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March 7, 2011

Via First Class Mail and E-mail

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 W Washington Street
PO Box 83720
Boise, ID 83720-0074
Jean.jewell@puc.idaho.gov

Re: **Answer of Rocky Mountain Power to Northwest and Intermountain Power Producers Coalition (NIPPC) Petition for Reconsideration of Order No. 32176 IPUC Docket No. GNR-E-10-04s**

Dear Ms. Jewell:

Please find enclosed for filing in the above-captioned docket an original and seven (7) copies of the *Answer of Rocky Mountain Power to Northwest and Intermountain Power Producers Coalition Petition for Reconsideration.*

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

Ken Kaufmann

Ken Kaufmann

cc: GNR-E-10-04 Service List

Enclosures

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BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION OF IDAHO POWER COMPMANY, AVISTA CORPORATION, AND ROCKY MOUNTAIN POWER TO ADDRESS AVOIDED COST ISSUES AND TO ADJUST THE PUBLISHED AVOIDED COST RATE ELIGIBILITY CAP	CASE NO. GNR-E-10-04 ANSWER OF ROCKY MOUNTAIN POWER TO NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION PETITION FOR RECONSIDERATION

Pursuant to Idaho Administrative Rule ("IDAPA") 31.01.01.331.05, PacifiCorp, dba Rocky Mountain Power ("Company"), submits this Answer to the Motion for Reconsideration of Order No. 32176 filed by the Northwest and Intermountain Power Producers Coalition ("NIPPC") on February 28, 2011 ("NIPPC's Petition").

I. BACKGROUND

On November 5, 2010, Idaho Power Company ("Idaho Power"), Avista Corporation ("Avista") and Rocky Mountain Power (collectively "the Utilities") jointly filed a petition and a motion with the Commission ("Joint Petition"). The petition asked the Commission to investigate various issues regarding implementation of the mandatory purchase provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). The motion asked the Commission to immediately reduce the published avoided cost eligibility cap for qualifying facilities ("QFs"), from 10 average monthly megawatts ("aMW") to 100 kilowatts ("kW") of nameplate capacity. The utilities requested reduction of the eligibility cap on less than 14 days notice.

In response, the Commission solicited comments in support or opposition to lowering the cap and held oral argument on January 27, 2011.[1] In addition to receiving comments on the requested reduction in the eligibility cap, the Commission asked that the parties comment on whether such a reduction should apply to non-wind QFs and the "consequences of dividing larger wind projects into 10 aMW projects to utilize the published rate."[2]

On February 7, 2011 the Commission issued Order No. 32176, temporarily reducing the eligibility cap for wind and solar QFs to 100 kW while the Commission investigates the facts and circumstances surrounding disaggregation of large QF projects into smaller projects eligible for published avoided cost rates.[3] During the temporary cap

[1] Order No. 32131, 6 (2010).

[2] *Id.* at 5.

[3] *See* Order No. 32176, 11-12 (2011).

reduction, wind and solar QF projects over 100 kW are eligible to receive avoided cost rates calculated using the purchasing utility's Integrated Resource Plan Methodology ("IRP Methodology").[4] On February 28, NIPPC petitioned the Commission for reconsideration.

II. OVERVIEW

NIPPC's Petition requests that the Commission: (1) take official notice of certain documents ("First Request"); (2) hold an evidentiary hearing on the issues addressed in Order No. 32176 ("Second Request"); (3) order the investor-owned utilities in Idaho to immediately implement changes to the IRP Methodology ("Third Request"); and (4) reinstate the 10 aMW published avoided cost rate eligibility cap for wind and solar projects ("Fourth Request").[5] Rocky Mountain Power does not take any position with regard to NIPPC's First Request. Rocky Mountain Power believes that NIPPC's remaining requests should be denied.

A. NIPPC's Second Request should be denied because the Commission was not required to hold an evidentiary hearing prior to reducing the eligibility cap for solar and wind resources.

NIPPC's Petition argues that, by refusing to hold evidentiary hearings, the Commission denied NIPPC due process.[6] NIPPC cites to the Idaho Supreme Court's holding, in *Intermountain Gas v. Id. Pub. Util. Comm'n*,[7] a case in which the court held that due process prevented the Commission from ordering Intermountain Gas to divest its gas appliance sales business before affording Intermountain Gas a full opportunity to

[4] *Id.* at 8-9.

