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IDAHO PUBLIC
UTILITIES COMMISSION

December 22, 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 Reply Comments.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP

Dean J. Miller

DJM/hh
Encl.

ORIGINAL

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Attorneys for Magic Wind, LLC

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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.	)	**CASE NO. IPC-E-11-20** **REPLY COMMENTS OF MAGIC WIND, LLC**

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

INTRODUCTION

Pursuant to Order No. 32395, the deadline for initial Comments in this matter was December 15, 2011. Magic Wind and the Commission Staff ("Staff") filed timely Comments. Idaho Power Company ("Idaho Power" or "Company") did not file Comments.

Staff Comments supports the Company's Application. As noted in its initial Comments, Magic Wind acknowledges that Idaho Power is entitled to terminate the FESA and to remove the

project from the Twin Falls Cluster Group interconnection queue. On these points Magic Wind does not disagree with the Company and Staff.

Magic Wind, however, disagrees with Staff's support of two proposals contained in the Company's Application:

- The proposal to deduct amounts spent on Network Upgrade Costs from a refund of the deposit made by Magic Wind;
- The proposal not to pay interest on amounts to be refunded to Magic Wind.

ARGUMENT

Staff Comments Misunderstand the Cassia Stipulation and Order Regarding Sharing of Network Upgrade Costs

As Staff notes, the rights and obligations of parties to the Twin Falls Cluster Group were established in IPUC Case No. 06-21, *Cassia Wind v. Idaho Power Company*. There, the parties entered in to a Stipulation ("Cassia Stipulation") and the Commission approved the Cassia Stipulation in Order No. 30414. The terms of the Cassia Stipulation and Order No. 30414, were later incorporated in the Generator Interconnection Agreement between Magic Wind and Idaho Power.

The Cassia Stipulation established a sharing formula by which the costs of Network Upgrades were allocated to the members of the Twin Falls Cluster Group. The formula is:

> "For Phase 1 upgrades, Idaho Power would assume 100 percent cost responsibility. For Phases 2,3,4 and 5, which encompass Magic Wind's required upgrades, cost responsibility would be paid as follows:
>
> i. Twenty-five percent of the costs would be provided by Cluster Group members as a non-refundable contribution in aid of construction ("CIAC");

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 Cluster Group member's individual power purchase agreements remaining in good standing". *See* Cassia Stipulation, Paragraph 13, pgs. 6-7.

Relying on this formula, Staff Comments supports the Company's proposal that the $76,569 that has been spent on upgrades not be refundable. "Staff believes this amount should be considered a Contribution in Aid of Construction (CIAC) which is not subject to refund consistent with the Stipulation in Order No. 30414". Staff Comments, pg. 5

Here, Staff misunderstands the intended operation of the sharing formula. The Cassia Stipulation makes it clear that the sharing formula was intended to apply to projects that completed construction and became connected to the Idaho Power transmission system. It was not intended to apply to projects that withdrew from the Twin Falls Cluster Group before completion. The following provisions of the Cassia Stipulation support this interpretation:

Paragraph 12 of the Cassia Stipulation, "Responsibility for Network Upgrade Costs" provides in part:

> "Cassia recognizes that the final cost of its share of the Network Upgrades will not be known *until construction is completed.* Cassia also recognizes that its share of the final Network Upgrade cost will increase or decrease, subject to the provisions of paragraph 10 depending on whether the projects, both earlier and later in the Idaho Power Queue *are constructed.*" (Emphasis added).

Paragraph 13 of the Cassia Stipulation, "Sharing of Network Upgrade Costs" provides in Part:

> "As projects in the Idaho Power Queue are interconnected, Idaho Power will relocate the CIAC and AIAC portions of the costs of Phases 2 through 4. For example, when additional projects in the Idaho Power Queue are constructed after the Cassia Projects are constructed, Idaho Power will collect monies from these subsequent projects and refund monies to Cassia. *It is Idaho Power's intent that each QF Project in the Idaho Power Queue will pay its respective pro-rata share, based on nameplate generation capacity, of each phase of Network Upgrade they utilize.*" (Emphasis Added).

And, as Magic Wind pointed out in its initial Comments, treating amounts spent for Construction as a non-refundable contribution would produce inequitable results: Magic Wind would pay for a benefit it will never receive and projects that do eventually connect will receive a windfall to the extent amounts paid by Magic Wind reduce Network Upgrade costs of projects that do connect.

Staff's Support of the Proposal Not to Pay Interest on a Refund is Punitive

The Staff Comments advance two reasons in support of the proposal that amounts refunded to Magic Wind be without interest. First, Staff asserts amounts deposited by Magic Wind should be considered as a contribution in aid of construction under the sharing formula. (Staff Comments, pg. 6). As discussed above, Staff misunderstands the intent of the sharing formula—it applies to projects that are finally constructed, not to projects that withdraw prior to completion.

The second reason for withholding interest is even more perplexing. The Staff Comments say:

"Furthermore, Staff does not believe that a project's delay, default and termination of its power purchase agreement presents reasonable grounds to justify entitlement to interest on a refund. To require interest to be paid on the refund amount would unjustly reward Magic Wind even though it failed to perform." (Staff Comments pg. 7).

Staff's use of the phrase "failed to perform" is troublesome to Magic Wind. It implies some kind of willful or wrongful default. It would be more accurate to say Magic Wind was unable to perform despite a long period of diligent effort. There can be a multitude of reasons why wind generation projects do not reach completion. But, in the case of Magic Wind, willful failure was not one of them.

Likewise, it is not clear what Staff intends to convey by the phrase "unjustly reward." Payment of interest would only give to Magic Wind that to which it is entitled—reasonable compensation for the use of its funds while those funds were in the possession of Idaho Power Company. Magic Wind cannot conceive of a rationale to support the idea that payment of reasonable compensation for use of funds is an unjust reward. As noted above, Magic Wind has accepted the consequences of its inability to perform: termination of the FESA and the loss of many thousands of dollars of its investment in the project. A further penalty in the form of denial of just compensation for use of funds is unwarranted.

CONCLUSION

For the reasons 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 7th 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 22nd 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	X ☐ ☐ ☐ ☐
Donovan E. Walker Jason B. Williams Idaho Power Company 1221 W. Idaho Street P.O. Box 70 Boise, ID 83707 dwalker@idahopower.com jwillimas@idahopower.com	Hand Delivered U.S. Mail Fax Fed. Express Email	☐ X ☐ ☐ X
Kristine Sasser Idaho Public Utilities Commission 472 West Washington Street P.O. Box 83720 Boise, ID 83720-0074 kris.sasser@puc.idaho.gov	Hand Delivered U.S. Mail Fax Fed. Express Email	X ☐ ☐ ☐ X

BY: Heather Houle
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