

135 FERC ¶ 61,154  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Idaho Wind Partners 1, LLC

Docket No. EL11-12-001

ORDER GRANTING CLARIFICATION AND DISMISSING REHEARING

(Issued May 19, 2011)

1. On April 18, 2011, Idaho Wind Partners 1, LLC (Idaho Wind) filed a request for clarification or, in the alternative, rehearing of the Commission's March 17, 2011 order.<sup>1</sup> As discussed below, we clarify our March 17 Order.

**I. Background**

2. On December 15, 2010, Idaho Wind petitioned for Commission approval of a proposed transaction to make an "inside-the-fence" sale of qualifying facility (QF) output to and buy-back of QF output from a third party prior to a sale of that output to its local utility, Idaho Power Company, both without losing the ability to make the second sale pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA) mandatory purchase obligation, and without violating the Commission's anti-manipulation rules.<sup>2</sup> The purpose of the proposed transaction is to unbundle any associated renewable energy credits (RECs) from the energy prior to selling the energy a second time at the busbar interconnection between the QFs and Idaho Power Company pursuant to the PURPA mandatory purchase obligation at the avoided cost rate authorized by the Idaho Public Utilities Commission.<sup>3</sup> The petition requested, more specifically, that the Commission

---

<sup>1</sup> *Idaho Wind Partners 1, LLC*, 134 FERC ¶ 61,217 (2011) (March 17 Order).

<sup>2</sup> *Id.* P 2-3, 19, 22; *see* 16 U.S.C. § 824a-3 (2010). Idaho Wind filed the petition on behalf of its eleven wholly-owned subsidiary operating companies, which are wind-powered self-certified QFs located in Idaho.

<sup>3</sup> *Id.* P 4.

find that the proposed transaction: (1) would not violate any of the Commission's anti-manipulation rules; (2) would not result in loss of QF status for any of Idaho Wind's wind generation facilities; and (3) would not disqualify the sale of electric energy from Idaho Wind's wind generation facilities to the local utility from being considered an avoided cost sale by a QF pursuant to PURPA.

3. In the March 17 Order, the Commission found that the proposed transaction would not violate the Commission's anti-manipulation rule.<sup>4</sup> However, the Commission dismissed the petition without prejudice to Idaho Wind refiling as there was insufficient information about the third party to make a determination. The Commission, citing precedent allowing a QF to purchase and then re-sell pursuant to the PURPA mandatory purchase obligation and at PURPA avoided cost rates energy produced by another QF,<sup>5</sup> stated that if the simultaneous sale and buy-back is a sale to and buy-back from a third-party QF, and there is no commingling with non-QF energy, the energy would remain QF energy and thus may be sold to an electric utility pursuant to the PURPA mandatory purchase obligation at PURPA avoided cost rates. Noting that it did not know if the third party is, in fact, a QF, however, the Commission explained that the Commission need not and did not rule whether its conclusion would be the same or different if the third party were not a QF.<sup>6</sup>

## **II. Request For Clarification**

4. In its request for clarification or rehearing, Idaho Wind asks the Commission to find that any QF, regardless of relative size or affiliation or physical location, may be the third party to the sale and buy-back. If the Commission does not grant clarification, Idaho Wind seeks rehearing and asks the Commission to find that whether or not the third party is a QF is irrelevant. In this latter regard, Idaho Wind emphasizes the physical structure of the proposed transaction which prevents any commingling of non-QF energy with the QF energy.

## **III. Determination**

5. We confirm that so long as the third party in the proposed transaction is a QF, regardless of its relative size, affiliation or physical location, the energy that is sold and

---

<sup>4</sup> *Id.* P 22-25.

<sup>5</sup> *Id.* P 20.

<sup>6</sup> *Id.* P 21, 26.

bought back will not affect the QF status of Idaho Wind's facilities that sell and buy-back the energy. In addition, the electric energy that Idaho Wind's facilities sell to a QF and then buy-back may subsequently be sold pursuant to the PURPA mandatory purchase obligation and at PURPA avoided cost rates.<sup>7</sup> Likewise, so long as the third party is a QF, the relative size or affiliation or physical location would not affect our earlier finding under our anti-manipulation rule.

6. In the March 17 Order, the Commission stated that it did not need to rule on, and so did not rule on, what would happen in the event the third party were not a QF, e.g., the effect on QF status or the right to invoke the PURPA mandatory purchase obligation and to sell at PURPA avoided cost rates.

7. Based on the clarification provided herein, we see no reason to address Idaho Wind's arguments seeking rehearing of the March 17 Order, and will therefore dismiss it.

---

<sup>7</sup> The Commission's regulations contain limited exemptions from Federal Power Act (FPA) section 205, 16 U.S.C. § 824d (2006), for certain sales by QFs. All sales by QFs 20 MW or smaller are exempt, but only certain sales from QFs larger than 20 MW are exempt. *See* 18 C.F.R. § 292.601(c) (2010). A third-party wind QF (or any other small power production QF as opposed to a cogeneration QF) thus may need FPA section 205 authority to sell the QF power back to Idaho Wind; a wind QF that is larger than 30 MW (net capacity) always would need authority under FPA section 205 to make sales. *See* 18 C.F.R. § 292.601(b) (2010). The 30 MW size limit for small power production facilities to be exempt from the FPA, including section 205, is statutory (*see* 16 U.S.C. § 824a-3(e)(2) (2006)), which the Commission codified in section 292.601(b) of its regulations.

According to Idaho Wind, both Idaho Wind and the third-party that will buy from Idaho Wind, strip the RECs, and sell back the energy to Idaho Wind, will have FPA section 205 market-based-rate authority. Idaho Wind Petition at 4, 11.

The Commission orders:

Idaho Wind's request for clarification is hereby granted as discussed above, and the request for rehearing is hereby dismissed.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.