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IDAHO PUBLIC  
UTILITIES COMMISSION

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Attorneys for Avista Corporation

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE PETITION  
FILED BY IDAHO POWER COMPANY  
FOR APPROVAL OF MODIFICATIONS  
TO THE SECURITY PROVISIONS  
REQUIRED TO BE INCLUDED IN  
POWER PURCHASE AGREEMENTS  
BETWEEN ELECTRIC UTILITIES  
(IDAHO POWER, AVISTA  
CORPORATION DBA AVISTA  
UTILITIES, AND PACIFICORP DBA  
UTAH POWER & LIGHT COMPANY)  
AND PURPA QUALIFYING  
FACILITIES (QFS)

CASE NOS. IPC-E-03-16  
AVU-E-03-9  
PAC-E-03-13

REPLY COMMENTS OF AVISTA  
CORPORATION ON  
RECONSIDERATION

**I. INTRODUCTION**

Avista Corporation ("Avista"), by and through its undersigned attorneys respectfully requests that the Commission consider and receive these Reply Comments.

**II. COMMENTS**

Avista has concerns regarding the use of second liens for risk mitigation in levelized rate contracts similar to those expressed in the Idaho Power Company comments. There is a definite possibility for conflicts of interest if qualifying facility ("QF") developers are allowed to prepare and file documents that are necessary to grant utilities security interests in QF assets in the event of defaults under QF power purchase and sale contracts.

Avista recommends that creation of second liens on QF projects be handled in a manner similar to common commercial and real estate transactions. In those transactions, the party receiving the benefit of the lien or mortgage may prepare and file the lien or mortgage documents, or select the attorney or closing agent who performs the required legal work. In other situations, a person or law firm who is neutral to the seller and the buyer performs the legal work associated with creating the lien. Although the person whose property is to be encumbered is responsible for executing appropriate documents, only in the most exceptional circumstances is that person actually tasked with the responsibility of preparing and filing the appropriate documents that create the lien. Allowing QF developers to prepare and file the required documents would be an unnecessary departure from usual commercial practice.

If QF developers are assigned the task of preparing, filing and perfecting a second lien for a utility, then the utility should not be held responsible for the viability of that security. It would be unreasonable to require a utility to accept a security interest created by a QF and then hold the utility responsible, if the security interest is not ultimately effective, enforceable or sufficient to cover all of the assets.

Avista also concurs that a utility should recover in its rates costs relating to preparing and/or reviewing second liens. Alternatively, costs of preparation and/or review of such liens should be directly reimbursed by the developer. The utility should have the discretion to determine whether its legal work associated with such liens will be conducted internally, or by retaining outside assistance.

Avista suggests that these issues be clarified in its final order so as to diminish possible misunderstandings between QF developers and the utility. The Company also

recommends that the Commission make clear that utility will recover their costs regarding the creation and/or review of second liens.

### III. SERVICE OF FURTHER PLEADINGS

Service of further pleadings, and other documents relating to this proceeding should be served upon the following:

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- and -

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**RESPECTFULLY SUBMITTED** this 2nd day of August, 2004.

PAINE, HAMBLLEN, COFFIN, BROOKE  
& MILLER LLP

By:

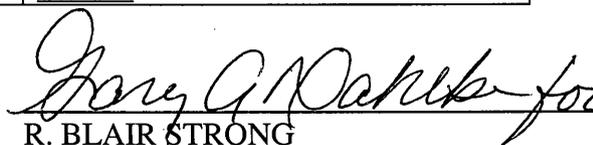


R. Blair Strong  
Attorneys for Avista Corporation

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on the 2<sup>nd</sup> day of August, 2004 I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Ms. Jean Jewell, Secretary Idaho Public Utilities Commission 472 West Washington Street Boise, Idaho 83720-0074	<u>XXXX</u> U.S. Mail _____ Hand Delivery _____ Facsimile _____ Overnight Mail _____ Electronic Mail
Randy C. Allphin Contract Administrator Idaho Power Company P.O. Box 70 Boise, ID 83707-0070	<u>XXXX</u> U.S. Mail _____ Hand Delivery _____ Facsimile _____ Overnight Mail _____ Electronic Mail
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