

McDowell & Rackner PC



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June 2, 2009

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. UM _____

Enclosed for filing in the above-referenced proceeding are an original and two copies of Idaho Power Company's Petition for a Partial Waiver of Competitive Bidding Guidelines. A Motion for Standard Protective Order is being filed concurrently with this Petition.

A copy of this filing has been served on all parties to Idaho Power's last general rate case (UE 167) and 2006 IRP case (LC 41), as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa F. Rackner". The signature is fluid and cursive, with a large loop at the end.

Lisa F. Rackner

cc: Service Lists for UE 167 and LC 41

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in **Idaho Power's Petition for a Partial Waiver of Competitive Bidding Guidelines**, on the following named persons on the date indicated below by e-mail addressed to said persons at his or her last-known address indicated below.

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DATED: June 2, 2009



Wendy McIndoo
Legal Assistant
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM _____

IN THE MATTER OF IDAHO POWER
COMPANY'S REQUEST FOR A PARTIAL
WAIVER OF COMPETITIVE BIDDING
GUIDELINES – 2012 WIND RESOURCE

**MOTION FOR STANDARD
PROTECTIVE ORDER**

Pursuant to OAR 860-012-0035(1)(k), Idaho Power Company moves for entry of the Commission's standard protective order in this proceeding. As good cause for this motion, Idaho Power Company states:

1. The Commission's rules authorize Idaho Power Company to seek reasonable restrictions on discovery of trade secrets and other confidential business information. See OAR 860-11-0000(3) (adopting Oregon Rules of Civil Procedure ("ORCP")); ORCP 36(C)(7) (providing protection against unrestricted discovery of "trade secrets or other confidential research, development, or commercial information"). See also *In re Investigation into the Cost of Providing Telecommunication Service* (UM 351), Order No. 91-500 (1991) (recognizing that protective orders are a reasonable means to protect "the rights of a party to trade secrets and other confidential commercial information" and "to facilitate the communication of information between litigants").

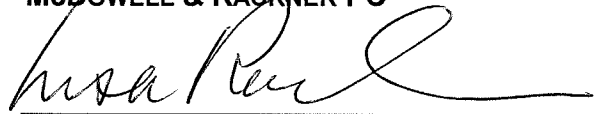
2. Idaho Power Company anticipates that discovery in this proceeding may include proprietary business and financial information. Idaho Power Company will be exposed to competitive injury if it is forced to make unrestricted disclosure of its confidential business information.

3. Issuance of a protective order will facilitate the production of relevant information, aid the discovery process and expedite resolution of this case.

1 For the foregoing reasons, Idaho Power Company requests entry of the
2 Commission's standard protective order in this docket.

3 DATED: June 2, 2009.

McDOWELL & RACKNER PC

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5 Lisa F. Rackner
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7 **IDAHO POWER COMPANY**

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9 Corporate Counsel
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11 P.O. Box 70
12 Boise, Idaho 83707

13 Attorneys for Idaho Power Company
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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM _____

IN THE MATTER OF IDAHO POWER
COMPANY'S REQUEST FOR A PARTIAL
WAIVER OF COMPETITIVE BIDDING
GUIDELINES – 2012 WIND RESOURCE

PETITION FOR A PARTIAL WAIVER OF
COMPETITIVE BIDDING GUIDELINES
(Expedited Consideration Requested)

Pursuant to OAR 860-013-0020, Idaho Power Company ("Idaho Power" or "Company") petitions the Public Utility Commission of Oregon ("Commission") for an order exempting Idaho Power from compliance with several of the guidelines governing competitive bidding adopted by the Commission in Order No. 06-446 ("Competitive Bidding Guidelines"). For the reasons discussed below, Idaho Power requests expedited review of this petition ("Petition").

I. INTRODUCTION

While the current recession has significantly slowed residential construction, the Company continues to experience commercial and industrial load growth, and continues to field requests from potential new large industrial loads. In addition, there appears to be a substantial likelihood that federal legislation will require the addition of new renewable resources. Accordingly, the Company has planned to add significant amounts of wind generation to its resource portfolio in the near term. The Company's acknowledged 2006 IRP and the 2008 RFP Update both included a 100 MW wind generation resource, to be added in 2008 and a 150 MW wind generation resource to be added in 2012. The 2008 wind generation resource addition was satisfied by the Company's acquisition of the output of the Elkhorn Valley Wind Project located between Baker and La Grande, Oregon. And recent events have presented an opportunity for Idaho Power to acquire the 2012 wind resource at very favorable prices. However, as discussed below, the opportunity is

1 time-limited. For these reasons the Company released a Request for Proposals ("RFP")
2 sooner than previously anticipated, and seeks waiver from several of the Competitive
3 Bidding Guidelines.

