KRISTINE A. SASSER
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0357
BAR NO. 6618

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IDAHO PUBLIC
UTILITIES COMMISSION

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5918

Attorney for the Commission Staff

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** **REPLY 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 reply comments.

BACKGROUND

On November 5, 2010, Idaho Power Company, Avista Corporation, and Rocky Mountain Power (Utilities) filed a Joint Petition to Address Issues and to Adjust the Published Avoided Cost Rate Eligibility Cap. On December 22, 2010, Comments were filed in response to the Utilities Petition by Commission Staff, Interveners and other interested parties. Staff wishes to submit Reply Comments in response to the comments filed by the Northwest and Intermountain

Power Producers Coalition (NIPPC), and to provide additional clarification to some of the comments submitted by Staff on December 22, 2010.

STAFF REPLY

Reducing the Eligibility Cap Would neither Frustrate the Intent of PURPA nor Violate It

In its December 22, 2010 comments, NIPPC argues that reducing the eligibility cap would frustrate the fundamental purpose of PURPA, in violation of that federal law. Reference *Comments in Opposition by the Northwest and Intermountain Power Producers Coalition and Alternative Request for an Evidentiary Hearing*, p. 6-8. Staff respectfully disagrees with NIPPC.

The fundamental purpose of PURPA was to create an incentive for development of small renewable resource projects by leveling the playing field such that a utility and its customers are indifferent as to whether the utility generates the power itself or acquires it from another source. FERC's rules implementing PURPA require that utilities offer to purchase energy and capacity from Qualifying Facilities (QFs) at the utilities' avoided cost. Utilities' avoided costs are to be determined by each state utility commission. FERC has allowed states a wide degree of latitude in establishing an implementation plan for PURPA, as long as such plans are consistent with FERC regulations. 133 FERC ¶ 61,059 at 11. "Such latitude is necessary in order for implementation to accommodate local conditions and concerns, so long as the final plan is consistent with statutory requirements." Reference *Policy Statement Regarding the Commission's Enforcement Role under Section 210 of the Public Utility Regulatory Policies Act of 1978*, Docket No. PL83-4-000, 23 FERC ¶ 61,304, at p. 61,646 (1983). With regard to review and enforcement of avoided cost determinations, the Commission's role is generally limited to ensuring that the state regulatory authority's implementation plan is consistent with section 210 of PURPA and with FERC's regulations.[1]

FERC's implementing regulations <u>require</u> that "standard" rates shall be put into effect for purchases from QFs with a design capacity of 100 kW or less. FERC's rules <u>allow</u> "standard" rates to be put into effect for purchases from QFs with a design capacity of more than 100 kW.

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[1] *California Public Utilities Commission*, 133 FERC ¶ 61,059 at ¶ 24 (2010) (October 21, 2010 Order) citing *American REF-FUEL Company of Hempstead*, 47 FERC ¶ 61,161, at 61,533 (1989); *Signal Shasta*, 41 FERC ¶ 61,120 at 61,295; *see also LG&E Westmoreland Hopewell*, 62 FERC ¶ 61,098, at 61,712 (1993).

Reference 18 CFR 292.304(c)(1 and 2). The 10aMW eligibility cap for published rates is solely a creation of the Idaho Commission, not of the FERC. Nonetheless, the 10 aMW eligibility cap is entirely consistent with PURPA and the implementing rules of FERC. In prior proceedings, the Commission has determined that an SAR methodology shall be used to compute such "standard" rates, i.e., "published rates" for QFs smaller than 10 aMW, and that an IRP-based methodology shall be used to establish rates for QFs 10 aMW and larger. For most of the history of PURPA implementation in Idaho, the Commission has found it appropriate to utilize a 10 aMW eligibility cap for published rates; however, the Commission has lowered the cap on at least two occasions. See IPC-E-05-22, Order No. 29839; IPC-E-93-28, Order No. 25884.

In large part, the rationale behind Idaho's establishment of the 10 aMW eligibility cap has been that by making published rates available to small QFs, the developers of those QFs could avoid difficult and costly contract negotiations with the utility. The Commission determined that 10 aMW was a reasonable size threshold to differentiate between large QFs capable of rate negotiations and small QFs who should be entitled to published rates. Projects 10 aMW and larger are required to have their rates computed using an IRP-based methodology. The IRP-based methodology, because it requires modeling of the proposed QF along with the utility's existing resources and the resources in its IRP portfolio, recognizes the individual generation characteristics of the QF and, in theory, results in a unique set of avoided cost rates for each QF modeled. Because of its ability to recognize and account for individual QF project characteristics, it could be argued that the IRP methodology is much better suited for computing avoided cost rates for large, aggregated wind facilities because of their significant differences from other types of QF resources and because of the total amount of energy that they actually produce.

