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Chas. F. McDevitt  
Dean J. (Joe) Miller

June 16, 2009

***Via Hand Delivery***

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 W. Washington St.  
Boise, Idaho 83720

Re: Sagebrush Energy LLC  
Case No. AVU-E-09-04

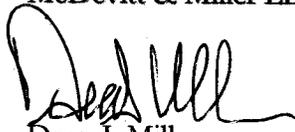
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find the original and seven copies of a Reply to Idaho Power Company's Brief of Sagebrush Energy LLC and Idaho Forest Group LLC.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP

  
Dean J. Miller

DJM/hh  
Enclosures

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Attorney for *Sagebrush Energy LLC and Idaho Forest Group LLC*

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF A PETITION  
FILED BY AVISTA CORPORATION  
FOR AN ORDER DETERMINING THE  
OWNERSHIP OF THE  
ENVIRONMENTAL ATTRIBUTES  
("RECS") ASSOCIATED WITH A  
QUALIFYING FACILITY UPON  
PURCHASE BY A UTILITY OF THE  
ENERGY PRODUCED BY A  
QUALIFYING FACILITY

**CASE NO. AVU-E-09-04**

**REPLY TO IDAHO POWER  
COMPANY'S BRIEF**

Sagebrush Energy LLC and Idaho Forest Group LLC (Sagebrush—IFG) respectfully submit the following Reply to Idaho Power Company's Brief, (Brief) filed on June 15, 2009. (According to email records of counsel for Sagebrush—IFG, the Brief was received by counsel after the close of business at 5:14 pm).

Given the short amount of time available for reply, Sagebrush—IFG reserve the right to make further oral responses at oral argument scheduled for June 17, 2009. In this written Reply, Sagebrush—IFG address only one topic: Idaho Power's observation that the Commission is not a court.

Idaho Power cites *McNeal v. Idaho Public Utilities Commission*, 142 Idaho 685, 132P.2d 442 (2006), for the general proposition that the Commission is not a court and that laws and rules developed by the courts are not necessarily applicable to proceedings at the Commission.

Sagebrush—IFG do not dispute this general observation, and in its Motion to Reject Stay, Sagebrush was careful to observe the distinction. There, Sagebrush argued that the Commission should (but is not required to) adopt the law of preliminary injunctions to guide its decision making in this case. Sagebrush wrote:

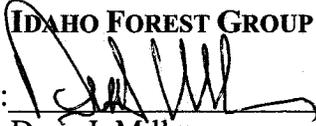
“The courts of Idaho, through a long series of judicial decisions and through adoption of procedural rules (IRCP 65e), have developed a well-established body of law that govern requests for preliminary relief prior to a full hearing on the merits. This body of law strikes a balance between recognizing there are rare circumstances where preliminary relief is required with the desirability of thoughtful consideration of the merits of the case. Accordingly, the law of preliminary injunctions should apply”.

The Commission, while not strictly bound by rules developed by courts, is, of course, required to engage in reasoned decision making. *Rosebud Enterprises v. IPUC*, 128 Idaho 609, 917 P.2d 766 (1996). The law of preliminary injunctions provides a rationale framework for a reasoned evaluation of a request for stay and the Commission should adopt that body of law as the basis of its analysis.

Further support for the approach suggested by Sagebrush—IFG comes from observing that Idaho Power does not, in its Brief, suggest any alternative set of standards, rules or guidelines that should be employed rather than the law of preliminary injunctions.

Respectfully Submitted, this 14 day of June, 2009.

**SAGEBRUSH ENERGY LLC**  
**IDAHO FOREST GROUP LLC**

By:  \_\_\_\_\_

Dean J. Miller

Attorney for *Sagebrush Energy LLC and  
Idaho Forest Group*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of June, 2009, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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BY: Leather Houle  
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