

KRISTINE A. SASSER
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0357
BAR NO. 6618

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5918

Attorney for the Commission Staff

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.) COMMENTS OF THE
) COMMISSION STAFF
)
_____)

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kristine A. Sasser, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32395 on November 9, 2011, in Case No. IPC-E-11-20, submits the following comments.

BACKGROUND

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. 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).

STAFF ANALYSIS

Contract Termination

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. Reference 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 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.

Staff supports Idaho Power's decision to terminate the Agreement. Magic Wind has failed to meet its initial Scheduled Operation Date, failed to bring the project online within 10 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 that Idaho Power has been exceptionally accommodating to Magic Wind to date; nonetheless, Staff agrees with Idaho Power that the time for further accommodation has ended. There is ample justification for termination of the Agreement.

Removal of Magic Wind from the Interconnection Queue

At the time Magic Wind's Firm Energy Sales Agreement was submitted to the Commission for approval, the Cassia Wind case was also pending before the Commission. Reference 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 ("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. Reference 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 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 as payment for its allocable share. Idaho Power states that as of September 30, 2011, \$76,569 has been spent on network upgrades from Magic Wind's \$562,536 prepayment of allocated cluster group costs.

Idaho Power seeks Commission acknowledgement and/or approval for Idaho Power to remove Magic Wind from its transmission 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.

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, Idaho Power states, 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.

Magic Wind submitted a request to the Company's interconnection queue in May 2005. As noted earlier, however, Magic Wind failed to timely post either the required delay security or the required construction deposit by September 30, 2011 in accordance with the Letter Agreement. Consequently, Idaho Power maintains that Magic Wind has now forfeited its position in the interconnection queue.

Staff supports the removal of Magic Wind from the interconnection queue. By failing to meet both its initial and revised Scheduled Operation Dates, failing to post liquid security, and failing to make required construction deposits, Magic Wind has demonstrated its inability to move forward in a timely manner. Staff does not believe Magic Wind should be entitled to maintain a queue position ahead of other projects more capable of performing and meeting contractual obligations.

Consequences of Removing Magic Wind from the Interconnection Queue

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 reallocated to the other members of the Cluster Group. Idaho Power proposes to reallocate the Network Upgrade

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

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. 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." Reference Stipulation at p. 6.

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. Consequently, Staff does not believe it is necessary for the Commission to further address reallocation of Network Upgrade costs amongst other members of the Cluster Group.

Disposition of Amounts Prepaid by Magic Wind

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 has 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 specifically for the benefit of 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.

Idaho Power does propose, however, to refund to Magic Wind the \$485,967 of its prepayment amount submitted on April 9, 2010 for the Network Upgrades because that amount has not yet been spent. Staff believes it is fair and reasonable to refund the full amount of unspent funds to Magic Wind.

Idaho Power does not propose to refund this amount with interest, however. The Generator Interconnection Agreement between Idaho Power and Magic Wind states the following with regard to interest on refunds:

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)(ii) from the date of any payment for Network Upgrades through the date on which Seller receives final repayment. (emphasis added).

The provisions in 18 C.F.R. 35.19a(a)(2)(ii) address refund requirements in instances wherein a utility's federal transmission rate schedules, tariffs and service agreements are suspended by FERC order.

In this instance, Staff does not believe that interest on the refund is justified for two reasons. First, Staff believes that both Section 8 of the Generator Interconnection Agreement and 18 C.F.R. 35.19a(a)(2)(ii) are intended to apply to advances in aid of construction (AIAC), not to contributions in aid of construction (CIAC). Under the terms of the Stipulation in Case No. IPC-E-06-21, the Cluster Group members and Idaho Power agreed to cost allocation for Network Upgrades. 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 the Cluster Group member's individual power purchase agreements remaining in good standing.

Reference Case No. IPC-E-06-21, Stipulation at pp. 6-8.

Staff believes that 25 percent of the amount prepaid by Magic Wind (approximately \$187,512) would have otherwise been considered CIAC, which is not subject to refund pursuant to the Stipulation. Second, Staff believes that the refunding provisions in both Section 8 of the Generator Interconnection Agreement and 18 C.F.R. 35.19a(a)(2)(ii) are clearly intended to apply only in instances in which transmission interconnection facilities are actually constructed, placed into service, and utilized by the transmission customer for which the facilities were built. Here, the majority of the refund amount was never spent in the first place, and any AIAC amounts that would have been spent would have been refunded over a 10-year period as Magic Wind used its

share of the transmission facilities. 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.

RECOMMENDATIONS

Staff recommends the following:

- 1) that the Commission approve the termination of the Firm Energy Sales Agreement approved by the Commission in Order No. 30206,
- 2) that the Commission acknowledge removal of Magic Wind from the transmission interconnection queue,
- 3) that the Commission approve Idaho Power's request to consider the \$76,569 spent on the Cluster Group Network Upgrades as non-refundable to Magic Wind,
- 4) that the Commission approve Idaho Power's request to refund to Magic Wind \$485,967 of its prepayment amount submitted on April 9, 2010 for the Network Upgrades, and
- 5) that the Commission not require Idaho Power to pay interest on the \$485,967 refund amount.

Respectfully submitted this 15TH day of December 2011.



Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 15th DAY OF DECEMBER 2011, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-11-20, BY E-MAILING AND MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

DONOVAN E. WALKER
JASON B. WILLIAMS
IDAHO POWER COMPANY
P.O. BOX 70
BOISE IDAHO 83707
E-MAIL: jwilliams@idahopower.com
dwalker@idahopower.com
CBearry@idahopower.com

RANDY C. ALLPHIN
ENERGY CONTRACT ADMINISTRATOR
IDAHO POWER COMPANY
PO BOX 70
BOISE IDAHO 83707
E-MAIL: rallphin@idahopower.com

DEAN J MILLER
McDEVITT & MILLER LLP
PO BOX 2564
BOISE ID 83701
E-MAIL: joe@mcdevitt-miller.com
heather@mcdevitt-miller.com


SECRETARY