4 The American Recovery and Reinvestment Act of 2009 (the economic stimulus
5 package, or "Stimulus Package") provides energy developers with an array of potential
6 benefits, all of which are available for a limited period of time. Among these are:

- 7 • A 50% bonus depreciation allowing developers to depreciate half the cost of a
8 project immediately *for projects completed during 2009*, and on a portion of the
9 cost of projects that have an *estimated construction period in excess of one year*
10 *and are placed in service in 2010*.
- 11 • An extension of the 10-year production tax credit eligibility for *wind generation*
12 *facilities placed in service up to December 31, 2012*.
- 13 • An investment tax credit in lieu of the production tax credit for *wind facilities placed*
14 *in service from 2009 through 2012*. The investment credit is taken in the year a
15 project is placed in service and includes 30% of the cost of the qualified property.
- 16 • A non-taxable treasury grant in lieu of the production or investment tax credit for
17 *wind projects (a) placed in service in 2009 and 2010 or (b) starting construction*
18 *during 2009 or 2010 and completed by 2012*. Grant applications must be received
19 prior to October 1, 2011.

20 In April of this year, Idaho Power received an offer to purchase approximately 150
21 MW of wind energy with very favorable attributes and at very favorable prices. While the
22 details of the offer are highly sensitive, the general characteristics of the offer are
23 described in the Confidential Affidavit of Mark Stokes, attached as Exhibit A. Idaho Power
24 understands that the developer is able to price this wind resource so favorably in part
25 because of its ability to take advantage of Stimulus Package benefits, and the offer is
26 expressly conditioned on the developer's ability to do so.

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III. BACKGROUND

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A. Wind Resources in Idaho Power's recent Integrated Resource Plans

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Idaho Power's acknowledged 2006 IRP and the 2008 IRP Update both identified wind resource additions of 100 MW in 2008 and 150 MW in 2012 as future resources. The 2008 100 MW resource was satisfied by the Company's acquisition of 100 MWs from the Elkhorn Valley Wind Project. This current RFP will correspond to the 150 MW addition identified for 2012.

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IV. PROPOSED RFP PROCESS

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In response to the above-described changes in circumstances, Idaho Power has developed and commenced an RFP process to obtain up to 150 MW of wind generation

1 capacity as early as 2009 but no later than 2012. In so doing, Idaho Power has sought to
2 balance the benefits of taking advantage of short-lived tax credits and other stimulus
3 incentives against the need for a process that is as consistent as possible with the
4 Commission's Competitive Bidding Requirements.

5 The RFP requests proposals for power purchase agreements ("PPA") up to
6 150 MW. Depending on the size of the proposed resources, Idaho Power may combine
7 proposals to meet its 150 MW requirement. The preferred term of a PPA is 20 years but
8 the Company will consider 15, 25, and 30 year terms. The Company will *not* propose a
9 self-build wind generation resource to compete with PPA proposals nor will it accept
10 proposals from any subsidiary of IDACorp or affiliate of the Company. Bids are due on or
11 before June 12, 2009.

12 Evaluation of the bids will take place as follows: Initially, the Company will screen
13 proposals for minimum qualifications, such as quantity and term. Second, Idaho Power
14 will evaluate the proposals on the basis of scoring factors. The scoring criteria are
15 described in detail on Pages 2 and 3 of Exhibit B. Third, Idaho Power will notify short-
16 listed respondents and commence contract negotiations.

17 The Company will employ an independent consultant to assist the Company in
18 evaluating the proposals. The independent consultant will independently review and
19 evaluate the proposals to determine whether the short list of bidders has been selected in
20 accordance with the RFP criteria. The independent consultant will then work with the
21 Company to resolve any scoring questions. The independent consultant will participate
22 with the Company in developing PPAs and making the final resource selection(s). Idaho
23 Power will provide periodic briefings to the Idaho Commission Staff, and the Oregon
24 Commission Staff if requested, throughout the RFP process. The independent consultant
25 will prepare reports to the Commission as requested by the Company.

