



June 16, 2009

VIA OVERNIGHT DELIVERY

Jean Jewell
Idaho Public Service Commission
472 W. Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074

RE: Case No. AVU-E-09-04 - In the Matter of the Application Filed by Avista Corporation for an Order Determining the Ownership of the Environmental Attributes Associated with PURPA Qualifying Facilities Upon Purchase of the Energy

Dear Ms. Jewell:

Enclosed for filing in the above captioned matter, please find the original and seven (7) copies of Rocky Mountain Power's Comments of on Subject Matter Jurisdiction and in Support of Stay, Affidavit of Bruce W. Griswold.

Very Truly,



Jeffrey K. Larsen
Vice President, Regulation

Enclosures

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IDAHO PUBLIC
UTILITIES COMMISSION

201 South Main, Suite 2300
Salt Lake City, Utah 84111

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2009, I caused to be served, via E-mail, a true and correct copy of Rocky Mountain Power's Comments in AVU-E-09-04 to the following:

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UTILITIES COMMISSION

Attorneys for Rocky Mountain Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF A PETITION FILED)
BY AVISTA CORPORATION FOR AN) CASE NO. AVU-E-09-04
ORDER DETERMINING THE OWNERSHIP)
OF THE ENVIRONMENTAL ATTRIBUTES)
("RECS") ASSOCIATED WITH A) Comments of Rocky Mountain
QUALIFYING FACILITY UPON) Power on Subject Matter
PURCHASE BY A UTILITY OF THE) Jurisdiction and in Support of Stay
ENERGY PRODUCED BY A QUALIFYING)
FACILITY)

COMMENTS OF ROCKY MOUNTAIN POWER
ON SUBJECT MATTER JURISDICTIONS AND
IN SUPPORT OF STAY

COMES NOW PacifiCorp dba Rocky Mountain Power ("RMP" or the
"Company") and pursuant to Rules 56 and 256 of the rules of Procedure of the Idaho
Public Utility Commission (the "Commission"), submits comments on subject matter
jurisdiction and in support of a stay of any award of Renewable Energy Credits ("RECs")
to any developer until such time as ownership of RECs is resolved by this Commission.

I. Background

On May 6, 2009, Avista Corporation ("Avista") filed a petition with the
Commission for a declaratory order determining the ownership of RECs associated with
wholesale sales of energy by qualifying facilities ("QFs") under the Public Utility

Regulatory Policies Act of 1978 (“PURPA”) to a utility within the state of Idaho (the “Avista Petition”). Avista also requested a stay of the award of any RECs to any PURPA developer that has tendered or may tender a PURPA project pending issuance by the IPUC of a declaratory order.

On May 26, 2009, Exergy Development Group of Idaho LLC (“Exergy”) filed a Motion to Dismiss Avista’s Petition for Declaratory Order (“Exergy Motion”) for lack of subject matter jurisdiction by the Commission to decide the proper ownership of RECs, in which it also contended that Avista’s Petition is an impermissible collateral attack on the Commission’s final Order No. 29480 in Case No. IPC-E-04-02.

On May 26, 2009, Sagebrush Energy LLC filed a Motion for Order denying Avista’s Petition for Stay (“Sagebrush Motion”). Sagebrush argued that Avista’s request should be evaluated as a preliminary injunction, and denied because Avista is not substantially likely to prevail, and will not suffer irreparable injury in the absence of litigation.

On June 2, 2009, the Commission issued a Notice of the above pleadings, and set forth a schedule to allow Avista and intervening parties the opportunity to reply in writing to the Motions of Exergy and Sagebrush, and for Exergy and Sagebrush to file Replies to Avista’s Answer.

Rocky Mountain Power hereby submits its comments in support of the Commission having subject matter jurisdiction over the determination of RECs, and in support of Avista’s petition for stay of any requirement to award RECs to a developer that has tendered or that may tender a PURPA project to any public utility until such time

as a final order is issued that fully resolves the issues raised in Avista's Petition to Determine Ownership of RECs.

II. Subject Matter Jurisdiction

As noted in Avista's Answer to Exergy and Sagebrush's Motions, the Commission has twice declined to address the issue of ownership of RECs, once in Order No. 29480, and again in Order No. 29577. Although the Commission held that the issues presented by Idaho Power in each case were not ripe for a declaratory judgment by the Commission, the Commission did not hold that it lacked subject matter jurisdiction to address ownership of RECs.