[5] NIPPC's Petition at 1-2.

[6] *Id.* at 8.

[7] *Id.*

address why its appliance business was in the public interest.[8] NIPPC's reliance on *Intermountain Gas* is misplaced because the QFs it represents, unlike *Intermountain Gas*, do not have the requisite property interest necessary to trigger due process protection. The Idaho Supreme Court has held that a QF developer's due process rights do not attach to a particular avoided cost rate until the developer has established a legally enforceable obligation to sell its output to a utility at the rate in question. *Rosebud Enterprises, Inc. v. Idaho Pub. Utils. Comm'n*, 131 Idaho 1, 12 (1997) ("*Rosebud II*").[9] NIPPC's constituents' property interest in particular avoided cost rates is not perfected unless and until a legally enforceable obligation exists. Accordingly, NIPPC's argument must fail. In its Reply Comments to Order No. 32131,[10] Rocky Mountain Power addressed further why a hearing is not required to adjust the size cap for published rates. Rocky Mountain Power's Reply Comments also noted that the California Public Utilities Commission found that no evidentiary hearing is required to suspend the availability of standard offer contracts[11] and that the Public Utility Commission of Oregon has held that no hearing is

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[8] *Intermountain Gas Co. v. Idaho Pub. Util. Comm'n,* 97 Idaho 113, 129, 540 P2d 775, 791 (1975).

[9] In most relevant part, the *Rosebud II* Court stated:

> Rosebud contends that IPUC's 1994 orders gave it a property interest in the form of a legally enforceable obligation it was required to have to be entitled to the 1994 rates. Because Rosebud never made a legally enforceable obligation, as discussed above, it never had a reasonable expectation that IPUC could not change the methodology for determining avoided cost rates. *Cf. Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 722-723, 918 P.2d 583, 591-92 (1996) (requiring more than a mere hope or expectation of continued employment to constitute a property interest). Therefore, it never had a property interest in the 1994 rates, and due process never attached to IPUC's consideration of the change of the 1994 rates.

Rosebud II, 131 Idaho at 12.

[10] Reply Comments of Rocky Mountain Power at 9-10, GNR-E-10-04 (January 19, 2011).

[11] *See Application of San Diego Gas & Electric Co. (U 902-E) for an Ex Parte Order Approving Modifications to Uniform Standard Offer No.1 and Standard Offer No.3*, 68 CPUC 2d 434, 1996 Cal. PUC

required to determine the reasonableness of QF rates.[12] The Commission's process was legal and therefore NIPPC's Second Request should be denied.

B. NIPPC's Third Request should be denied because the IRP Methodology was beyond the scope of GNR E-10-04 and the Commission has already committed to reviewing the IRP Methodology in a separate proceeding.

The soundness of the IRP Methodology is not one of the three issues the Commission set forth for consideration in GNR-E-10-04. Consequently, Rocky Mountain Power did not address this issue in its comments to the Commission or at the January 27 hearing.[13] If NIPPC wishes to challenge the adequacy of the IRP Methodology, the proper avenue for doing so is to file a separate petition with the Commission. Such action is not necessary here, however, because the Commission has already stated that it will address concerns over the IRP Methodology *after* the Commission has an opportunity to investigate and make a determination regarding disaggregation.[14] NIPPC will have an opportunity to resolve its concerns at this later date

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LEXIS 1016, *44-45 (stating that the CPUC has suspended the availability of standard offer contracts without evidentiary hearings).

[12] *In the matter of Public Ulil. Comm'n of Oregon Investigation into Interconnection of PURP A Qualifying Facilities with Nameplate Capacity Larger than 20 Megawatts to a Public Utility's Transmission or Distribution System*, OPUC Order No. 10-132, 5, 2010 Ore. PUC LEXIS 118, *12 (concluding that the OPUC implementation of PURPA is not subject to filing and suspension requirements applicable to retail electric tariffs, and that the Oregon PUC may determine the reasonableness of QF rates without a hearing).

