

LOVINGER | KAUFMANN LLP

825 NE Multnomah • Suite 925
Portland, OR 97232-2150

office (503) 230-7715
fax (503) 972-2921

Kenneth E. Kaufmann
Kaufmann@LKLaw.com

March 16, 2011

Via UPS Overnight Delivery and Electronic Mail

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 W Washington Street
Boise, ID 83702-5918
Jean.jewell@puc.idaho.gov

RECEIVED
2011 MAR 17 AM 10:09
IDAHO PUBLIC UTILITIES COMMISSION

Re: **IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO
DISAGGREGATION AND AN APPROPRIATE PUBLISHED AVOIDED
COST RATE ELIGIBILITY CAP STRUCTURE FOR PURPA QUALIFYING
FACILITIES.
IPUC Docket No. GNR-E-11-01**

Dear Ms. Jewell:

Please find enclosed for filing in the above-captioned docket an original and seven (7) copies of *Rocky Mountain Power's Motion for Clarification and Motion for Protective Order*.

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
Attorney for Rocky Mountain Power

cc: GNR-E-11-01 Service List

Enclosures

Mark C. Moench
Daniel E. Solander
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone: (801) 220-4014
Fax: (801) 220-3299
mark.moench@pacificorp.com
daniel.solander@pacificorp.com

RECEIVED
2011 MAR 17 AM 10:09
IDAHO PUBLIC
UTILITIES COMMISSION

Jeffrey S. Lovinger
Kenneth E. Kaufmann
Lovinger Kaufmann LLP
825 NE Multnomah, Suite 925
Portland, Oregon 97232
Telephone: (503) 230-7715
Fax: (503) 972-2921
lovinger@lklaw.com
kaufmann@lklaw.com

Attorneys for Rocky Mountain Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S) CASE NO. GNR-E-11-01
INVESTIGATION INTO DISAGGREGATION)
AND AN APPROPRIATE PUBLISHED) ROCKY MOUNTAIN
AVOIDED COST RATE ELIGIBILITY CAP) POWER'S MOTION FOR
STRUCTURE FOR PURPA QUALIFYING) CLARIFICATION AND
FACILITIES) MOTION FOR PROTECTIVE
) ORDER
)
) EXPEDITED REVIEW
) REQUESTED
)

Pursuant to IDAPA 31.01.01.056, PacifiCorp, dba Rocky Mountain Power, respectfully moves for clarification of Order No. 32195 and moves for a protective order to stay discovery of matters not within the scope of the technical hearing noticed in Order No. 32195.

I. Background

On November 5, 2010, Idaho Power Company, Avista Corporation, and Rocky Mountain Power (the “Utilities”) filed a joint petition asking the Idaho Public Utilities Commission (“Commission”) to initiate an investigation to address various avoided cost issues related to the Commission’s implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA).¹ The Utilities requested an immediate reduction in the 10aMW eligibility cap for published avoided cost rates while the Commission completed its investigation.² On February 7, 2011 the Commission issued Order No. 32176, which temporarily reduced the eligibility cap for published avoided cost rates from 10 aMW to 100 kW for wind and solar Qualifying Facilities (“QFs”).³ Order No. 32176 also called for a hearing the week of May 9, 2011, to investigate and determine requirements by which wind and solar QFs can obtain a published avoided cost rate without allowing large QFs to obtain a rate that is not an accurate reflection of a utility’s avoided cost for such projects.⁴ The Commission declared that “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.*”⁵

On February 25, 2011, the Commission published a Notice of Technical Hearing, which reiterated the scope of its current investigation:

¹ *In the Matter of the Joint Petition of Idaho Power Company, Avista Corporation, and Rocky Mountain Power to Address Avoided Cost Issues and Joint Motion to Adjust the Published Avoided Cost Rate Eligibility Cap*, I.P.U.C. Case No. GNR-E-10-04, (Joint Petition to Address Avoided Cost Issues and Joint Motion to Adjust the Published Avoided Cost Rate Eligibility Cap) (November 5, 2010).