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8 **V. DISCUSSION**

9 The Competitive Bidding Guidelines specifically allow an electric utility to request a
10 waiver under appropriate circumstances. In this case, where strict adherence to the
11 Guidelines would jeopardize Idaho Power's ability to move quickly to capture a potential
12 benefit based on the limited availability of the 2009 economic stimulus incentives and
13 where the alternative RFP process proposed by the Company will yield fair and
14 reasonable results for customers, the Commission should grant the requested waiver.

15 **A. Exemptions from RFP Guidelines**

16 In 2006 the Commission adopted Competitive Bidding Guidelines to facilitate the
17 RFP process.¹ These Guidelines establish detailed procedures that are intended to result
18 in a full review and evaluation of all potential resources; they also necessarily result in an
19 expensive and time-consuming process. In recognition of this fact, in Guideline 2, the
20 Commission outlined three circumstances under which a utility is not required to issue an
21 RFP:²

- 22 a. Acquisition of a Major Resource in an emergency or where there is a time-
23 limited resource opportunity of unique value to customers ["Exemption 2(a)"];
24 b. Acknowledged IRP provides for an alternative acquisition method for a Major
25 Resource;
26 c. Commission waiver on a case-by-case basis ["Exemption 2(c)].³

27 Idaho Power's Petition should be granted under Exemption 2(a) and 2(c). In
28 adopting the Competitive Bidding Guidelines, the Commission explicitly recognized that a
29 utility might be presented with a time-limited opportunity to acquire a resource—which
30 opportunity might be lost if the Company were required to issue an RFP in accordance

31 _____
32 ¹ *Re Investigation Regarding Competitive Bidding*, Docket UM 1182, Order No. 06-446
33 (Aug. 10, 2006).

34 ² *Id.* at 4.

35 ³ Order No. 06-446 at 4.

1 with all of the Competitive Bidding Guidelines. In fact, the Commission contemplated that
2 under such circumstances the utility might not even have time to request a waiver in
3 advance of the acquisition. In such cases, the Commission requires only that the utility
4 notify the Commission after the acquisition and explain why it was unable to follow the
5 RFP process.⁴

6 In this case, Idaho Power does have time to request this partial waiver in advance
7 of the acquisition. However, the pressing need to commence the acquisition process has
8 required the Company to issue its RFP before receiving a waiver from the Commission. In
9 addition, Guideline 2(c) allows the Commission to waive RFP requirements on a case-by-
10 case basis if the utility does not believe the requirement would be suitable to the resource
11 acquisition.⁵

12 As described above, a limited time opportunity to save customers money has
13 presented itself. It is therefore in the public interest for the Commission to waive those
14 certain requirements of the UM 1182 Competitive Bidding Guidelines that would prevent
15 the Company from acquiring this previously identified resource at a potentially favorable
16 price.

17 **B. Proposed Exemptions from the RFP Guidelines**

18 Idaho Power has identified several specific Competitive Bidding Guidelines, which,
19 if complied with completely, would preclude Idaho Power from acquiring the identified wind
20 resource in time to capture the potential price benefits. These are the guidelines for which
21 the Company requests a waiver:

22 Guideline Number 5 - Independent Evaluator. This guideline requires utilities
23 to use an Independent Evaluator ("IE") in each RFP to assure equitable and fair evaluation
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25 ⁴ *Id.*

26 ⁵ *Id.*

1 of offers.⁶ Guideline No. 5 provides that the IE will contract with and be paid by the utility
2 and will confer with Commission Staff as needed.⁷ Guideline No. 5 also contemplates that
3 the Commission will select and approve the IE for the RFP.

