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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION)
OF IDAHO POWER COMPANY, AVISTA)
CORPORATION, AND PACIFICORP DBA)
ROCKY MOUNTAIN POWER TO ADDRESS)
AVOIDED COST ISSUES AND TO ADJUST)
THE PUBLISHED AVOIDED COST RATE)
ELIGIBILITY CAP.)
)

CASE NO. GNR-E-10-4

COMMENTS OF THE
COMMISSION STAFF

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Kristine A. Sasser, Deputy Attorney General, and in response to the Notice of Joint Petition, Notice of Modified Procedure, Notice of Intervention Deadline and Notice of Oral Argument issued in Order No. 32131 on December 3, 2010, in Case No. GNR-E-10-4, submits the following comments.

BACKGROUND

On November 5, 2010, Idaho Power Company, Avista Corporation, and PacifiCorp dba Rocky Mountain Power (Utilities) filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues¹ related to the Public Utility Regulatory

¹ Although the Joint Petition identifies numerous issues to be examined, no formal consensus on identification of issues has been reached by the parties. Furthermore, Staff does not necessarily believe that all of the issues identified in the Joint Petition need to be addressed in further proceedings.

Policies Act of 1978 (PURPA). While the investigation is underway, the Petitioners also requested that the Commission “lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW [to] be effective immediately. . . .” Petition at 7.

The Joint Petition was filed following a public workshop in Case No. GNR-E-09-03 convened for the purpose of discussing a surrogate avoided resource (SAR) methodology for wind-specific qualifying facilities (QFs). The Joint Petition asserts that there was a discussion at the November 3, 2010 workshop regarding the need to temporarily reduce the eligibility cap while an investigation of numerous avoided cost issues is conducted. The Petitioners maintain that the Commission has made similar reductions in the past on an interim basis, citing Commission Order Nos. 29872 in Case No. IPC-E-05-22.

The Joint Petition asserts that many of the same reasons that justified the Commission’s action to lower the eligibility cap to 100 kW in the 05-22 case are present in this case. The Petitioners stress that the reasons and justifications are amplified in the present situation because “the number of projects, their combined MWs, the dollar impacts, and the potential consequences to the system and to customers are much larger and much more pronounced than even those that existed [in 2005].” *Id.* at 3.

The Petition states that Idaho Power currently has more than 208 MW of wind generation and an additional 264 MW of Commission-approved QF wind contracts (many of which are scheduled to be online by December 31, 2010). The Petition asserts that Idaho Power could have 1100 MW of wind powered generation on its system in the near term that would exceed the minimum loads experienced on Idaho Power’s system this year. “Cumulatively, this amount of generation would exceed any other single source of generation – hydro, coal, natural gas, or renewables – that exists on Idaho Power’s system.” *Id.* at 4.

Rocky Mountain asserts that it is in a similar situation. The Petition declares that in 2005, Rocky Mountain had a single 20 MW wind QF contract and less than 50 MW of wind QF requests in Idaho. “As of today, [Rocky Mountain] has 64 MW of wind QF contracts executed; however, none have achieved commercial operation, and another 358 MW of standard wind QF contracts are proposed.” Rocky Mountain maintains that the majority of these proposed standard wind QF contracts are configured to use the Goshen Idaho electrical system “where integration of the QF resource as a Network Resource for serving load could be impacted by transmission constraints across Path C if the wind power is exported to RMP’s northern Utah load.” *Id.* at 4.

The Petition states that many current QF projects are “large, utility-scale wind farms that are broken up into 10 aMW increments in order to qualify for the published [avoided cost] rates.” *Id.* at 5. The Petition maintains that the typical wind developer is no longer “unsophisticated” about the QF process and small projects (0.5-1.5 MW) “are no longer the norm.” *Id.* The Petitioners assert that it is “commonplace” for wind developers seeking QF contracts with Idaho Power and Rocky Mountain to aggregate “six or more ‘projects’ totaling 100 to 150 MW of nameplate rating, and the multiple projects to all share interconnection facilities to one common utility delivery point.” *Id.* The Petitioners request that the Commission take action on its request to lower the eligibility cap immediately “on fewer than fourteen days notice, if possible. *See*, RP 256.”

In the Notice of Joint Petition, Notice of Modified Procedure, Notice of Intervention Deadline and Notice of Oral Argument issued in Order No. 32131 on December 3, 2010, the Commission declined to immediately reduce the published avoided cost rate eligibility cap. The Commission directed that the Petitioners' request to reduce the eligibility cap be processed by Modified Procedure and scheduled an oral argument. In particular, the Commission directed the parties to address the following: (1) the advisability of reducing the published avoided cost eligibility cap; (2) if the eligibility cap is reduced, the appropriateness of exempting non-wind QF projects from the reduced eligibility cap; and (3) the consequences of dividing larger wind projects into 10 aMW projects to utilize the published rate.

