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IDAHO PUBLIC
UTILITIES COMMISSION

Dean J. Miller (ISB No. 1968)
McDEVITT & MILLER LLP
420 West Bannock Street
P.O. BOX 2564-83701
Boise, Idaho 83702
Tel: 208-343-7500
Fax: 208-336-6912
joe@mcdevitt-miller.com

Attorney for *Sagebrush Energy 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** **PETITION FOR INTERVENOR FUNDING**

COMES NOW Sagebrush Energy LLC (Sagebrush) and, pursuant to RP 161—165 Petitions the Commission for an award of intervenor funding in the amount of $6,799.35, and in support thereof respectfully shows as follows:

I.

Itemized List of Expenses. Attached hereto is an itemized list of expenses for which Sagebrush seeks recovery.

II.

Statement Showing Costs. The amount of Sagebrush's requested award is reasonable because: The hourly rate charged by the undersigned is the standard hourly rate for legal services of the firm McDevitt and Miller LLP, and is comparable to the

hourly rates charged by attorneys with similar experience and knowledge in the Boise, Idaho area. As noted in the attached itemized list, some charges were shared with the Intervenor Idaho Forest Group LLC, in order to avoid duplication of charges.

III.

Explanation of Cost Statement. The costs described above constitute a significant financial hardship for Sagebrush because the company is a small renewable energy development firm that carefully allocates limited investor funds to specific tasks. Avista filed their Petition months after Sagebrush and Avista had engaged in PURPA contract negotiations. As a result, Avista's Petition created specific delays and complications with contract negotiations, appears to have closed out opportunities for Sagebrush to purchase deeply discounted turbines, and added unanticipated, unbudgeted costs to Sagebrush operations. These hardships have affected investor's willingness to finance the deal between Avista and Sagebrush and diverted limited company resources and staff time from contract negotiations and development activities to address Avista's claims in the Petition.

Sagebrush's request for intervener funding is reasonable and does not represent all of the costs Sagebrush incurred while addressing Avista's Petition. For example, senior Sagebrush staff dedicated many hours to understanding the Petition and regulatory requirements, and developing a strong position counter to Avista's. Sagebrush has not asked for intervener funding of these costs. The only costs Sagebrush seeks to recover are direct expenses associated with Sagebrush travel and direct legal fees.

Statement of Difference. The analysis and recommendation provided by Sagebrush to the Commission differed materially from that of the Commission Staff, which did not file any analysis or recommendation.

IV.

Statement of Recommendation. Sagebrush provided extensive legal and policy analysis demonstrating that Avista's Request for a Stay of its PURPA obligations was not supported by law or policy. *See* Motion for Order Rejecting Request for Stay (May 26, 2009), Reply to Avista's Answer (June 16, 2009), Reply to Idaho Power Company's Brief (June 16, 2009), and Reply to Rocky Mountain Power's Comments (June 16, 2009).

As demonstrated in those pleadings, Avista's Request for a Stay was deeply flawed and unreasonable. Sagebrush, in order to protect its entitlement to a power purchase agreement that recognized renewable energy credits as property of the seller, was compelled to incur significant legal costs defending against Avista's unreasonable request for a stay.

While the Commission has not issued a written order regarding Sagebrush's Motion for Order Rejecting Stay, as recited in Avista's Notice of Withdrawal, the Commission apparently intends to open a generic electric docket to revisit the methodology for published avoided cost rates. From this, Sagebrush can only infer that the Commission has concluded that Avista's PURPA obligation should not be stayed and that the advocacy of Sagebrush materially contributed to that decision.

RP 165.01(a), which requires a finding that the intervenor's presentation materially contributed to the Commission's decision, arguably contemplates that a written decision will precede an intervenor funding request. RP 13, however, provides:

> "013. **Liberal Construction** (Rule 13).
>
> These rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the Commission. Unless prohibited by statute, the Commission may permit deviation from these rules when it finds compliance with them is impracticable, unnecessary or not in the public interest."