4 Because Idaho Power will potentially accept proposals with some utility
5 ownership arrangement, Guideline No. 5 would be applicable to this RFP. The far-
6 reaching involvement of the IE as contemplated by Competitive Bidding Guideline No. 5
7 will delay the final conclusion of the RFP process. The use of an IE in the process would
8 almost certainly preclude Idaho Power from meeting deadlines for acquiring a wind
9 resource that can take advantage of the 2009 economic stimulus tax benefits. Idaho
10 Power is also concerned that the involvement of the IE as contemplated in the
11 Commission's Competitive Bidding Guidelines would substantially increase the cost the
12 RFP process as compared to the cost Idaho Power has previously incurred by utilizing an
13 independent consultant in the manner described below. This is of particular concern given
14 that the Company's ability to recover the costs of an IE in its Idaho rates is questionable.

15 Idaho Power's RFP contemplates the use of an independent consultant to
16 ensure that its RFP process is fair, and assist in evaluating proposals. Idaho Power has
17 successfully used independent consultants in previous RFPs. The independent consultant
18 will ensure that the RFP is fair and efficient and can provide the Commission with sworn
19 testimony to that effect. Idaho Power requests that the Commission waive the
20 requirement to use an IE to evaluate this RFP.

21 Guideline Number 6: RFP Design. This guideline requires utilities to conduct
22 bidder and stakeholder workshops to provide all parties and interested persons in the
23

24 _____
25 ⁶ *Id.* at 6.

26 ⁷ *Id.*

1 utilities most recent general rate case and IRP dockets with an opportunity to comment on
2 the design of the proposed RFP.⁸

3 As previously noted, Idaho Power has concluded that the time required to
4 schedule and conduct multiple formal workshops prior to the issuance of an RFP would
5 have resulted in significant delays in issuance of the RFP. Idaho Power's need to move
6 quickly to take advantage of economic stimulus package incentives simply does not allow
7 for the additional time required for full compliance with Guideline 6.

8 The Company will provide periodic informal briefings to the Idaho
9 Commission Staff during the course of the RFP process. Idaho Power would certainly be
10 willing to include the Oregon Commission Staff as a part of those briefings. Accordingly,
11 Idaho Power requests that the Commission waive application of Guideline 6.

12 Guideline Number 7: RFP Approval. This guideline requires the Commission
13 to undertake a public notice and comment process on both the utility's draft RFP and the
14 Commission approval of the draft RFP.⁹ The guideline indicates that the Commission will
15 target a decision within sixty (60) days after the draft RFP filing,¹⁰ but the Commission
16 obviously cannot commit that the process will be concluded that quickly. Idaho Power's
17 concern with Guideline 7 is the time that will be required to go through the public notice
18 and comment process in conjunction with issuance of the RFP. Delaying the issuance of
19 the RFP by sixty (60) or more days could have made it impossible for the Company to
20 meet the tight time schedules required to ensure that the stimulus package incentives will
21 be available. Idaho Power therefore requests that the Commission waive the public notice
22 and comment, and Commission approval process outlined in Guideline 7.

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24 ⁸ Order No. 06-446 at 7.

25 ⁹ *Id.* at 9.

26 ¹⁰ *Id.*

1 **C. The Idaho Commission's Oversight of the Process Will Protect Idaho Power's**
2 **Customers.**

3 Waiver here is especially appropriate where oversight of the RFP process by the
4 Idaho Commission will ensure that all of the Company's customers are protected. More
5 than 95 percent of Idaho Power's revenue requirement is allocated to its Idaho customers.
6 As a result, the Idaho Commission has a significant stake ensuring that Idaho Power
7 conducts a fair RFP process. While the Idaho Commission does not exercise the same
8 degree of oversight as the Oregon Commission's bidding guidelines require prior to
9 issuance of the RFP, the Idaho Commission is no less rigorous in its review of the fairness
10 and efficiency of the procedures its utilities use to conduct and evaluate RFPs.

11 If the RFP process results in the selection of a PPA as the preferable new
12 resource, Idaho Power must file the contract with the Idaho Commission and obtain its
13 approval prior to its inclusion in rates.¹¹ Review and approval of the contract would not
14 necessarily be undertaken as a part of a general rate case, but could be handled as an
15 independent application.¹² Actual implementation of a rate change associated with a PPA
16 would occur in a subsequent general rate case or power cost adjustment case. Again, the
17 approval of the PPA would be a public process with full opportunity for participation by the
18 public and subject to full review by Idaho Commission Staff and intervenors. The Idaho
19 Commission's review procedure will serve to both allow Idaho Power to expedite its RFP
20 to acquire this necessary resource while at the same time protecting the interests of Idaho
21 Power customers, including those in Oregon.