STAFF ANALYSIS

PURPA requires that states put into effect standard rates for purchases from QFs with a design capacity of 100 kilowatts (kW) or less. At the same time, however, PURPA allows states to put into effect standard rates for purchases from QFs with a design capacity of more than 100 kW. Reference 18 CFR 292.304(c)(1 and 2).

Since PURPA was first implemented in Idaho in the early 1980s, the Commission, in setting avoided cost rates, has elected to draw a clear distinction between large and small QF projects. Avoided cost rates for small QFs have been set in a generic manner based on assumed costs of a Surrogate Avoided Resource or "SAR". These generic avoided cost rates are commonly referred to as the "published rates".

For large QFs, the Commission established a different methodology for determining avoided cost rates. In that methodology, rates are computed using the results of each utility's

production cost model as a starting point for negotiations. In the case of Idaho Power and Avista, the AURORA model is used as the production cost model, and for PacifiCorp, its GRID model is used. This methodology is commonly referred to as the "IRP methodology". The IRP methodology recognizes the individual generation characteristics of projects and, in theory, produces different rates for different projects. Use of the IRP methodology has been limited to only two projects since PURPA was first implemented in Idaho. In large part, this is because rates computed under the IRP methodology have tended to be less than published rates most of the time and because most project developers have had a perception that it is too difficult to negotiate contracts for large projects.

Throughout most of the history of PURPA in Idaho, the Commission has set 10 average megawatts (aMW) as the limit for eligibility for published rates, instead of the lower 100 kW capacity mandated by PURPA. One of the primary justifications for limiting eligibility for published rates to 10 aMW has been to recognize that developers of small QFs are less likely to be large, well-financed organizations, capable of sophisticated contract negotiations. By making published rates available for small projects, rate negotiations can be eliminated and contracting costs can be minimized.

The advisability of reducing the published avoided cost eligibility cap

The development of large wind projects in Idaho over the past six years has blurred the distinction between large and small QFs. Wind projects are unique from other generation technologies because they normally consist of multiple turbines, each with its own generator, often scattered over large areas. Because of this characteristic, wind projects capable of generating more than 10 aMW per month can be subdivided into multiple legal entities and reconfigured into smaller projects in order to qualify for the historically higher published avoided cost rates. It has become quite common for large wind projects to be structured as multiple, separate QFs, each 10 aMW in size, but collectively 60, 80 or 120 MW in size. In fact, nearly all new wind contracts submitted for Commission approval in recent years are collections of two or more adjacent 10 aMW projects, each with common ownership and developers.

Although large wind projects are not inherently undesirable, aggregation of multiple QFs does raise concerns. First, considering each 10 aMW QF individually for purposes of eligibility for avoided cost rates creates an artificial mismatch between the method used to establish a project's avoided cost rates and the collective size of the project. For example, it could be argued

that in fairness, a collection of six adjacent QFs being developed all at the same time and with a common owner should have its avoided cost rates computed using the IRP methodology as a single project.

Second, configuring several adjacent sets of wind turbines so that each set is at least a mile apart in order to qualify under PURPA as separate QFs forces inefficient turbine layouts. Such patchwork development fails to optimally utilize the available wind resource.

Third, large wind projects that are structured as multiple 10 aMW facilities become eligible for guaranteed rates, therefore they do not have to compete on price with other non-QF projects that may be bid in utility RFPs. Historically, Idaho's published rates have exceeded rates paid to projects selected in utility RFP processes.

Finally, utilities are forced to acquire generation from large wind QFs at standard rates regardless of the utility's need for new generation. Although Idaho Power and PacifiCorp have near-term capacity needs, neither Idaho Power, Avista nor PacifiCorp has a near-term need for energy resources.² Forcing utilities to acquire generation they do not need increases rates for customers. Moreover, it negates the integrated resource planning process wherein a utility's needs can be appropriately matched with resources at the lowest cost. By default, PURPA has become one of the primary means for the utilities in Idaho to acquire new generation, but Staff is not convinced that it is the most effective, least costly way, or that it is in the best interests of ratepayers.

