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IDAHO PUBLIC UTILITIES COMMISSION

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Via email (jean.jewell@puc.idaho.gov)

Idaho Public Utilities Commission
c/o Jean Jewell, Secretary
472 W Washington St
Boise ID 83702

Re: Proposed Consolidation of Idaho Wind Partners' Complaint and Petition for Declaratory Order, Case No. IPC-E-13-19 and Idaho Power's Tariff Advice No. 13-05

Dear Commissioners:

On behalf of Idaho Wind Partners I LLC ("Idaho Wind Partners"), I provide these comments in response to the November 18, 2013 Decision Memorandum in which Staff recommends consolidation of Idaho Wind Partners' Complaint and Petition for Declaratory Order, Case No. IPC-E-13-19 ("Complaint") with Idaho Power's Tariff Advice No. 13-05 (recommended to proceed by Modified Procedure) ("Schedule 86 Proceeding"). Idaho Wind Partners opposes consolidation of the two proceedings.

Idaho Wind Partners' Complaint is a breach of contract action seeking interpretation of specific language in eight Firm Energy Sales Agreements ("FESAs") and monetary damages. Idaho Wind Partners seeks an expedient and fair resolution to a dispute that has cost them approximately One Million Dollars from January 2011 to date.

The Schedule 86 Proceeding is a policy matter that may affect parties to future sales agreements but that has no bearing on prior contracts or the payments due under the specific terms of those contracts. Contrary to statements in the Decision Memorandum at page 2 suggesting that the Schedule 86 Proceeding could impact existing contracts,¹ the Commission's

¹ "[T]he implications of Idaho Power's proposed changes to its Schedule 86 potentially affect the calculation of avoided cost for surplus energy for numerous active QF contracts managed by the utility." "The Commission's consideration of volume weighting as it applies to the calculation of Avoided Energy Costs under Schedule 86 necessarily implicates the calculation utilized to derive Market Energy Costs in numerous Idaho Power QF agreements."

consideration of new tariff language cannot retroactively apply to existing contracts as a matter of law.

Conversely, the outcome of the Complaint proceeding *could* affect future amendments to Schedule 86. As noted in the Decision Memorandum at page 3, “[T]he interpretation and application of the language in Schedule 86 is meant to be – and in practice has been – a reflection of the interpretation and application of the language in QF contracts.” It is the Commission’s prerogative to consider all prior transactions and decisions and any new information as it considers new tariff language. This does not mean that the Complaint decision limits the Commission’s discretion in future tariff decisions. For example, the Commission could decide the specific language in the FESAs does not support Idaho Power’s position that the price of surplus energy is based only on index prices with a reported volume, and, yet, in a subsequent tariff proceeding, the Commission could agree with Idaho Power’s position as a matter of policy and amend Schedule 86 to reflect those pricing terms for future contracts.

The Decision Memorandum also suggests consolidation is appropriate because other parties will be impacted by the outcome of the Complaint. To the extent there are other parties with the same contract language and the same impact (namely, in 90/110-era contracts, establishing the price for energy outside of the 90/110 band), they may seek to intervene in the Complaint proceeding or they may file their own case to seek redress of their own specific damages. However, the fact that other parties might have a similar concern as stated in the Complaint does not justify consolidation with the Schedule 86 Proceeding. For the same reasons set forth above, a tariff proceeding does not impact existing contracts – whether Idaho Wind Partners’ or other parties’ contracts.

Idaho Wind Partners fears that a consolidated case would (1) confuse forward-looking policy considerations with existing contract language and (2) force Idaho Wind Partners into a slower, broader, and more expensive process to resolve a contract dispute. For these reasons, Idaho Wind Partners respectfully requests the Commission to decline to consolidate its Complaint into the Schedule 86 Proceeding.

I will attend the Decision Meeting today to present these concerns and to address any questions you may have.

Sincerely,



Deborah Nelson

cc: Kristine Sasser, Idaho Attorney General’s Office (kris.sasser@puc.idaho.gov)
Donovan Walker, Idaho Power Company (dwalker@idahopower.com)