

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)
WIND, LLC) **ORDER NO. 32496**
_____)

On October 25, 2011, Idaho Power Company filed an Application with the Commission requesting termination of its Firm Energy Sales Agreement (Agreement) with Magic Wind, LLC (the Project). Specifically, Idaho Power requests that the Commission approve/acknowledge (1) the termination of the Agreement; (2) removal of Magic Wind from Idaho Power's interconnection queue; and (3) the disposition of amounts prepaid by Magic Wind for Idaho Power's transmission system network upgrades associated with the "cluster group" of generators that was the subject of Case No. IPC-E-06-21 (the "Cassia Wind" case). Idaho Power requested that its Application be processed by Modified Procedure.

On November 9, 2011, the Commission issued a Notice of Application/Notice of Modified Procedure and set a comment deadline of December 15, 2011. Commission Staff and Magic Wind filed comments. Idaho Power and Magic Wind each filed reply comments. With this Order, the Commission approves Idaho Power Company's Application to terminate its FESA with Magic Wind, LLC, as set out in greater detail below.

BACKGROUND

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 its 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 on-line within ten months of the Scheduled Operation Date to avoid an event of default. Magic Wind failed to bring the project on-line.

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 generators, mostly PURPA, 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 that showed costs of 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 to be used to allocate network upgrade costs among the individual Cluster Group projects and other Idaho Power customers. Order No. 30414. As part of the stipulation, Idaho Power estimated through a “redispatch study” that the total interconnection costs could be reduced from \$60 million to \$11 million if the projects agreed to the potential redispatch of their project’s output.

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. Idaho Power states that as of September 30, 2011, \$76,569.83 has been

spent on network upgrades from Magic Wind's \$562,536.75 prepayment of allocated Cluster Group costs.

THE APPLICATION

Because the Firm Energy Sales Agreement was approved by the Commission in Order No. 30206, Idaho Power requests that the Commission acknowledge and/or approve the termination of the Commission-approved Agreement. Idaho Power also seeks Commission acknowledgement and/or approval for Idaho Power to remove Magic Wind from its interconnection queue. Magic Wind submitted a request to the Company's interconnection queue in May 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, Idaho Power states that Magic Wind has now forfeited its position in the 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 will be directly impacted by the removal of Magic Wind from the queue, Idaho Power seeks Commission acknowledgement and/or approval of such removal. Finally, Idaho Power seeks acknowledgement and/or approval for the disposition of Magic Wind's prepaid funds and the reallocation of the Cluster Group network upgrade costs.

THE COMMENTS

Staff Comments

Staff supports Idaho Power's decision to terminate the Agreement. Staff pointed out that Magic Wind has failed to meet its initial Scheduled Operation Date, failed to bring the project on-line within ten months to avoid an event of default, failed to meet a revised Scheduled Operation Date that was nearly five years later, and failed to post delay security as required by the August 3, 2011 Letter Agreement. Staff believes there is ample justification for termination of the Agreement.

The stipulation and Idaho Power'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. Idaho Power reports that as of September 30, 2011, \$76,569 had been spent on network upgrades for the Magic Wind project. Idaho Power proposes that the \$76,569 that has already been spent on the Cluster Group network upgrades for Magic Wind not be refundable. Staff agrees that money already spent by Idaho Power in reliance on its Power Purchase Agreement with Magic Wind should not be refundable. Staff believes that 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. As a CIAC, Staff does not believe that interest on the refund amount is justified.

As a result of removing Magic Wind from the interconnection queue and refunding \$485,967¹ of its prepaid amount for network upgrades, that amount must be re-allocated to the other members of the Cluster Group. Idaho Power proposes to re-allocate 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 a stipulation approved by the Commission in Order No. 30414. Staff noted that this re-allocation is consistent with and contemplated by the stipulation.

Magic Wind Comments

Magic Wind does not dispute termination of the Agreement. However, the project maintains that it is entitled to a refund of the entire amount advanced for network upgrades (\$562,536), including interest. Magic Wind acknowledges that none of the pertinent documents surrounding this case specifically address the issue of refunds to projects that withdraw from the queue prior to connecting to Idaho Power's system. However, Magic Wind argues that because a withdrawn project never receives any benefit from Idaho Power's network upgrade, such project should not be allocated any portion of the construction costs associated with the upgrade.

Magic Wind maintains that agreements and documents associated with its project, and other projects in the Cassia Group, contemplate that network upgrade costs will be allocated to projects that actually connect to Idaho Power's system. The project argues that any other interpretation would yield an inequitable result, i.e., a project paying for a benefit that it will never receive.

¹ (\$562,536 prepaid - \$76,569 already spent = \$485,967)

Citing Commission Customer Relations Rule 106, Magic Wind further asserts that “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.” Magic Wind Comments at 5. The project states that Idaho Power’s denial of interest is also inconsistent with the parties’ prior course of dealing. Magic Wind explains that, in connection with the Twin Falls Study Group, Magic Wind made a deposit which Idaho Power later refunded, minus study costs, with interest. *Id.* at 6. The project maintains that interest should be calculated pursuant to the terms of the Cassia Settlement Stipulation, using the methodology prescribed by the Federal Energy Regulatory Commission (FERC) at 18 C.F.R. 35.19a.

Idaho Power Reply Comments

Idaho Power asserts that, subsequent to the filing of the present Application with the Commission, two additional work orders cleared its accounting system on October 25, 2011, and modified the amount that has been spent on network upgrades for the Magic Wind project. The additional costs increase the total amount spent for network upgrades on behalf of Magic Wind from \$76,569.83 to \$78,384.82. Correspondingly, Idaho Power adjusted its proposed refund to Magic Wind from \$485,966.92 to \$484,151.93.