Staff supports the utilities' Petition seeking to reduce the avoided cost eligibility cap from the current 10 aMW to 100 kW. Staff is convinced that the problem described by the utilities in their Petition is real and requires immediate attention by the Commission. There is clear evidence in all three utilities' service territories that large wind projects are purposely being disaggregated into smaller 10 aMW projects in order to be eligible for published avoided cost rates. This issue alone, Staff believes, provides sufficient justification for lowering the eligibility cap for published rates. In addition, however, there are other issues such as those preliminarily identified in prior workshops that need to be addressed, not the least of which is ownership of Renewable Energy Credits (RECs). An immediate lowering of the eligibility cap will relieve the

² Because wind generation is intermittent and cannot be called upon when needed, it is generally regarded to have little or no capacity value. By contrast, a gas-fired peaking resource, because it can be dispatched when needed and not dispatched when not needed, is considered primarily a capacity resource. A baseload resource is considered to have capacity and energy value.

pressure currently faced by the utilities to acquire new unneeded generation, while also allowing time for other issues to be resolved.

An immediate lowering of the eligibility cap will simply limit the availability of the published avoided cost rates. Projects larger than the cap can still be developed under PURPA, but they will be required to have rates determined using the IRP methodology as a starting point for negotiations.

The appropriateness of exempting non-wind QF projects from the reduced eligibility cap

The Joint Petition proposes that the eligibility cap for published rates be reduced pending an investigation of numerous avoided cost issues, and goes on to describe problematic issues almost exclusively related to large wind projects. However, the Petition does not specify whether a reduced eligibility cap should apply to only wind QFs. In comments submitted so far in this case by intervenors and other interested parties, it has been suggested that because large wind projects are the only types of projects causing concerns, that other resource types (e.g., hydro, wood waste, municipal waste, and biogas) should be exempted if the Commission decides to grant the Joint Petition to lower the eligibility cap from 10 aMW to 100 kW.

Although many of the issues identified by parties in prior workshops apply equally to all resource types, Staff believes that those that are most problematic and most in need of immediate attention pertain almost exclusively to wind. In just the past two years, the Commission has approved four large wind contracts, while 20 are now pending. Every one of the wind contracts are for projects 10 aMW in size, with one exception having a nameplate capacity of 80 MW. In that same time period, the Commission has approved seven contracts for biogas digesters at dairies, varying in size from 1.5 to 4.5 MW. Two contracts for small hydro projects, both less than one MW have been approved, while three others are currently pending — all less than 10 aMW. In addition, the Commission has approved one contract for a 10 aMW facility to be fueled by wood waste, and is currently presented with a 3.2 MW contract for a facility at Ada County's Hidden Hollow Landfill. Finally, one 10 aMW contract has been approved for a photovoltaic project within the past two years.

While each resource type brings its own unique characteristics, few lend themselves to being developed as large projects and disaggregated into 10 aMW pieces in order to qualify for published avoided cost rates. Except for some unusual circumstances, wind and perhaps solar are generally the only resources types that can be easily disaggregated into smaller projects.

Because wind projects have been, by far, collectively the largest and most plentiful projects in recent years, they represent the greatest immediate concern for the utilities. Consequently, Staff recommends that if the Commission grants the Petition to lower the eligibility cap, it apply its decision only to wind projects.

Staff believes that PURPA allows the Commission to exercise discretion to lower the eligibility cap for published rates for wind only. FERC's rules implementing PURPA provide that "standard rates for purchases"(i.e., published rates), "may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies." Reference 18 CFR 292.304(c)(3)(ii). Staff believes it is a logical extension for the Commission to be able to differentiate among technologies in determining eligibility for specific rates. In fact, in Case No. IPC-E-05-22, when the Commission temporarily lowered the eligibility cap for published rates, it applied the lowered eligibility cap only to wind resources. Order No. 29839.

The consequences of dividing larger wind projects into 10 aMW projects to utilize the published rate

The consequences of dividing larger wind projects into 10 aMW projects to utilize the published rate are that the utilities and their ratepayers may end up paying more than is fair or necessary for acquiring new resources and that the utilities will be forced to acquire more new resources than are needed. For most of the history of PURPA development in Idaho, the primary driver for new PURPA development was whether the published avoided cost rates were high enough to cover the cost of the projects while still allowing an attractive return for investors. As a result, the pace of new development, for the most part, increased or decreased with changes in avoided cost rates. Now, however, avoided cost rates represent just one of several revenue streams for project developers. Federal and state tax policies have provided tremendous incentives for new development. In addition, the advent of RECs has created another new revenue stream that greatly increases the viability of new projects. Published avoided cost rates, at least as currently computed, are no longer the throttle controlling new development because they may not reflect either the true value or need for new generation.

Staff is convinced that something must be done to address the concerns raised by the Utilities in their Petition. Staff does not believe that the Commission contemplated receiving comments on anything other than the three issues identified in the Notice of December 3, 2010.

