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Lawyers

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

(208) 343-7500
(208) 336-6912 (Fax)

October 16, 2009

Via Hand Delivery

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

**Re: Sagebrush Energy and Idaho Forest Group
Case No. GNR-E-09-03**

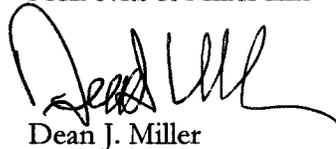
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find an original and seven copies of a Sur-Reply of Sagebrush Energy and Idaho Forest Group.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh
Enclosures

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

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

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF A REVIEW OF
THE SURROGATE AVOIDABLE
RESOURCE (SAR) METHODOLOGY
FOR CALCULATING PUBLISHED
AVOIDED COST RATES

CASE NO. GNR-E-09-03

**SUR-REPLY OF SAGEBRUSH
ENERGY AND IDAHO FOREST
GROUP TO EXERGY REPLY
COMMENTS**

On October 6, 2009, the Commission issued Order No. 30922 which established an October 16, 2009, deadline for the filing of Sur-Reply Comments in response to the Reply Comments of Exergy Development Group dated September 29, 2009.

Sagebrush Energy LLC (Sagebrush) and Idaho Forest Group (Idaho Forest) respectfully submit the following in response to Order No. 30922.

For the reasons stated in their initial Comments, and as further argued in Exergy's Reply Comments, Sagebrush and Idaho Forest continue to believe it would be unwise for the Commission to move away from the established, and time-tested SAR methodology in favor of an unknown methodology. Sagebrush and Idaho Forest will not repeat those arguments in this Sur-Reply. Rather, Sagebrush and Idaho Forest desire to elaborate on, and support, Exergy's contention that the Commission, if it does undertake an

investigation of a wind SAR, should not adopt any policy that would have the explicit or practical effect of a moratorium on the utility's obligation to negotiate in good faith with project developers for the execution of purchase power agreements.

As Staff notes in its Comments, "In addition, the process of developing a wind SAR is likely to be contentious and time-consuming." (Staff Comments pg. 10). The Commission should not be under any illusion that a moratorium would be short lived. Recent experience teaches that once in place, a moratorium extends much longer than originally anticipated. *See*, Order No. 29872, Case No. IPC-E-05-02 (projected nine-month moratorium lasted more than two years).

A moratorium and associated grandfathering criteria would produce more litigation. No matter how carefully the Commission attempted to define grandfathering criteria, disputes will invariably arise, forcing developers to incur additional expense of litigating entitlement to grandfathering status. *See e.g. Petition of Magic Wind to Determine Exemption Status*, Case No. IPC-E-05-34, *Petition of Cassia Wind to Determine Exemption Status*, Case No. IPC-E-05-35.

Finally, Sagebrush and Idaho Forest reiterate their arguments made against a moratorium in Case No. AVU-E-09-04. There, Sagebrush and Idaho Forest argued that a request for a moratorium should be evaluated under the law of preliminary injunctions and that to be entitled to relief an applicant must show:

1. That the applicant is entitled to the relief demanded and there is a substantial likelihood the applicant is likely to prevail. If the applicant's claim is not free from doubt, an injunction is improper. *Harris v. Cassia County*, 106 Idaho 513, 681 P.2d 988(1984).

2. That the applicant will suffer irreparable injury in the absence of an injunction.

"A preliminary injunction is granted only in extreme case where the right is very clear and it appears that irreparable injury will flow from its refusal." *Evans v.*

District Court, 47 Idaho 267, 270 275 P. 99 (1929); Harris, *supra*.

Here, it is far from certain that the Commission will ultimately adopt a wind SAR and none of the utility comments filed herein allege anything in the nature of irreparable injury in the absence of a moratorium.

Conclusion

Based on the reasons and authorities cited herein, Sagebrush and Idaho Forest respectfully request that if the Commission enters an Order initiating further investigation of the surrogate avoided resource, that the Order contain specific ordering language along the following lines: "Nothing in this Order excuses Idaho Power Company, Avista Corporation and Rocky Mountain Power from their obligation to negotiate with QF developers and enter into purchase power agreements containing avoided cost rates established in Order No. 30744 and the errata thereto."

DATED this 14 day of October, 2009.

**IDAHO FOREST GROUP LLC
SAGEBRUSH ENERGY LLC**

By: _____

Dean J. Miller

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

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 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
jjewell@puc.state.id.us

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

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

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Bart Kline, Esq.
Lisa Nordstrom, Esq.
Idaho Power
P.O. Box 70
Boise, ID 83702
bkline@idahopower.com
lnordstrom@idahopower.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

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
datarequest@pacificorp.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Michael G. Andrea
Senior Counsel
Avista Corporation
1411 E. Mission Avenue, MSC-23
Spokane, WA 99202
michael.andrea@avistacorp.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

BY: Heather Houle
MCDEVITT & MILLER LLP