Idaho Power states that, pursuant to the stipulation approved by the Commission, 25% of the costs of network upgrades were to be considered non-refundable contributions in aid of construction. Twenty-five percent were to be funded through the base rates of Idaho Power’s customers. The remaining 50% of network upgrade costs were to be refunded over a 10-year period contingent on the project’s power purchase agreement remaining in good standing. As a contract in default, Magic Wind no longer has an agreement in good standing.

Idaho Power argues that the provision cited by Magic Wind regarding payment of interest refers to interest on refund payments with regard to the 50% refund of network upgrade costs for agreements in good standing. The provision was not intended to apply to “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.” Idaho Power’s Reply at 5.

Magic Wind Reply Comments

Magic Wind argues on reply that Staff misunderstands the Cassia Stipulation and Order regarding the sharing of network upgrade costs. Magic Wind argues that the language in the stipulation supports its position that the sharing formula was intended to apply only to projects that completed construction and became connected to Idaho Power's system. In addressing the responsibility for network upgrade costs, the stipulation states that final costs will not be known until construction is complete because costs could increase or decrease "depending on whether the projects, both earlier and later in the Idaho Power Queue are constructed." Stipulation ¶ 12. The project further argues that, without a refund of the full amount, Magic Wind would pay for a benefit that some other project will receive because payment by Magic Wind will have reduced the total network upgrade costs for a project that joins the queue at a later point in time. Finally, Magic Wind maintains that Staff's recommendation for no interest on the refund amount is punitive and not warranted.

FINDINGS AND CONCLUSIONS

The Idaho Public Utilities Commission has jurisdiction over Idaho Power, an electric utility, and the issues raised in this matter pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities (QFs) and to implement FERC rules.

The Commission has reviewed the record in this case, including the Application, the Agreement, and the comments of Staff, Magic Wind, and Idaho Power. Based on the record, we approve the termination of the Agreement between Idaho Power and Magic Wind. We find that it is appropriate for Idaho Power to remove Magic Wind from the interconnection queue. We further find that it is just and reasonable to refund to Magic Wind the unspent balance, \$485,967, of its prepayment for network upgrade costs. Idaho Power incurred network upgrade costs, at least in part, based on its reliance on the Agreement with Magic Wind. Costs were incurred and allocated pursuant to contract terms agreed to by both parties. Idaho Power was performing its contractual obligations in expending Magic Wind's allocable share of network upgrade prepayment funds. Magic Wind's failure to perform its reciprocal obligations and, therefore,

inability to receive a benefit from such expenditures is not a reasonable basis for refunding an allocated amount spent in good faith by Idaho Power while it was performing under the contract.

Under the terms of its interconnection agreement, Magic Wind is entitled to a refund, in monthly, equal installments, for advances in aid of construction as long as the contract remains in good standing. Generator Interconnection Agreement (GIA), Attachment 6, ¶ 7. Interest on refunded amounts is calculated pursuant to 18 C.F.R. 35.19a. *Id.* at ¶ 8. In order for Magic Wind to be entitled to interest, we would first have to determine that its prepayment was an advance in aid of construction as opposed to a contribution in aid of construction. We would then have to find that its contract with Idaho Power was in good standing. The facts do not support those findings. The GIA contemplates the effect on remaining projects in the queue if a project fails to be constructed, i.e., re-allocation of the contributions in aid of construction and advances in aid of construction to the remaining projects. *Id.* at ¶¶ 5 and 6. It does not, however, directly address treatment of a project that is never built. The sharing mechanism for the cost of network upgrades is clear: 25% of the costs are paid by the QF as a non-refundable contribution in aid of construction; 25% of the costs are funded by Idaho Power and will be included in rate base; and 50% of the costs are funded by the QF as an advance in aid of construction subject to refund as long as the agreement remains in good standing. We find that the prepayment provided by Magic Wind was contribution in aid of construction and non-refundable. However, a portion of the prepayment has not yet been utilized for network upgrade costs. Therefore, we find it equitable for Idaho Power to refund the amount of prepayment that has not been expended. We also find that under these circumstances Magic Wind is not entitled to interest on its refunded amount.

Idaho Power sent a Notice of Termination of the project's FESA to Magic Wind on October 4, 2011. We find that, as of that date, no additional expenditures can reasonably be allocated to a project whose agreement has been terminated. On reply, Idaho Power stated that two additional work orders had cleared accounting as of October 25, 2011, but the Company did not identify when the work was performed. Idaho Power has failed to establish that the additional work orders were for work performed prior to the termination of Magic Wind's Agreement. Therefore, we find that Magic Wind is entitled to a refund of \$485,967. We further direct Idaho Power to issue the refund within fourteen (14) days.

ORDER

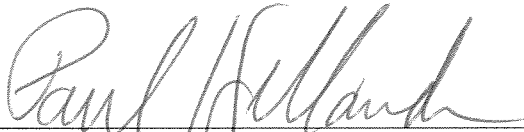
IT IS HEREBY ORDERED that Idaho Power's Application to terminate its Firm Energy Sales Agreement with Magic Wind is approved.

IT IS FURTHER ORDERED that Magic Wind be removed from Idaho Power's transmission interconnection queue.

IT IS FURTHER ORDERED that Idaho Power reimburse Magic Wind the unspent portion, \$485,967, of its network upgrade cost prepayment no later than fourteen (14) days from the date of this Order.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21st day of March 2012.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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