Applying, the Rule 13 liberal construction standard, an otherwise meritorious request for intervenor funding should not fail because the utility withdrew its Petition before a written order could be issued.

V.

Statement Showing Class of Customer. The advocacy of Sagebrush in this proceeding was not undertaken on behalf of any particular class of retail customers. Accordingly, Sagebrush recommends that any amount of intervenor funding be included in each utility's revenue requirement in the utility's next general rate case and recovered from all classes of customers.

WHEREFORE, Sagebrush respectfully requests that the Commission:

1. Enter its order, pursuant to RP 68, suspending the Notice of withdrawal pending ruling on this Petition for Intervenor Funding;

2. Thereafter, enter its order granting this Petition.

3. Grant such other and further relief as warranted by the circumstances.

DATED this 3 day of August, 2009.

SAGEBRUSH ENERGY LLC

By: _____
Dean J. Miller
Attorney for *Sagebrush Energy LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2009, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary Idaho Public Utilities Commission 472 West Washington Street P.O. Box 83720 Boise, ID 83720-0074 jjewel@puc.state.id.us	Hand Delivered U.S. Mail Fax Fed. Express Email	✗ ✓ ✓ ✓ ✓
Scott Woodbury Idaho Public Utilities Commission 472 West Washington Street P.O. Box 83720 Boise, ID 83720-0074 scott.woodbury@puc.idaho.gov	Hand Delivered U.S. Mail Fax Fed. Express Email	✓ ✗ ✓ ✓ ✗
Peter J. Richardson Richardson & O'Leary 515 N. 17th Street P.O. Box 7218 Boise, ID 83702 peter@richardsonandoleary.com	Hand Delivered U.S. Mail Fax Fed. Express Email	✓ ✗ ✓ ✓ ✗
Glen Ikemoto Idaho Windfarms, LLC 672 Blair Ave. Piedmont, CA 94611 glenn@pacbell.net	Hand Delivered U.S. Mail Fax Fed. Express Email	✓ ✗ ✓ ✓ ✗
Dean Brockbank Daniel Solander Mark Moench Rocky Mountain Power One Utah Center 201 S. Main Street, Suite 2300 Salt Lake City, UT 84111	Hand Delivered U.S. Mail Fax Fed. Express Email	✓ ✗ ✓ ✓ ✗
David Schiess Schiess & Associates 7103 S. 45th West Idaho Falls, ID 83402	Hand Delivered U.S. Mail Fax Fed. Express Email	✓ ✗ ✓ ✓ ✗

Ted Sorenson Sorenson Engineering 5203 S. 11th E. Idaho Falls, ID 83404 ted@sorenson.net	Hand Delivered U.S. Mail Fax Fed. Express Email	ف ✗ ف ف ✗
Donovan Walker Barton L. Kline Greg W. Said Randy C. Allphin Idaho Power Company P.O. Box 70 Boise, ID 83707-0070 dwalker@idahopower.com bkline@idahopower.com rgale@idahopower.com rallphin@idahopower.com	Hand Delivered U.S. Mail Fax Fed. Express Email	ف ✗ ف ف ✗
Michael G. Andrea Senior Counsel-Avista Corporation 411 E. Mission Ave.-MSC-7 Spokane, WA 99202	Hand Delivered U.S. Mail Fax Fed. Express Email	ف ✗ ف ف ✗
Clair Bosen Twin Lakes Canal Company P.O. Box 247 Preston, ID 83263 contact@twinlakescanalcompany.com	Hand Delivered U.S. Mail Fax Fed. Express Email	ف ✗ ف ف ✗
Joseph N. Pirtle Elam & Burke, P.A. 251 E. Front Street, Suite 300 P.O. Box 1539 Boise, ID 83701	Hand Delivered U.S. Mail Fax Fed. Express Email	ف ✗ ف ف ✗

