 2005 through October 1, 2007 (collectively, the "Requests" or "Requesting Projects").

B. In accordance with FERC Order 2003, the Company's OATT, Commission Order No. 30414 and in the interest of maintaining comparability and economic efficiency in responding to the Requests, the Company has established "Joint Study Group One (1)" for the Requesting Projects.

C. Seller is ready and willing to start immediate construction of the Generation Facility. One or more Requesting Projects which precede or follow Seller in the Joint Study Group One are not yet prepared for immediate construction or may not be constructed at all.

2) **Generation Output Limit Control:** The Generator Facility is a PURPA QF. Seller will, at its sole expense, install, operate and maintain the equipment and communications facilities necessary to enable the Generation Facility to reduce its Maximum Hourly Output to a not-to-exceed set point, within ten (10) minutes of when the Company calls for the reduction. The Company will specify the set point when it notifies Seller of the need to initiate Generation Output Limit Control. Generation Output Limit Control cannot be used to increase the Generation Facility's output above such Maximum Hourly Output for then existing turbine and wind conditions. Seller will normally, subject to those conditions, seek to maximize the energy output of the Generation Facility, but Generation Output Limit Control will limit the output of the Generation Facility whenever the Maximum Hourly Output level would otherwise exceed the required set point in any scheduling hour. Seller has elected to be subject to Generation Output Limit Control.

3) **Cost Risk for Network Upgrades:** Network Upgrade costs will be allocated to each Requesting Project, including the Generation Facility, based on: a) their election of whether to be subject to Generation Output Limit Control, b) their order in the Joint Study Group One, and c) based on the megawatt interconnection capacity of each Requesting Project, their prorata share of the cost for the Network Upgrade required to interconnect one or more Requesting Project and the added interconnection capacity of that particular Network Upgrade. The Seller will pay non-reimbursed amounts of no more than 25% of the actual as-constructed cost of the Generator Facilities currently-allocated share of the Network Upgrades required to interconnect the Generation Facility without Generation Output Limit Control (see paragraph 6 below - Sharing of Network Upgrade Costs).

4) **Generation Output Limit Control Rights:** The Company may issue a set point or limit and initiate Generation Output Limit Control to respond to transmission system emergencies, or respond to circumstances where the transmission line(s) identified in Commission Order No. 30414 are out of service and for which Generation Output Limit Control was determined necessary and did lower the amount of Network Upgrade cost obligation to the Generation Facility. In most circumstances, Generation Output Limit Control will not be required when all the lines specified in Commission Order No. 30414 are in service. Any use of Generation Output Limit Control to establish a set point below the Generation Facility's capacity shall be pro-rata with other Requesting Projects subject to Generation Output Limit Control. The Company will not purchase or pay for energy which would have been produced by the Generation Facility, but for operation of Generation Output Limit Control.

5) **Responsibility for Network Upgrade Costs:** In addition to funding all costs of directly interconnecting the Generation Facility to the Company's system, the Seller will pay its pro-rata share of the Network Upgrade costs actually incurred by the Company to provide firm Network Resource Interconnection Service to the Generation Facility but the Generation Facility shall not be obligated to share the on-going operation and maintenance costs of such Network Upgrades.

Seller recognizes that the final cost of its share of the Network Upgrades will not be known until construction is completed. The Seller also recognizes that its share of the final Network Upgrade cost will increase or decrease, subject to the provisions of paragraph 6, depending on whether other Requesting Projects, both earlier and later in the Joint Study Group One are constructed.

6) **Sharing of Network Upgrade Costs:**

A. The Seller and the Company will share the five phases of Network Upgrade costs attributable to the Generation Facility as follows:

1. Phase 1: the Company will assume 100% cost responsibility for Phase 1 and include this cost in its rate base.

2. Phases 2, 3, 4 and 5:

(a) 25% of the costs will be provided by the Generation Facility as a non-refundable contribution in aid of construction ("CIAC").

(b) 25% of the costs will be funded by the Company and included in the Company's rate base.

(c) 50% of the costs will be funded by Generation Facility as an advance in aid of construction ("AIAC") subject to refund as provided in paragraph 7 below. As refunds are made, the refunded amounts will be included in rate base using standard regulatory accounting principles.

B. As projects in the Joint Study Group One are interconnected, the Company will reallocate the CIAC and AIAC portions of the costs of Phases 2 through 5. For example, when additional projects in the Joint Study Group One are constructed after the Generation Facility is constructed, the Company will collect monies from these subsequent projects and refund monies to Seller. It is the Company's intent that each QF Project in the Joint Study Group One will pay its respective pro-rata share, based on nameplate generation capacity, of each phase of the Network Upgrade they utilize. Tables B-7, 8, 9 and 10 in the Settlement Stipulation adopted

in Commission Order No. 30414 illustrate how this re-allocation would occur on a hypothetical basis.