In any case, whichever method the Commission uses to compute avoided cost rates is entirely within the Commission's discretion as long as rates are (1) just and reasonable to electric customers and in the public interest, (2) not discriminatory against QFs, and (3) not in excess of the incremental cost to the electric utility of alternative electric energy. 18 CFR 292.304(a); 133 FERC ¶ 61,059. FERC rules do not specify which method is to be used, nor do FERC rules prohibit use of multiple methods and development of criteria for determining which method to use. FERC rules state that standard rates for purchases may differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different

technologies. 18 CFR 292.304(C)(3)(ii). Moreover, FERC has ruled that a multi-tiered avoided cost rate structure[2] can be consistent with the avoided cost rate requirements set forth in PURPA and FERC's implementing regulations. See *California Public Utilities Commission*, 133 FERC ¶ 61,059 at ¶ 26 (2010) (October 21, 2010 Order). If different methods are required in order to fairly and accurately differentiate among QFs, then it seems reasonable to assume that different methodologies are acceptable for computing avoided cost rates. Furthermore, the criteria for determining the circumstances under which each method shall be used is also entirely within the Commission's discretion. As long as the Commission develops "standard" rates for projects with a design capacity of 100 kW or less, it has met FERC's requirements. Therefore, lowering the eligibility cap for published rates would in no way be a violation of PURPA or FERC's implementing rules. Contrary to the assertions of NIPPC, Staff argues that not reducing the eligibility cap would be a violation of PURPA if it allows QFs to be compensated at levels in excess of the utilities' true avoided costs.

Wind Integration is Not the Only Issue in this Case

NIPPC's characterization of the issues in this case as being solely related to wind integration fails to recognize all of the other identified issues. NIPPC asserts that a drop in the eligibility cap is not warranted because the record does not demonstrate that Idaho Power will be unable to integrate the amount of wind proposed, or that the current wind integration charge is an inaccurate reflection of the integration costs. Contrary to NIPPC's assertions, the Joint Petition does not cite inaccurate wind integration charges as a reason for lowering the eligibility cap, and only tangentially cites the inability to integrate increasing amounts of wind generation. The reasons cited by the Utilities in support of their Joint Petition were namely

a) the SAR methodology for computing avoided cost rates is inadequate for large projects because it does not represent the actual costs avoided by a utility,
b) the SAR methodology fails to account for the different characteristics of various types of generation resources,

[2] In the context of the cited case, a "multi-tiered" avoided cost rate structure referred to offering a certain rate to combined heat and power generation technology while offering a different avoided cost rate to other generation technologies.

c) the current requirements for PURPA development in Idaho have created a situation in which the utilities' IRP processes are being circumvented,
d) the current rules provide incentives to develop PURPA facilities that provide generation when it is not needed,
e) surplus PURPA generation causes significant operational and reliability issues, and
f) the continued addition of QF generation at published avoided cost rates is very costly to customers.

Clearly, Staff believes, the issues in this case go far beyond just the integration costs and abilities of the Utilities to integrate increasing amounts of new wind generation.

NIPPC's Comments on Disaggregation are Misleading

In its comments, NIPPC also cites a recent FERC decision[3] as purported evidence of FERC endorsement of disaggregation of large wind projects into multiple smaller projects. In that case, six separate QFs developed by John Deere Renewables petitioned FERC to overturn a Texas PUC decision to deny the projects long-term contracts at avoided cost rates calculated at the beginning of the contract, rather than rates calculated throughout the course of the contract term at the time of actual energy deliveries. NIPPC reasons that because FERC knew these wind projects were developed by one large, sophisticated developer utilizing the one-mile-rule to break up a 129.4 MW project into smaller projects to qualify below the 80 MW limit, yet nevertheless ordered that the QFs were entitled to PURPA contracts, that somehow FERC is making a judgment on disaggregated wind projects.

The exclusive focus of this case was on whether the Texas PUC decision to deny contracts containing fixed long-term rates was inconsistent with PURPA and FERC's implementing regulations. The QF status of the projects as a consequence of their disaggregated configuration was never in dispute by any party, nor did FERC ever make any judgment related to this fact. For NIPPC to cite this case as an affirmation by FERC that disaggregation of large wind projects is acceptable, particularly since it bears no relationship to disaggregation of large projects in order to meet Idaho's 10 aMW eligibility cap, is misleading and inappropriate.