22 **VI. CONCLUSION**

23 Idaho Power finds itself in a desirable position. Because of recent national
24 Legislative action to stimulate the economy, the Company has the opportunity to obtain a


25 ¹¹ IDAPA 31.01.01 Rule 121.

26 ¹² *Id.*

1 new wind resource at competitive prices. Market realities require that the Company move
2 quickly to pursue an RFP for this renewable resource. As a result, the Company does not
3 have the time that would be required to fully comply with all of the Competitive Bidding
4 Guidelines. Idaho Power believes that the RFP process it has designed and initiated will
5 protect the interest of customers in a fair and efficient RFP while protecting them from the
6 harm that will result if Idaho Power is not able to acquire the needed resource because of
7 a delay in the RFP process. In addition, the Idaho Commission will fully review the
8 fairness of the RFP. For all of these reasons, Idaho Power respectfully requests that the
9 Commission grant Idaho Power a waiver from compliance with those portions of the
10 Competitive Bidding Guidelines described herein. Due to the short timelines involved in
11 this RFP, Idaho Power requests that the Commission grant expedited review of this
12 Petition.

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14 DATED: _____, 2009.

McDOWELL & RACKNER PC



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16 Lisa F. Rackner

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18 **IDAHO POWER COMPANY**

19 Barton L. Kline
20 Corporate Counsel
21 1221 West Idaho Street
22 P.O. Box 70
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24
25 Attorneys for Idaho Power Company
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Exhibit A
Affidavit of Mark Stokes
(CONFIDENTIAL)

Exhibit B
Wind RFP Proposal



Wind Energy Solicitation

May 18, 2009

Summary

Idaho Power identified a need for wind-powered electric generation in the company's 2006 Integrated Resource Plan (IRP). Specifically, the 2006 IRP indicated that Idaho Power would acquire 150 MW of wind-powered generation in 2012. Idaho Power reaffirmed this resource need in the 2008 Integrated Resource Plan Update published in June 2008.

With the passage of the American Recovery and Reinvestment Act of 2009 (the economic stimulus package), Idaho Power believes it may be advantageous to accelerate the timing of this resource acquisition. As time is of the essence to take advantage of the economic stimulus package, Idaho Power is issuing this abbreviated solicitation to request offers from wind-powered generation resource developers (Respondents). As a result of the stimulus package and other events, Idaho Power has been offered an opportunity to acquire additional wind generation for its portfolio at competitive prices.

Idaho Power will not accept proposals from any IDACORP subsidiaries or affiliates. The summary details of this solicitation are as follows:

PRODUCT

A renewable, wind-powered generating resource, or resources, located inside, or in close proximity to, Idaho Power's service area providing first-call physically delivered electrical energy including all associated renewable energy credits (RECs) or "green tags".

QUANTITY

Idaho Power anticipates acquiring energy from up to approximately 150 MW of nameplate wind-powered generation by the end of 2012.

TERM

Deliveries for the energy and associated renewable energy credits can begin as soon as 2009 and must commence no later than year-end 2012. The preferred contract term is 20 years, however 15, 25, and 30 year terms may be considered.

OWNERSHIP

Idaho Power anticipates acquiring the energy through a power purchase agreement (PPA). Idaho Power may consider other arrangements including utility ownership or PPA with deferred ownership

Selection Criteria

All offers received by the response date will be evaluated in a non-discriminatory and consistent manner. Primary selection criteria include delivered energy price, capacity factor, persistence, and flexibility. Idaho Power will assess the various offers based on the delivered energy price

and the cost and ability to curtail the project's energy deliveries as necessary to accommodate transmission congestion or energy integration.

Idaho Power will give preference to wind projects that are permitted and ready to begin construction with demonstrated transmission access and capacity or significant progress in the transmission study process. Idaho Power is a summer peaking utility and will give preference to wind projects where generation coincides with Idaho Power's peak demand in June, July, and August, and has a high probability of being able to be delivered to Idaho Power's load center. Idaho Power will also give preference to Respondents who demonstrate successful wind project development experience.

