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IDAHO PUBLIC
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January 21, 2011

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074
HAND DELIVERY

RE: **Case No. GNR-E-10-04**

Dear Ms. Jewell:

On behalf of the Northwest and Intermountain Power Producers Coalition, enclosed please find an original and seven (7) copies of the **MOTION TO STRIKE THE PREFILED TESTIMONY OF BRUCE GRISWOLD OR IN THE ALTERNATIVE TO AMEND SCHEDULE** and three copies of **THE FIFTH PRODUCTION REQUEST OF THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS TO THE JOINT UTILITIES** in the above case.

I have also enclosed an extra copy of each pleading to be service-dated and returned to us for our files. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Curtis", is written over a horizontal line.

Nina Curtis
Administrative Assistant

encl.

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Attorneys for Northwest and Intermountain
Power Producers Coalition

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION)
OF IDAHO POWER COMPANY, AVISTA) CASE NO. GNR-E-10-04
CORPORATION AND ROCKY MOUNTAIN)
POWER TO ADDRESS AVOIDED COST) MOTION TO STRIKE THE PREFILED
ISSUES AND JOINT MOTION TO ADJUST) DIRECT TESTIMONY OF BRUCE
THE PUBLISHED AVOIDED COST RATE) GRISWOLD OR IN THE ALTERNATIVE
ELIGIBILITY CAP) TO AMEND SCHEDULE OF THE
) NORTHWEST AND INTERMOUNTAIN
) POWER PRODUCERS COALITION
)

Pursuant to Rule 56 of the Rules of Procedure of the Idaho Public Utilities Commission (the "Commission"), the Northwest and Intermountain Power Producers Coalition ("NIPPC") hereby lodges its Motion to Strike the prefiled testimony of Bruce Griswold or in the alternative to amend the schedule. In support thereof NIPPC says as follows:

BACKGROUND

The Commission issued Order No. 32131 in this docket on December 3, 2010, providing Notice of Joint Petition; Notice of Modified Procedure; Notice of Intervention Deadline; and Notice of Oral Argument. In that Order the Commission specifically declared that:

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter and will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission's Rules of Procedure, IDAPA 31.01.01.201 through .204. The Commission notes that Modified Procedure and written comments have proven to be an effective means for obtaining public input and participation. The Commission further finds that it is appropriate to schedule an oral argument for parties to present their case.

Order No. 32131, at p. 6, (capitalization in original). The date for filing Reply Comments was January 19, 2011, and the date for oral argument is next Thursday, January 27, 2011.

Rules 201 through 204 of the Commission's rules govern the process by which Modified Procedure is prosecuted before the Commission. Rule 201 allows the Commission to "preliminarily find that the public interest may not require a hearing to consider the issues presented." Rule 202 provides that when the Commission makes a preliminary finding that the public interest may not require it to hold a hearing, that it shall establish a deadline for "filing written protests or comments, and a reply by the moving party." It also requires notice be given to all interested parties. Rule 203 provides that affected persons may file written protests or comments but requires that "Persons desiring a hearing must specifically request a hearing in their written protests or comments." Finally, Rule 204 provides the Commission with the discretion to consider the matter based on the filed comments and protests or to set the matter for hearing. The rules of Modified Procedure do not allow for testimony to be filed or heard.

PRAYER FOR RELIEF

- 1. BECAUSE ROCKY MOUNTAIN POWER HAS NOT REQUESTED A HEARING, NIPPC RESPECTFULLY REQUESTS THAT THE COMMISSION STRIKE MR. GRISWOLD'S TESTIMONY.**

The Commission's Procedural Rule 203 requires Rocky Mountain Power to "specifically request a hearing" if it wants the Commission to hold a hearing where evidence can be heard. Rocky Mountain Power has not done so. Nevertheless, Rocky Mountain Power has prefiled the testimony Mr. Griswold along with its Reply Comments, which fact suggests that it intends to call Mr. Griswold as a witness at oral argument or otherwise admit his testimony as evidence in this case. No other parties have filed testimony, presumably because the Commission's procedural schedule has not provided for the filing of testimony or a hearing where such testimony could be challenged by adverse parties. NIPPC submits that permitting one party to, at the eleventh hour, file testimony and sponsor a witness at a hearing noticed only for oral argument in a modified procedure docket is prejudicial to the due process rights of all other parties and clearly violates Rules 201 – 204. *See, e.g., Lawrence Warehouse Co. v. Rudio Lumber Co.*, 89 Idaho 389, 396, 405 P.2d 634 (1965) ("Trial of an issue of fact necessitates opportunity to present evidence and not by only one side to the controversy."). NIPPC therefore respectfully requests the Commission strike Mr. Griswold's testimony and not enter it into the record of this proceeding.

2. ALTERNATIVELY, IF THE COMMISSION DENIES NIPPC'S REQUEST TO STRIKE MR. GRISWOLD'S TESTIMONY, NIPPC RESPECTFULLY REQUESTS THAT THE COMMISSION AMEND THE SCHEDULE TO ALLOW ALL PARTIES THE OPPORTUNITY TO FILE TESTIMONY AND CROSS EXAMINE WITNESSES AT A HEARING.

NIPPC has formally requested an evidentiary hearing on the eligibility cap phase of this docket in its Comments and in its Reply Comments, as required in the Commission's rules for modified procedure. The Commission has not yet ruled on NIPPC's request, so NIPPC has not filed testimony. If Rocky Mountain Power believes, as it apparently does, that there are factual matters that must be brought before the Commission in order for it to decide the issues in this phase of this docket, Rocky Mountain Power should so state in a filing with the Commission. The Commission could then exercise its discretion, pursuant to Rule 203, to decide whether a hearing is warranted. If the Commission accepts Rocky Mountain Power's testimony, then all parties should be afforded their full due process rights by being allowed to file direct testimony and rebuttal testimony, as well as be afforded an opportunity to engage in cross examination. See Commission Rules of Procedure 241-260.

Should the Commission deny NIPPC's Motion to Strike Mr. Griswold's testimony, NIPPC respectfully moves this Commission to convene a prehearing conference with all parties to arrive at acceptable dates for prefiling testimony, reply testimony, and rebuttal testimony, as well as a hearing.

Respectfully submitted this 21st day of January 2011.

RICHARDSON AND O'LEARY, PLLC



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Gregory M. Adams (ISB No. 7454)

Attorneys for the Northwest and

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of January, 2011, a true and correct copy of the within and foregoing **MOTION TO STRIKE OR IN THE ALTERNATIVE TO AMEND SCHEDULE OF THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION** was served as shown to the following parties:

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Signed



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