² *Id.*

³ I.P.U.C. Case No. GNR-E-10-04, Order No. 32176 (February 7, 2011).

⁴ *Id.* at 9.

⁵ *Id.* at FN4 (emphasis added).

The Commission initiates this proceeding to investigate and determine in a finite time frame requirements by which wind and solar QFs can obtain a published avoided cost rate without allowing large QFs to obtain a rate that is not an accurate reflection of the utility's avoided cost for such projects.⁶

On March 7, 2011 Northwest and Intermountain Power Producers Coalition ("NIPPC") served on the Utilities its First Production Request (attached as Exhibit A). All of the questions in NIPPC's First Production Request are about the IRP Methodology and appear to have no relevance to the questions set for hearing in Order No. 32195.

II. Standard of Review

The Commission has adopted the rules governing discovery contained in the Idaho Rules of Civil Procedure.⁷ I.R.C.P. 26(b)(1) governs the scope of discovery allowed in Idaho and states: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action."⁸

III. Argument

NIPPC's First Production Request is comprised entirely of questions about the Utilities' IRP Methodology and seems relevant only to the question of whether the IRP Methodology is a valid means for establishing the avoided cost under PURPA. For the

⁶ *In the Matter of the Commission's Investigation into Disaggregation and an Appropriate Published Avoided Cost Rate Eligibility Cap Structure for PURPA Qualifying Facilities*; I.P.U.C. Case No. GNR-E-11-01, Order No. 32195 at 1 (February 25, 2011) (the Commission further expressed its interest in addressing only the disaggregation issue in the current proceedings through the notifications "the Commission solicits information and investigation of a published avoided cost rate eligibility cap structure that: (1) allows small wind and solar QFs to avail themselves of published rates for projects producing 10 aMW or less; and (2) prevents large QFs from disaggregating in order to obtain a published avoided cost rate that exceeds a utility's avoided cost." *Id.* at 3).

⁷ IDAPA 31.01.01.225; *In the Matter of the Investigation into Whether Packsaddle Development Corporation is a Public Utility Subject to Commission Regulation*, I.P.U.C. Case No. GNR-W-95-1, Order No. 26399 (1996) (adopting the scope of discovery of I.R.C.P. 26(b)(1)).

⁸ I.R.C.P. 26(b)(1).

reasons below, Rocky Mountain Power believes that NIPPC's inquiry is contrary to the Commission's instructions in Order No. 32195.

A. The validity of the IRP Methodology is not an issue noticed by the Commission for hearing May 10, 2011.

NIPPC's First Production Request suggests that NIPPC is planning to attack the validity of the IRP Methodology at the May 10 hearing.⁹ Order No. 32176 and Order No. 32195 make clear the Commission's intent to address the validity of the IRP Methodology *after* it makes a determination regarding disaggregation,¹⁰ and Rocky Mountain Power has prepared for the May 10 hearing accordingly. If the Commission allows NIPPC to question the validity of the IRP Methodology during the May 10 hearing, parties (including Rocky Mountain Power) that wish to follow the Commission's orders deferring that issue until after resolution of the disaggregation issue will not have a fair chance to produce their testimony and refute that offered by NIPPC. In effect, they would be punished for conforming to the Commission's clearly defined scoping orders. Persons desiring to participate in a proceeding regarding the IRP Methodology that are not parties to this proceeding would be excluded without notice if the IRP Methodology is put at issue in the May 10 hearing. Furthermore, entertaining NIPPC's inquiry into the validity of the IRP Methodology would divert time and attention away from the Commission's stated goal of making a final determination regarding disaggregation.