If attractive prices are offered, it is Idaho Power's intent to finalize a definitive agreement as soon as possible with Respondent(s) that provide, in Idaho Power's sole judgment, the best combination of power supply characteristics and costs. Idaho Power recognizes it may be necessary for Respondents to refresh their bid price for final consideration. During the evaluation process Idaho Power will notify Respondents of due dates for refreshed bids.

Transmission Connections

Many transmission paths in the Northwest are constrained during various times of the year. The ideal situation for a project located outside of Idaho Power's Balancing Area is for the project to be designated as an Idaho Power network resource with firm transmission capacity available for delivering the project's output to the point of interconnection with Idaho Power's system and no transmission constraints between the point of interconnection and the Treasure Valley load center.

Projects within Idaho Power's Balancing Area will ideally be designated as an Idaho Power network resource with firm transmission capacity available for delivering the project's output to load without transmission constraints between the point of interconnection and the Treasure Valley load center.

Proposal Requirements

This is a competitive solicitation. Idaho Power encourages Respondents to present a brief summary of the proposed project including the following items:

- Initial price and escalation factor
- Initial delivery date
- Proposed contract term
- Point of delivery
- Known transmission constraints
- Scheduling considerations or proposed curtailment provisions
- Permitting status
- Meteorological analysis/wind data
- Wind project development experience

Response Date and Contact Information

Responses to this solicitation should be submitted electronically to wind2012@idahopower.com by 5:00 p.m. on June 12, 2009. Questions regarding this solicitation can be sent to the e-mail address above or directed to:

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(208) 388-2623

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(208) 388-2483

Reservation of Rights

Idaho Power reserves the right, without qualification and in its sole discretion, to accept or reject any or all proposals for any reason without explanation to the respondent, or to make the award to that respondent, who, in the opinion of Idaho Power, will provide the most value to Idaho Power and its customers. Idaho Power reserves the right to reject any proposal, either in entirety or any portion thereof, for failure to meet any criteria set forth in this solicitation.

Idaho Power will consider both price and non-price attributes in the evaluation of proposals. Idaho Power reserves the right to make an award to other than the lowest price offer, or to the offer representing the best combination of price and non-price attributes, in Idaho Power's sole judgment, if Idaho Power determines that such an award results in the greatest value to Idaho Power and its customers.

Idaho Power makes no guarantee that a contract award will result from this solicitation. Idaho Power reserves the right to revise or terminate the solicitation process at any time. Idaho Power may decline to enter into an arrangement with any or all respondents, and Idaho Power may abandon the solicitation process in its entirety at any time.

Idaho Power reserves the right to participate in discussions and begin negotiations with any Respondent at any time during the solicitation process. Idaho Power may make an award of a contract without further discussion at any time in the solicitation process. Idaho Power may discontinue negotiations with a Respondent at any time.

Idaho Power reserves the right to revise the solicitation quantity. Idaho Power reserves the right to revise the capacity needs forecast at any point during the solicitation process including during negotiations, and any such change may reduce, eliminate, or increase the amount of power sought.

During all stages of the solicitation process, Idaho Power reserves the right to request additional information from individual Respondents or to request all Respondents to submit supplemental materials in fulfillment of the content requirements of this solicitation or to meet additional information needs. Idaho Power also reserves the unilateral right to waive any technical or format requirements contained in this solicitation. Idaho Power will review, and may utilize, any or all information submitted by a Respondent, even if the submitted information has not been specifically requested as a part of this solicitation.

Those who submit proposals do so without recourse against Idaho Power, IDACORP, Inc., or any of IDACORP, Inc.'s subsidiary companies for either rejection of their proposal or proposals or for failure to execute an agreement for any reason.

All offers shall be valid and binding upon the respondent through contract negotiations and contract execution.

Limitation of Liability

Idaho Power shall not be liable for any expenses Respondents incur in connection with providing a response to this solicitation, or for any costs, fees, or lost or foregone profits of unsuccessful proposals.

Confidentiality

Idaho Power will use reasonable efforts to protect any proprietary and confidential information contained in a proposal, provided that such information is clearly identified by the Respondent as "Proprietary and Confidential" on the page on which proprietary and confidential information appears. Such information may, however, be made available under applicable state or federal law to regulatory commissions and their staffs. Under no circumstance will Idaho Power, or its agents or contractors, be liable for any damages resulting from any disclosure.