Nevertheless, Staff believes that, should the Commission grant the Utilities' Petition to lower the eligibility cap to 100 kW, a longer-term solution must be found. Staff offers the following comments in an effort to advance the process.

Long-term Alternatives

1. Lower the eligibility cap indefinitely

One alternative is to lower the eligibility cap indefinitely. This would require all proposed projects that are larger than the cap to individually negotiate contracts with the utility using the IRP methodology as the starting point for rate negotiations. Although Staff has no objection to this method in principle, Staff has concerns about whether it could be successfully implemented for small projects. First, the IRP methodology requires use of a complicated, proprietary production cost model. Developers would likely be suspicious of the model results, and would be unable to replicate or verify the model output. Second, running a production cost model for each proposed new project would not be a simple task that could be completed quickly. Third, it could be difficult to justify different results for individual small projects, which could in turn, lead to complaints about discrimination. Finally, requiring small projects to negotiate contracts would defeat a longstanding objective of the Commission to minimize negotiation costs and complexity for small projects.

Another option would be to lower the eligibility cap indefinitely to some level between 10 aMW and 100 kW. For example, the cap could be lowered to 5 aMW to allow relatively small projects to continue to be eligible for published rates, but force large projects to negotiate rates based on the IRP methodology. Large wind projects could still disaggregate into smaller projects for purposes of qualifying for published rates, but it would be much more difficult for them to do so.

2. Re-visit past avoided cost computation methodology to take the need for new generation into account

Prior to 2002, avoided cost computations took into account each utility's "surplus period", i.e., that period of time until the utility's load-resource balance indicated a need to acquire new resources. During the surplus period, avoided cost rates were based on estimated market prices, and after the surplus period, rates were based on the costs of a combined cycle combustion turbine. This practice was abandoned in Case No. GNR-E-02-1 (reference Order No. 29124)

because, among other reasons, the difficulty in defining and measuring "surplus period", administrative burdens, minimal impact on rates, and extreme variations in market prices.

Nevertheless, despite its difficulties, consideration of a surplus period had merit because it recognized that power sold to the utility during its surplus period had less value. Perhaps a similar method should be reconsidered if the benefits of the method outweigh the difficulties.

This concept has been recognized by FERC in its rules implementing PURPA as reflected in the excerpt below:

A qualifying facility may seek to have a utility purchase more energy or capacity than the utility requires to meet its total system load. In such a case, while the utility is legally obligated to purchase any energy or capacity provided by a qualifying facility, the purchase rate should only include payment for energy and capacity which the utility can use to meet its total system load. These rules impose no requirement on the purchasing utility to deliver usable energy or capacity to another utility for subsequent sale.

(Reference FERC Order No. 69 Docket No. RM79-55 Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978; § 292.303 Electric utility obligations under this subpart; Federal Register, Vol. 45, No. 38, Monday February 25, 1980, p. 12219).

Based on the above FERC guidance, Staff believes it could be successfully argued that power offered for sale to the utility during its surplus period has no value, and that the utility has no obligation to resell the capacity or energy that it does not need.

3. Implement a five-mile separation rule

As discussed earlier, many parties including Staff, believe that the utilities' concerns are primarily with large wind projects, specifically those that choose to reconfigure themselves into multiple legal entities in order to qualify for published avoided cost rates. FERC rules implementing PURPA require facilities to be located at least one mile apart in order to be certified as separate QFs. Reference 18 CFR 292.204(a)(2). The Commission, in prior cases, has ruled that project developers are entitled to one power sales agreement for each QF certificate issued by the FERC. Reference Order No. 26772. Consequently, by disaggregating a large project into several small ones, it is easily possible to qualify for published rates regardless

of the collective size of the projects, and essentially render the Commission's 10 aMW eligibility cap meaningless.

In an attempt to address the disaggregation issue, a proposal effectively limiting QFs with common ownership from being located closer than five miles of each other in order to be eligible to receive published rates was made by Idaho Power in Case No. IPC-E-07-04. Although Staff supported the intent of the proposed rules, it recommended denial of the Company's proposal, believing that project developers would devise ways to circumvent the proposed rules. Staff stated its belief that it would be bad policy to adopt a new rule if there are serious doubts from the beginning about whether it will actually achieve its intended objective.

The Commission denied Idaho Power's Petition stating that published rates were not necessarily a more accurate representation of the value of QF power than IRP-based rates, and that no persuasive evidence had been presented demonstrating that the IRP methodology would consistently produce avoided costs that are either higher or lower than the published rates. The Commission stated further that "The Company, we find, has not convincingly demonstrated that this calculated type of project reconfiguration is occurring in Idaho or that the present requirements for published rate eligibility are now being or will be abused by wind and geothermal or other PURPA qualifying technologies. ... we cannot find that without change abuse will occur and the public interest will not be served. It is a change that we find would encourage and might actually promote gamesmanship." Reference Order No. 30415.