⁹ Rocky Mountain Power notes that NIPPC is entitled to file its own complaint calling into question the validity of the IRP Methodology, but is *not* entitled to raise this issue as a collateral attack in a Commission proceeding regarding disaggregation. I.C. § 61-625 (2011) states: □“All orders and decisions of the commission which have become final and conclusive shall not be attacked collaterally.” The Commission affirmed the validity of the IRP Methodology through final order in Orders Nos. 25882, 25883 and 25884.

¹⁰ See Section I, *supra*.

B. NIPPC's First Production Request is not relevant to the May 10 hearing.

If the Commission agrees that the IRP Methodology is not at issue at the May 10 hearing, then NIPPC's First Production Request is irrelevant to the subject matter of the proceedings before the Commission. The Commission's rules do not permit discovery on irrelevant matters.¹¹ Therefore, Rocky Mountain Power should not be required to provide responses.

C. Expedited Review of Company's Motions is warranted.

The Commission may modify its rules, including the rule permitting parties 14 days to respond to a motion, when compliance is impracticable.¹² Permitting parties 14 days to respond to this motion is impracticable because the parties to the proceeding need clarification on the scope of the May 10 hearing before the March 25, 2011 deadline to file direct testimony. To the extent the Commission permits parties to file a response, five days would afford more than ample opportunity for parties to respond.

IV. Conclusion

For the reasons stated above, Rocky Mountain Power asks the Commission to declare that the validity of the IRP Methodology is not relevant to the May 10, 2011 hearing. Rocky Mountain Power requests, further, that the Commission grant its motion for protective order staying discovery on matters relating to the IRP Methodology until after the Commission makes a final determination regarding disaggregation. Finally,

¹¹ I.R.C.P. 26(b)(1); *In the Matter of the Application of Avista Corporation for the Authority to Increase its Rates and Charges for Electric and Natural Gas Service to Electric and Natural Gas Customers in the State of Idaho*, I.P.U.C. Case No. AVU-E-04-01; AVU-G-04-1; Order No. 29583 (2004) (denying discovery of information regarding an issue not properly before the Commission as irrelevant to the subject matter of the proceedings).

¹² IDAPA 31.01.01.013.

because Rocky Mountain Power and other parties will be prejudiced if this matter is not resolved promptly, Rocky Mountain Power asks that the Commission narrow the time for other parties to respond, from 14 days to five days, and make a ruling at least three days prior to the deadline for filing direct testimony.¹³

Dated this ___ day of March 2011.

Respectfully submitted,



Mark C. Moench USB 2284
Daniel E. Solander USB 11467
Rocky Mountain Power

Jeffrey S. Lovinger, OSB 960147
Kenneth E. Kaufmann, OSB 982672
Lovinger Kaufmann LLP

Attorneys for Rocky Mountain Power

¹³ This request could be satisfied if the Commission rules on or before March 22, 2011, or if the Commission rules before March 25, 2011, and postpones the March 25, 2011 deadline for filing direct testimony.

Case No. GNR-E-11-01

Rocky Mountain Power's Motion for Clarification and Motion for Protective Order

EXHIBIT A

**First Production Request of the Northwest and Intermountain
Power Producers Coalition to Idaho Power Company, Avista
Corporation and Rocky Mountain Power in GNR-E-11-01
(March 7, 2011)**

Peter J. Richardson (ISB # 3195)
Gregory M. Adams (ISB # 7454)
Richardson & O'Leary, PLLC
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonandoleary.com
greg@richardsonandoleary.com

Attorneys for Northwest and Intermountain
Power Producers Coalition

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S)	
INVESTIGATION INTO DISAGGREGATION)	CASE NO. GNR-E-11-01
AND AN APPROPRIATE PUBLISHED)	
AVOIDED COST ELIGIBILITY CAP)	FIRST PRODUCTION REQUEST OF THE
STRUCTURE FOR PURPA QUALIFYING)	NORTHWEST AND INTERMOUNTAIN
FACILITIES)	POWER PRODUCERS COALITION TO
	IDAHO POWER COMPANY, AVISTA
	CORPORATION AND ROCKY
	MOUNTAIN POWER

Pursuant to Rule 225 of the Rules of Procedure of the Idaho Public Utilities Commission (the "Commission"), the Northwest and Intermountain Power Producers Coalition ("NIPPC") hereby requests that Idaho Power Company ("Idaho Power"), Rocky Mountain Power, and Avista Corporation (collectively the "Joint Utilities") provide responses to the following with supporting documents, where applicable.