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[3] *See JD Wind 1, LLC, JD Wind 2, LLC, JD Wind 3, LLC, JD Wind 4, LLC, JD Wind 5, LLC, JD Wind 6, LLC,* "Notice of Intent Not to Act and Declaratory Order," 129 FERC ¶ 61,148, at ¶¶ 24-29 (November 19,2009).

Clarification of Staff Comments on a Five-Mile Separation Rule

In its comments, Staff discussed a five mile separation rule as one possible long-term solution to address disaggregation of large projects into smaller 10 aMW projects in order to qualify for published rates. Staff discussed a filing made by Idaho Power in 2007 seeking to implement a five-mile separation rule, and related that the Commission had denied Idaho Power's request. Staff also pointed out that a similar rule had been adopted in Oregon, seemingly successfully. Staff expressed concerns about whether such a rule would be legal under FERC guidelines, yet expressed a willingness to explore similar options if one can be proposed that passes legal scrutiny and offers an effective means of addressing the disaggregation issues.

Since filing its initial comments, Staff has conducted additional research. Staff is confident that a five-mile separation rule could be implemented without violating either PURPA or FERC's implementing rules as long as the "floor" established by FERC is met.[4] As long as the Commission offers a published rate for QFs producing 100 kW or less, Staff believes, in its discretion, the Commission can also create a published rate for QFs with particular characteristics, located five miles or more apart and producing between 100 kW and 10 aMW, to be compensated at an alternative published rate. Such a rule could be implemented either alone or in combination with a reduction in the eligibility cap for published rates so that projects with unique characteristics could be analyzed more accurately for purposes of computing avoided cost rates.

NIPPC cites a recent FERC rule-making in which the Edison Electric Institute (EEI) requested that FERC "revisit the 'one-mile-rule' used to determine whether two facilities are part of the same QF for purposes of § 292.204(a)." *Revision to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production Facility*, 75 Fed. Reg. 15950, 15955 (March 30, 2010). EEI asked "that the Commission [FERC] adopt a rebuttable presumption that facilities on sites located more than one mile apart are independent for purposes of QF certification, but that utilities would be allowed to rebut this presumption upon a showing that the facilities, although located more than one mile apart, are 'part of a common enterprise'

[4] The "floor" established by FERC requires that standard/published rates be made available for each QF producing 100 kW or less. 18 CFR 292.304(c).

and should thus be considered as a single entity, not entitled to more separate certifications of QF status." *Id.*

NIPPC contends that FERC rejected the utility proposal to reinterpret its one-mile-rule, observing that the one-mile-rule has been part of its regulations since the inception of PURPA. *Id.* Staff maintains that NIPPC's contention is grossly misleading. First, the entire focus of the case cited by NIPPC was on the content and structure of the form (Form 556) required to be submitted to FERC for facilities to be self-certified as Qualifying Facilities. The proceeding had virtually nothing to do with changes to the actual criteria for obtaining QF status or with the definition of a qualifying facility. What FERC *actually* said in its Order was "**The Commission declines, as beyond the scope of this proceeding**, the request by EEI to adopt a presumption that facilities on sites located more than one mile apart are independent for purposes of QF certification, and that such presumption is rebuttable based on considerations EEI enumerates." *Id.* (emphasis added). NIPPC's implication that FERC's ruling in the case represented offensive resistance to changes or alternatively, affirmation of current interpretation of the rules, is highly presumptuous at best.

Procedural Matters

NIPPC's comments recommend that the Commission deny the request to reduce the published avoided cost rate eligibility cap, and alternatively requests that the Commission hold an evidentiary hearing prior to issuing any order in reducing the cap. Staff notes that interveners in this case have been provided opportunities to submit both direct and reply comments, in addition to having the opportunity to make oral arguments, now scheduled for January 27, 2011. Staff believes that this has afforded all parties ample opportunity to introduce evidence and offer legal arguments necessary to establish a record upon which the Commission can base its decisions. While this case involves a blend of factual and legal issues, the Commission's decisions, in Staff's opinion, are mostly a matter of policy. Therefore, Staff does not believe an evidentiary hearing is necessary or that it would serve any useful purpose.

Respectfully submitted this 19TH day of January 2011.