Rules requiring a five-mile separation for eligibility for published rates, identical to those proposed in Case No. IPC-E-07-04, have been adopted in Oregon and have been in place for several years. To Staff's surprise, the rules seem to be effective in preventing disaggregation and have not led to gamesmanship. However, Staff consulted with a FERC senior staff attorney, asking specifically about whether rules such as those adopted in Oregon would be in conflict with federal law. In the opinion of the attorney, a five-mile separation rule such as Oregon's would likely not withstand legal challenges. Consequently, Staff is not prepared to propose revisiting the same proposal made by Idaho Power in 2007 even though many circumstances have changed. However, Staff would be willing to further explore similar options if one can be found that passes legal scrutiny and offers an effective means of addressing the disaggregation issues raised in this case.

4. Develop a new methodology for establishing avoided cost rates for large projects

If no other alternatives are considered viable, then perhaps a new methodology could be developed for establishing rates for large projects. For example, in Case No. GNR-E-09-03, the predecessor to this case, consideration was given to adoption of a "wind SAR" as a possible means of establishing fair avoided cost rates for wind QFs while also addressing some of the limitations of the current methodology. Staff developed a straw man proposal for a wind SAR, but participants in a November 3, 2010 workshop did not offer enough support for continuing to pursue the proposal.

Nevertheless, if parties in this case reach an impasse in pursuing other alternatives, perhaps satisfactory revisions to the wind SAR proposal could be made, or alternatively, a new methodology could be devised. For example, a bidding or auction-based approach may be desirable because it could effectively account for a utility's need for new generation while relying on competition to set prices. The details of any new methodology are critical, and would likely take quite a bit of time to work out. Moreover, Staff believes that any methodology, regardless of how well-intended or thought out, will present implementation challenges that must be resolved over time.

Should the Commission's decision apply to all three utilities?

Staff believes that decisions that the Commission makes regarding the Utilities' Petition should be applied equally to Idaho Power, Avista, and PacifiCorp. In comments submitted so far in this case, some parties have contended that Idaho Power is the only utility of the three with serious issues that need to be addressed, that PacifiCorp's issues are minor, and that Avista has few if any issues because no proposed wind projects were identified in the Utilities' Petition. Staff disagrees. The Utilities' Petition identified existing projects and both signed and proposed wind contracts, yet Staff is aware of less mature wind project proposals that were not included in the Utilities' totals. Moreover, additional future project proposals are likely inevitable for all three utilities. Regardless of the situation each utility is in now, the same issues will be critical for all three utilities going forward.

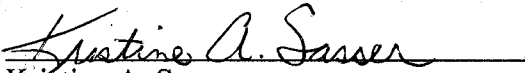
Staff believes that all of the three utilities are impacted by all of the issues identified in previous workshops and that likely would be considered in future proceedings. Staff also believes that any change to the eligibility cap for published rates would affect all three utilities whether a revised cap is applied to them or not. If decisions regarding a revised eligibility cap

are not applied equally to all three utilities, project developers could simply shop for the utility with the most attractive rates and the highest eligibility cap. With few if any exceptions, the Commission has historically applied its decisions in PURPA avoided cost proceeding equally to all three utilities. Staff sees no reason to make an exception in this case.

STAFF RECOMMENDATIONS

Staff recommends that the Commission grant the Utilities' Joint Petition to Address Avoided Cost Issues. Staff also recommends that while the investigation is underway, the Commission lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW to be effective as of December 14, 2010, the date identified in Order No. 32131. Further, Staff recommends that the eligibility cap be lowered for wind resources only, and that the current cap of 10 aMW remain in place for all non-wind resources. The scope of issues to be addressed in the investigation, Staff believes, should be broad, and include consideration of whether the eligibility cap for published rates should be set at 100 kW, 10 aMW, or some other level going forward. In addition, the investigation should explore new methods for establishing fair and reasonable avoided cost rates for wind QFs larger than the eligibility cap for published rates.

Respectfully submitted this 22nd day of December 2010.


Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 22ND DAY OF DECEMBER 2010, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. GNR-E-10-04, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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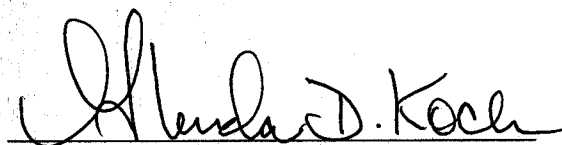
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