This production request is to be considered as continuing, and the Joint Utilities are requested to provide by way of supplementary responses additional documents that they or any

REQUEST FOR PRODUCTION NO. 1

For the purpose of this request please refer to the "IRP Methodology" as approved by the Idaho Public Utilities Commission in Order No. 26576 in Docket No. IPC-E-95-09.¹ The IRP Methodology approved in Order No. 26576 is embodied in Exhibit 101 to Staff's technical testimony (Exhibit 101). In the time since Order No. 26576 was issued, please provide a list of each project for which the IRP Methodology has been used to set avoided cost rates for QF projects. For each project, please identify the Idaho PUC order approving the project.

REQUEST FOR PRODUCTION NO. 2:

Pages 7 and 8 of Exhibit 101 state that semiannual updates of the IRP Methodology must be approved by the Commission for the following variables before they are to be used to determine avoided cost rates:

- a. Escalation rates for capital costs,
- b. Escalation rates for O&M expenses,
- c. Escalation rates for fuel prices,
- d. Fuel prices,
- e. Wholesale power prices
- f. Wholesale power prices escalation rates
- g. Wholesale power available for purchase

Please provide the docket numbers for all such semiannual updates since Order No. 26756 was issued. If no docket numbers exist, please explain how your utility has otherwise obtained the requisite semi-annual Commission approval.

REQUEST FOR PRODUCTION NO 3:

Page 9 of Exhibit 101 provides that "utilities be allowed to publish avoided cost rates for hypothetical projects. The rates should be published semiannually at the time changes in variables are submitted to the Commission. The rates should be for hypothetical 10 MW, 20 MW and 40 MW" projects. Exhibit 101 also provides that utilities "may forego publishing hypothetical rates if they can provide, within 10 working days of receiving a request, approximate rates based on IRP model runs."

(a) Has your utility ever filed hypothetical avoided cost rates for 10 MW, 20 MW and 40 MW projects? Please provide copies of all such filings.

¹ Although docketed as an Idaho Power case, IPC-E-95-09 was, pursuant to Order No. 25884, a generic docket and the Washington Water Power Company (Avista Corporation) and PacifiCorp (Rocky Mountain Power) were also parties and are hence bound by its terms.

REQUEST FOR PRODUCTION NO. 6:

In support of the last response, please provide supporting data, in electronic format where possible, the source of the values assumed, workpapers, notes, and an explanation why particular values were assumed. Specifically, please provide:

- (a) The inputs to the power supply model used, including but not limited to:
 - (i) Fuel costs for each year of the 20 years for: Coal, Natural Gas, and Other.
 - (ii) Fixed and Variable O&M costs for each year of the 20 years.
 - (iii) Capacity factors,
 - (a) For existing resources,
 - (b) For the modeled wind resource.
 - (iv) Heat rates for existing resources
 - (v) System loads for each year of the 20 years, including On-peak by season, and Off-peak by season.
 - (vi) DSM MWh for each year of the 20 years
- (b) The output values used in the energy supply model, including but not limited to the following:
 - (i) Off system purchases for each year of the 20 years, including MWh, and Price per MWh.
 - (ii) Off system sales for each year of the 20 years, including MWh, and Price per MWh.
 - (iii) Capacity factors, including each existing resource, and the modeled wind resource.
- (c) For the financial model used to find the present value of the revenue requirement (PVRR), please provide the input values used, including but not limited to the following: (i) the resource used to for the capital cost, (ii) the cost of capital, (iii) the capital carrying cost, (iv) tax rate assumptions – (state, federal, local), (v) economic life of the system resources.
- (d) The levelization model used including all assumptions.