[13] The only remark Rocky Mountain Power made regarding its IRP Methodology was during the hearing, when Rocky Mountain Power rebutted NIPPC's assertion that its IRP Methodology does not include a capacity component and therefore understates the Company's true avoided cost. *See In the Matter of the Application of Idaho Power Company, Avista Corporation and PacifiCorp, dba Rocky Mountain Power to Address Avoided Cost Issues and to Adjust the Published Avoided Cost Eligibility Cap*, Case No. GNR-E-10-04, Transcript of Oral Argument at 101 (January 27, 2011).

[14] Order 32176, 9 n. 4. ("Other avoided cost issues identified in the Joint Petition, including utilization and/or modification of the IRP Methodology, will be considered after a determination regarding disaggregation").

when all parties will be able to present full evidence over the adequacy of the IRP Methodology. Therefore NIPPC's Third Request should be denied.

C. The Commission should not reinstate the 10 aMW eligibility cap for solar and wind QFs, nor stay enforcement of Order No. 32176.

In its Reply Comments, Rocky Mountain Power noted that, in 2010, it executed seven PPAs comprising over 178 MW nameplate capacity with QFs that disaggregated into 10aMW projects in order to qualify for published rates.[15] Rocky Mountain Power further noted that developers with 358 MW total nameplate capacity of planned new wind have told Rocky Mountain Power they wish to disaggregate into 10aMW projects to be eligible for published avoided cost rates in 2011.[16] This allegation, alone, warrants reduction of the 10aMW cap on wind QFs under the legal standard recommended by Commission staff in IPC-E-05-022 (the last time the Commission temporarily reduced the eligibility cap for wind QFs). In that proceeding, Commission Staff Engineer Rick Sterling offered the following testimony regarding how the Commission should determine whether a temporary change in published rate eligibility should be granted:

> **Question**: What standard do you believe should be applied by the Commission in determining whether a temporary change in published rate eligibility should be granted?
>
> **Answer**: At this initial stage of the proceeding, I believe the Commission only needs to decide whether to temporarily limit the obligation to purchase the output from intermittent generating resources such as wind. Consequently, *I believe that the proper standard is to determine whether there may be a problem developing and whether that problem is serious enough to justify immediately limiting published rate availability. I do not believe that Idaho Power at this stage needs to make a convincing case that a problem has already occurred or that harm has already been done*

[15] Reply Comments at 8.

[16] *Id.*

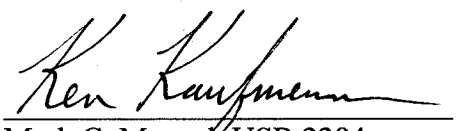
> *to Idaho Power or its ratepayers*. The purpose of restricting published rates is to pause long enough to gather information and to assess whether Idaho is headed in the right direction before proceeding further on the current path. If the Commission agrees, I would not view that as a judgment on the price, the quantity, or the prudence of acquiring wind generation, but instead as a "timeout" while we evaluate our position and determine a future direction that is in the best interests of Idaho's ratepayers.

IPUC Case No. IPC-E-05-22, Testimony of Rick Sterling at 5 (July 15, 2005) (italics added). In the current proceeding the Commission heard ample comment that there may be a problem serious enough to justify immediately lowering the eligibility cap for wind and solar QFs, and therefore did just that. It also set a date for a hearing for the purpose of developing rules that prevent large wind and solar projects from disaggregating into 10aMW projects. NIPPC's Fourth Request should be denied.

IV. CONCLUSION

For the reasons above, NIPPC's requests for (i) an evidentiary hearing, (ii) an order requiring the investor-owned utilities in Idaho to immediately implement changes to the IRP Methodology for calculating avoided cost rates, and (iii) the Commission to reinstate the 10 aMW eligibility cap for avoided cost rates, should be denied.

DATED this 7th day of March 2011.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 7th day of March, 2011, I served a true and correct copy of the foregoing *ANSWER OF ROCKY MOUNTAIN POWER TO NORTHWEST INTERMOUNTAIN POWER PRODUCERS COALITION PETITION FOR RECONSIDERATION* in Case No. GNR-E-10-04 on the following named persons/entities by First Class U.S. Mail (and e-mail, where available):

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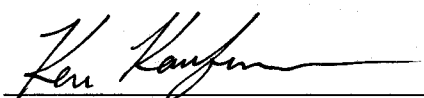
DATED this 7th day of March, 2011.



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