Rocky Mountain Power agrees with Avista's arguments, and supports the position that the Commission's enabling statutes authorize the Commission to determine the ownership of RECs associated with PURPA projects. The Idaho Code vests the Commission with the power to "supervise and regulate every public utility in the state and to do all things necessary to carry out the spirit and intent of the provisions of this act"¹ and further orders the Commission to "prescribe rules and regulations for the performance of any service or the furnishings of any commodity of the character furnished or supplied by any public utility."²

To argue, as Exergy does, that the Commission lacks jurisdiction over RECs ignores the clear language in the Commission's enabling statutes and stretches credulity. RECs are clearly associated with "a commodity of the character furnished or supplied by any public utility." Accordingly, were the Commission to find that it does not have jurisdiction over RECs would be to hold that there is no venue in the state of Idaho for

¹ I.C. § 61-501.

² I.C. § 61-507.

determining such ownership, which flies in the face of the intent expressed by I.C. §61-501 and 507.

III. Petition for Stay

In support of its Petition to Intervene, Rocky Mountain Power noted that it is currently negotiating contracts with several proposed PURPA projects, and if RMP does not receive the RECs associated with those projects when it purchases the energy its customers will be forced to overpay significantly over the life of those contracts.

Rocky Mountain Power has, in fact, executed two PURPA standard contracts in the past month with the current avoided cost pricing and is in negotiations on requests for seven PURPA contracts, totaling approximately 255 megawatts. In addition, Rocky Mountain Power has received requests for an additional 120 megawatts of wind and hydro power that are in the initial inquiry stage.

Attached as Exhibit 1 to this pleading is the affidavit of Bruce Griswold, Rocky Mountain Power's Director of Short-Term Origination and QF Contracts. As noted by Mr. Griswold, if Rocky Mountain Power enters into these seven PURPA contracts that have been requested, this will have a significant negative impact on Rocky Mountain Power and its ratepayers over the life of these contracts. These contracts will be intermittent, null power for the Company, not qualifying for any existing or future renewable portfolio standards or even voluntary renewable programs.

Mr. Griswold's statements demonstrate that allowing this proceeding to determine ownership of RECs to move forward without a stay pending the Commission's decision will produce waste, and irreparable injury to Rocky Mountain Power and its ratepayers within the state of Idaho. This satisfies the requirements of Idaho Rule of Civil

Procedure 65e, which states that a preliminary injunction may be granted if it appears that the commission or continuance of some act would produce waste, or great or irreparable injury to the plaintiff.³

The Commission need not determine if Avista is likely to succeed on the merits if it determines that the requirements of IRCP 65e(2) are met. However, Sagebrush's arguments regarding the merits are flawed and provide no evidence that Avista will not prevail in this proceeding.

The Avista petition does not seek to overturn the Commission's decision on avoided cost rates in Order No. 30744, as Sagebrush argues, and, based on the factors put forth by Avista, including: (1) PURPA rates have increased substantially; (2) interest in PURPA contracts has increased; (3) several states have adopted renewable portfolio standards; (4) a robust market for RECs has developed; and (5) the value of RECs has increased dramatically, this matter is ripe for consideration by the Commission.

Accordingly, Rocky Mountain Power joins in Avista's Petition for an Order Determining the Ownership of the Environmental Attributes Associated with a Qualifying Facility Upon Purchase by a Utility of the Energy Produced by a Qualifying Facility.

IV. Conclusion

WHEREFORE, Rocky Mountain Power requests that:

- (1) the Commission confirm its jurisdiction over Renewable Energy Credits, including the ability to determine ownership; and
- (2) the Commission grant Avista's request for a stay of any requirement to award RECs to a developer that has tendered or may tender a PURPA project until the

³ IRCP 65e(2).

Commission has entered a final order resolving the issues raised in Avista's
Petition to Determine Ownership of RECs.

DATED this 16th day of June, 2009.

Handwritten signature in black ink, appearing to read "Mark C. Moench / Daniel E. Solander".

Mark C. Moench
Daniel E. Solander

Attorneys for
Rocky Mountain Power