BY: Heather Houle
McDEVITT & MILLER LLP

ITEMIZED STATEMENT OF COSTS

Professional Services Rendered May 2009
McDevitt & Miller LLP

Date	Activity	Time	Charge
May 5, 2009	Conference w. M. Andrea (Avista) re: Intended Filing; Memo to Clients	0.50	$110.00
May 6, 2009	Receive, Review & Transmit Avista Petition	1.00	$220.00
May 7, 2009	Conference w/ B. Ellis re: Avista Application & Stay Request	0.50	$110.00
May 8, 2009	Memo to P. Richardson re: Participation; Conference w/ P. Richardson re: Case Participation; Research re: Stay Motions; Memo to Client re: Stay Motions; Prepare Intervention Petition; Transmit Same to B. Ellis	2.00	$440.00
May 9, 2009	Receive & Review Client Comments re: Intervention Petition; Memo to Client re: Case Procedure	0.50	$110.00
May 11, 2009	Revise Intervention Petition; Memo to B. Ellis re: Out-of-State Attorneys; Research State Decisions re: REC Ownership; Memo to Clients re: Same; Finalize & File Intervention Petition	1.75	$385.00
May 12, 2009	Conference w/ IPUC Staff re: Procedure; Memo to B. Ellis re: Same; Prepare Case Plan &Fee Estimated; Conference w/ B. Ellis re: Coalitions & Utility Dominance	2.00	$440.00
May 13, 2009	Memos to/from B. Ellis re: Negotiation	0.25	$55.00
May 14, 2009	Receive, Review & Transmit RMP Petition; Memos to/from B. Ellis re: Same	0.50	$110.00
May 18, 2009	Conference w/ IPUC Staff re: Stay; Conference w/ B. Ellis re: Stay; Memo to B. Ellis re: Stay Opposition	1.00	$220.00
May 19, 2009	Work on Opposition to Stay (1/2 Billed to IFG)	4.00	$440.00
May 20, 2009	Revise & Transmit Opposition to Stay (1/2 Billed to IFG)	3.00	$330.00
May 22, 2009	Receive &Review Client Comments to Opposition to Stay; Revise Opposition to Stay; Memo to B. Ellis (1/2 Billed to IFG)	2.00	$220.00
May 26, 2009	Review Exergy Motion; Transmit to Client; Attend IPUC Decision Meeting; Memo to Client; Finalize & file Motion to Reject stay (1/2 Billed to IFG)	2.00	$220.00
	Total Attorney's Fees:		**$3,410.00**

Costs May 2009

May 11, 2009	89 copies @.15 each		$13.50
	Postage		$ 2.98
		Total Costs:	**$16.48**

ITEMIZED STATEMENT OF COSTS

Professional Services Rendered June 2009
McDevitt & Miller LLP

Date	Activity	Time	Charge
June 9, 2009	Receive, Review & Transmit Avista Answer (1/2 Billed to IFG)	1.50	$165.00
June 10, 2009	Work on Response to Avista Answer; Transmit Draft to Client (1/2 Billed to IFG)	4.00	$440.00
June 12, 2009	Revise Reply to Avista Answer (1/2 Billed to IFG)	2.00	$220.00
June 15, 2009	Receive, Review & Transmit Idaho Utility Pleadings (1/2 Billed to IFG)	1.00	$110.00
June 16, 2009	Prepare & File Replies to Idaho Power, Pacificorp and Avista (1/2 Billed to IFG)	5.00	$550.00
June 16, 2009	Prepare for Oral Argument (1/2 Billed to IFG)	2.00	$220.00
June 17, 2009	Prepare for Oral argument, Attend Oral Argument (1/2 Billed to IFG)	5.00	$550.00
	Total Attorney's Fees:		**$2,255.00**

Costs June 2009

June 2, 2009	83 copies @.15 each	$12.45
	Postage (1/2 Billed to IFG)	$ 2.64
June 16, 2009	576 copies @.15 each	$43.20
	Postage (1/2 Billed to IFG)	$ 6.95
	Total Costs:	**$65.24**

Total Costs: $81.72

Total Attorney's Fees: $5,665.00

Sagebrush Travel Expense: $1,053.15

Total Statement of Costs: $6,799.35