REQUEST FOR PRODUCTION NO.7

For Avista, please use the "IRP Methodology" as approved by the Idaho Public Commission in Order No. 26576 in Docket IPC-E-95-09 to calculate the estimated avoided costs for the Reardan

resource used to for the capital cost, (ii) the cost of capital, (iii) the capital carrying cost, (iv) tax rate assumptions – (state, federal, local), (v) economic life of the system resources.

- (d) The levelization model used including all assumptions.

REQUEST FOR PRODUCTION NO.9

For Rocky Mountain Power, please use the “IRP Methodology” as approved by the Idaho Public Commission in Order No. 26576 in Docket IPC-E-95-09 to calculate the estimated avoided costs for the Rolling Hills wind farm in Wyoming, based on actual production data if the project were to have an online date of January 1, 2012, in the following format:

- (a) on a \$/MWh basis levelized over the 20 year contract period
- (b) on a non-levelized \$/MWh basis annually over the 20 year contract period,
- (c) on a \$/MWh basis seasonal rates over the 20 year contract period,
- (d) for (a) through (c), separate the avoided cost between the capital and energy components.
Request No.

REQUEST FOR PRODUCTION NO. 10

In support of the last response, please provide supporting data, in electronic format where possible, the source of the values assumed, workpapers, notes, and an explanation why particular values were assumed. Specifically, please provide:

- (a) The inputs to the power supply model used, including but not limited to:
- (i) Fuel costs for each year of the 20 years for: Coal, Natural Gas, and Other.
 - (ii) Fixed and Variable O&M costs for each year of the 20 years,
 - (iii) Capacity factors,
 - (a) For existing resources,
 - (b) For the modeled wind resource.
 - (iv) Heat rates for existing resources
 - (v) System loads for each year of the 20 years, including On-peak by season, and Off-peak by season.
 - (vi) DSM MWh for each year of the 20 years

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 16th day of March, 2011, I served a true and correct copy of the foregoing *ROCKY MOUNTAIN POWER'S MOTION FOR CLARIFICATION AND MOTION FOR PROTECTIVE ORDER* in Case No. GNR-E-11-01 on the following named persons/entities by UPS Overnight Delivery (Commission Secretary only) and electronic mail:

Jean Jewell, Commission Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, ID 83702-5918
jean.jewell@puc.idaho.gov
(UPS Overnight Delivery)

Daniel Solander
Rocky Mountain Power
201 South Main Street, Suite 2300
Salt Lake City, UT 84111
daniel.solander@pacificorp.com

Ronald L. Williams
Williams Bradbury PC
1015 West Hays Street
Boise, ID 83702
ron@williamsbradbury.com

Dana Zentz, Vice President
Summit Power Group, Inc
2006 East Westminster
Spokane, WA 99223
dzentz@summitpower.com

Robert A. Paul
Grand View Solar II
15690 Vista Circle
Desert Hot Springs, CA 92241
robertapaul08@gmail.com

R. Greg Ferney
Mimura Law Offices PLLC
2176 East Franklin Road, Suite 120
Meridian, ID 83642
greg@mimuralaw.com

Robert D. Kahn, Executive Director
Northwest and Intermountain Power
Producers Coalition
1117 Minor Avenue, Suite 300
Seattle, WA 98101
rkahn@nippc.org

Michael G. Andrea
Avista Corporation
1411 East Mission Ave
Spokane, WA 99202
michael.andrea@avistacorp.com

Dean J. Miller
McDevitt & Miller LLP
PO Box 2564
Boise, ID 83701
joe@mcdevitt-miller.com

Don Sturtevant, Energy Director
J. R. Simplot Company
PO Box 27
Boise, ID 83707-0027
don.sturtevant@simplot.com