Kristine A. Sasser

Kristine A. Sasser
Deputy Attorney General

Technical Staff: Rick Sterling

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 19TH DAY OF JANUARY 2011, SERVED THE FOREGOING **REPLY COMMENTS OF THE COMMISSION STAFF,** IN CASE NO. GNR-E-10-04, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

DONOVAN E WALKER
LISA D NORDSTROM
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
E-MAIL: dwalker@idahopower.com
lnordstrom@idahopower.com

DANIEL E SOLANDER
ROCKY MOUNTAIN POWER
201 S MAIN ST STE 2300
SALT LAKE CITY UT 84111
E-MAIL: daniel.solander@pacificorp.com

MICHAEL G ANDREA
AVISTA CORPORATION
1411 E MISSION AVE
SPOKANE WA 99202
E-MAIL: michael.andrea@avistacorp.com

PETER J RICHARDSON
GREGORY M ADAMS
RICHARDSON & O'LEARY
515 N 27TH STREET
BOISE ID 83702
E-MAIL: peter@richardsonandoleary.com
greg@richardsonandoleary.com

ROBERT D KAHN
NW & INTERMOUNTAIN POWER
PRODUCERS COALITION
1117 MINOR AVE STE 300
SEATTLE WA 98101
E-MAIL: rkahn@nippc.org

DON STURTEVANT
ENERGY DIRECTOR
J R SIMPLOT COMPANY
PO BOX 27
BOISE ID 83707-0027
E-MAIL: don.sturtevant@simplot.com

ROBERT A PAUL
GRAND VIEW SOLAR II
15690 VISTA CIRCLE
DESERT HOT SPRINGS CA 92241
E-MAIL: robertapaul08@gmail.com

JAMES CARKULIS
ENXERGY DEVELOPMENT GROUP OF
IDAHO LLC
802 W BANNOCK ST STE 1200
BOISE ID 83702
E-MAIL: jcarkulis@exergydevelopment.com

RONALD L WILLIAMS
WILLIAMS BRADBURY PC
1015 W HAYS ST
BOISE ID 83702
E-MAIL: ron@williamsbradbury.com

SCOTT MONTGOMERY
PRESIDENT
CEDAR CREEK WIND LLC
668 ROCKWOOD DR
N SALT LAKE UT 84054
E-MAIL: scott@westernenergy.us

DANA ZENTZ
VICE PRESIDENT
SUMMIT POWER GROUP INC
2006 E WESTMINSTER
SPOKANE WA 99223
E-MAIL: dzentz@summitpower.com

THOMAS H NELSON
RENEWABLE ENERGY COALITION
PO BOX 1211
WELCHES OR 97067
E-MAIL: nelson@thnelson.com

JOHN R LOWE
RENEWABLE ENERGY COALTIION
12050 SW TREMONT ST
PORTLAND OR 97225
E-MAIL: jravensanmarcos@yahoo.com

R GREG FERNEY
MIMURA LAW OFFICES PLLC
2176 E FRANKLIN RD
STE 120
MERIDIAN ID 83642
E-MAIL: greg@mimuralaw.com

BILL PISKE MGR
INTERCONNECT SOLAR
DEVELOPMENT LLC
1303 E CARTER
BOISE ID 83706
E-MAIL: billpiske@cableone.net

DEAN J MILLER
McDEVITT & MILLER LLP
PO BOX 2564
BOISE ID 83701
E-MAIL: joe@mcdevitt-miller.com

PAUL MARTIN
INTERMOUNTAIN WIND LLC
PO BOX 353
BOULDER CO 80306
E-MAIL:
paulmartin@intermountainwind.com

WADE THOMAS
DYNAMIS ENERGY LLC
776 E RIVERSIDE DR
STE 15
EAGLE ID 83616
E-MAIL: wthomas@dynamisenerg.com

SHELLEY M DAVIS
BARKER ROSHOLT ET AL
STE 102
1010 W JEFFERSON ST
BOISE ID 83701
E-MAIL: smd@idahowaters.com

BRIAN OLMSTEAD
GENERAL MANAGER
TWIN FALLS CANAL CO
PO BOX 326
TWIN FALLS ID 83303
E-MAIL: olmstead@tfcanal.com

TED DIEHL
GENERAL MANAGER
NORTH SIDE CANAL CO
921 N LINCOLN ST
JEROME ID 83338
E-MAIL: nscanal@cableone.net

BILL BROWN CHAIR
BOARD OF COMMISSIONERS
OF ADAMS COUNTY ID
PO BOX 48
COUNCIL ID 83612
E-MAIL: dbbrown@frontiernet.net

CERTIFICATE OF SERVICE

TED S SORENSON PE
BIRCH POWER COMPANY
5203 SOUTH 11TH EAST
IDAHO FALLS ID 83404
E-MAIL: ted@tsorenson.net

GLEN IKEMOTO
MARGARET RUEGER
IDAHO WINDFARMS LLC
672 BLAIR AVENUE
PIEDMONT CA 94611
E-MAIL: gleni@envisionwind.com
margaret@envisionwind.com

SECRETARY

CERTIFICATE OF SERVICE