- 7) **Refund Provisions:** The Seller will be entitled to a cash repayment, in monthly, equal installments, for the total AIAC amount the Seller advances to the Company for Network Upgrades, including any tax gross-up or other tax related payments associated with the AIAC for Network Upgrades. Repayment will be made in accordance with Article 11.4 of the Large Generator Interconnection Agreement ("LGIA") included in the Company's OATT and occur over a term not to exceed ten (10) years after the date the Generation Facility achieves commercial operation. Monthly repayments will be contingent on the FESA's being in good standing (no uncured defaults) and upon the Generation Facility achieving a mechanical availability in that month in excess of 50%, defined as 100% multiplied by the ratio of (1) the sum of the capacity available to generate in each hour, over all hours of the month, divided by (2) the installed capacity multiplied by the number of hours in the month. In computing the mechanical availability, the capacity available in each hour will not be reduced from the installed capacity, if the reason for the reduction is an event of force majeure, (as that term is defined in the FESA) or a reduction in generation due to Generation Output Limit Control required by the Company as described in paragraphs 2 and 4.
- 8) **Interest on Refunds:** Monthly refund payments on AIAC amounts shall include interest calculated in accordance with the methodology set forth in FERC regulations at 18 C.F.R. 35.19a(a)(2)(iii) from the date of any payment for Network Upgrades through the date on which Seller receives final repayment.
- 9) **Security for Payment:** Until it is finally determined which of the Projects in the Joint Study Group One will be constructed and interconnected and the final cost of those interconnections is determined, upon execution of this Interconnection Agreement Seller will provide and maintain a cash escrow or a letter of credit to the Company in a form and by an issuer satisfactory to the Company as security for payment, initially in the amount of the Generator Facility's allocation of Network Upgrade costs as provided herein and adjusted from time to time pursuant to the status of the Requests. The total security amount at any time will not exceed the amount that would be owed if the Requests then remaining in the Joint Study Group One that are scheduled for construction later than the Generation Facility is not constructed. Other QF participants in the Joint Study Group One will be held to a similar requirement.
- 10) **Generation Output Limit Control Protocols:** This Interconnection Agreement addresses interconnection of the Generation Facility to the Company transmission system with Network Resource Interconnection Service. However, Seller acknowledges that, until sufficient Network Upgrades are installed to allow the Generation Facility to qualify for Network Resource Interconnection Service, the Generation Facility will be subject to Generation Output Limit Control as described in paragraphs 2 and 4.
- 11) **Network Upgrade Cost Determination:** Network Upgrade costs, allocated to the Generation Facility for initial funding, will be determined in a comparable manner and with the same criteria used by the Company when studying the interconnection of other generation, whose output can be changed within ten (10) minutes, at other locations on its transmission system. Upon request by the Generation Facility, the Company will provide a written explanation of the methods and assumptions leading to any such allocation of Network Upgrade cost obligation to the Generation Facility.
- 12) **Request Uncertainty:** The Company will follow good utility practice, the LGIP and SGIP, and all Commission orders in processing the Joint Study Group One within Idaho Power Company's Generator Interconnection Queue. Any Requests that fail to meet those requirements to remain in the Joint Study Group One, or fail to proceed to construct their interconnection or fail to initially fund or secure their allocated share of the Network Upgrade costs, will forfeit their position in the Idaho Power

Company Generator Interconnection Queue and their rights to the interconnection and transmission system capacity associated with their Request.

13) **Generation Facility Responsibility for Network Upgrade Costs:** The Company will initially and throughout the life of the Generation Facility, consistent with good utility practice, determine the least cost solution, given the current status of the Requests in the Joint Study Group One, that will result in the lowest reasonable allocation of initial funding responsibility for Network Upgrades to the Generation Facility. The Company will apply the same criteria to all Projects in the Joint Study Group One.

14) **Seller Construction Responsibility Transmission Network Upgrades:**

Description	Owner	Estimated Cost
Under 3/14/08 System Impact Study Report for the Twin Falls area:		
Phase 4 – Midpoint 1/3 Series Capacitor Bypass	IPC	\$47,647.00
Phase 5 – King 230/138 kV transformer	IPC	\$ 702,402.00
	Total	\$750,049.00

Full payment is required up front for each Phase in accordance with Section 9 of this Attachment 6. The final cost will be allocated to the participants remaining in Joint Study Group One upon completion of each phase of the project.

Allocation of Transmission Network Upgrade Costs

Seller and Idaho Power will share the actual Network Upgrade costs attributable to the project as follows:

1. 25% of the costs will be provided by Seller as a non-refundable contribution in aid of construction ("CIAC").
2. 25% of the costs will be funded by Idaho Power and included in Idaho Power's rate base.
3. 50% of the costs will be funded by Seller as an advance in aid of construction ("AIAC") subject to refund. As refunds are made the refunded amounts will be included in rate base using standard regulatory accounting principles.

Company Costs (25%)	\$187,512.25
Non-reimbursable CIAC Costs (25%)	\$187,512.25
Reimbursable AIAC Costs (50%)	\$375,024.50



June 7, 2011

Magic Wind, LLC
Attn: Armand Eckert
716-B East 4900 North
Buhi, ID 83316

Re: Project #135 Facility Study Refund (Twin Falls Cluster Group)

Dear Mr. Eckert:

The facility study for the Twin Falls Cluster Group has been completed. As a result, we are refunding the \$11,765.00 deposit, less study costs of \$7,972.83, plus interest of \$887.91. Please find enclosed a check in the amount of \$4,680.08.

If I can be of any further assistance, please call (208) 388-5697

Sincerely,

A handwritten signature in cursive script, appearing to read "Aubrae N. Sloan".

Aubrae N. Sloan

cc: Rowena Bishop, IPC



DATE	INVOICE NO.	PAYMENT AMOUNT	CUR
06/01/2011	GCR1105311328	4,680.08	USD
PYMT COMMENTS: #135 TWIN FALLS CLUSER GROUP FSA REFUND			
	TOTAL FOR CHECK 0001392778	\$4,680.08	

000105
005483

PLEASE DETACH AND RETAIN BEFORE DEPOSITING CHECK