Scott Montgomery, President
Cedar Creek Wind LLC
668 Rockwood Drive
North Salt Lake, UT 84054
scott@westernenergy.us

James Carkulis, Managing Member
Exergy Development Group of Idaho LLC
802 West Bannock Street, Suite 1200
Boise, ID 83702
jcarkulis@exergydevelopment.com

Thomas H. Nelson, Attorney
PO Box 1211
Welches, OR 97067-1211
nelson@thnelson.com

Bill Piske, Manager
Interconnect Solar Development LLC
1303 East Carter
Boise, ID 83706
billpiske@cableone.net

Brian Olmstead, General Manager
Twin Falls Canal Company
PO Box 326
Twin Falls, ID 83303
olmstead@tfcanal.com

John R. Lowe
Consultant to Renewable Energy Coalition
12050 SW Tremont Street
Portland, OR 97225
jravensanmarcos@yahoo.com

Bill Brown, Chair
Board of Commissioners
of Adams County, ID
PO Box 48
Council, ID 83612
bdbrown@frontiernet.net

Donovan E. Walker
Lisa D. Nordstrom
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
dwalker@idahopower.com
lnordstrom@idahopower.com

Donald L. Howell II
Kristine A. Sasser
Deputy Attorneys General
Idaho Public Utilities Commission
472 West Washington Street
Boise, ID 83702
don.howell@puc.idaho.gov
kris.sasser@puc.idaho.gov

M.J. Humphries
Blue Ribbon Energy LLC
4515 S. Ammon Road
Ammon, ID 83406
blueribbonenergy@gmail.com

Arron F. Jepsen
Blue Ribbon Energy LLC
10660 South 540 East
Sandy, UT 84070
arronesq@aol.com

Wade Thomas, General Counsel
Dynamis Energy LLC
776 West Riverside Drive, Suite 15
Eagle, ID 83616
wthomas@dynamisenergy.com

Paul Martin
Intermountain Wind LLC
PO Box 353
Boulder, CO
paulmartin@intermountainwind.com

Shelley M. Davis
Barker Rosholt & Simpson LLP
1010 West Jefferson Street (83702)
PO Box 2139
Boise, ID 83701
smd@idahowaters.com

Glenn Ikemoto
Margaret Rueger
Idaho Windfarms LLC
672 Blair Avenue
Piedmont, CA 94611
glenni@envisionwind.com
margaret@envisionwind.com

Gary Seifert
Kurt Myers
Idaho National Laboratory
Conventional Renewable Energy Group
2525 Fremont Avenue
Idaho Falls, ID 83415-3810
garyseifert@inl.gov
kurtmyers@inl.gov

Ted Sorenson PE
Birch Power Company
5203 South 11th East
Idaho Falls, ID 83404
ted@tsorenson.net

Benjamin J. Otto
Idaho Conservation League
710 N. Sixth Street (83702)
PO Box 844
Boise, ID 83701
botto@idahoconservation.org

Ken Miller
Snake River Alliance
PO Box 1731
Boise, ID 83701
kmiller@snakeriveralliance.org

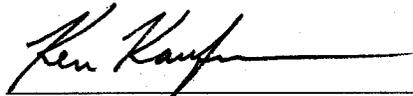
Ted Diehl, General Manager
North Side Canal Company
921 North Lincoln Street
Jerome, ID 83338
nscanal@cableone.net

Megan Walseth Decker
Senior Staff Counsel
Renewable Northwest Project
917 SW Oak Street, Suite 303
Portland, OR 97205
megan@rnp.org

Peter J. Richardson
Gregory M. Adams
Richardson & O'Leary PLLC
PO Box 7218
Boise, ID 83702
peter@richardsonandoleary.com
greg@richardsonandoleary.com

DATED this 16th day of March, 2011.

LOVINGER KAUFMANN LLP



Kenneth E. Kaufmann, OSB 982672
Attorney for Rocky Mountain Power