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IDAHO PUBLIC
UTILITIES COMMISSION

March 18, 2011

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

RE: Case No. GNR-E-11-01

Dear Ms. Jewell:

We are enclosing for filing in the above-referenced case an original and three (7) copies of the ANSWER OF THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION IN OPPOSITION TO ROCKY MOUNTAIN POWER'S MOTION FOR CLARIFICATION AND MOTION FOR PROTECTIVE ORDER. An additional copy is enclosed for you to stamp for our records.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Adams". The signature is stylized and cursive.

Greg Adams
Richardson & O'Leary PLLC

encl.

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IDAHO PUBLIC
UTILITIES COMMISSION

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) ANSWER OF THE NORTHWEST AND
STRUCTURE FOR PURPA QUALIFYING) INTERMOUNTAIN POWER
FACILITIES) PRODUCERS COALITION IN
) OPPOSITION TO ROCKY MOUNTAIN
) POWER'S MOTION FOR
) CLARIFICATION AND MOTION FOR
) PROTECTIVE ORDER
)

Pursuant to IDAPA 31.01.01.057, the Northwest and Intermountain Power Producers Coalition ("NIPPC") hereby files this Answer in Opposition to Rocky Mountain Power's Motion for Clarification and Motion for Protective Order. For the reasons set forth below, NIPPC respectfully requests that the Idaho Public Utilities Commission ("Commission") deny Rocky Mountain Power's motions.

BACKGROUND

This case evolved from the Commission's Order No. 32176, reducing the eligibility cap available to wind and solar qualifying facilities ("QFs") under the Public Utility Regulatory Policy Act of 1978 ("PURPA") from 10 average monthly megawatts ("aMW") to 100 kilowatts ("kw"). NIPPC incorporates its filings in Case No. GNR-E-10-04 by reference.

Relevant to this motion, Idaho Power Company, Avista Utilities, and Rocky Mountain Power ("Joint Utilities") complained that large wind projects were "disaggregating" to obtain published avoided cost rates. NIPPC asserted in Case No. GNR-E-10-04 that the reason "disaggregation" of PURPA QFs ever even began occurring is that the IRP Methodology, as currently implemented, provides a rate that is a gross underestimate of the true avoided costs for projects over 10 aMW. *See Tr.*, Case No. GNR-E-10-04, p. 49-50 (Jan. 27, 2011). NIPPC attempted to offer evidence at oral argument in support of its position. *Id.* at pp. 6-7, 48, 96-99. Avista too offered its witness to testify to the adequacy of the IRP Methodology. *Id.* at pp. 97-98. In Order No. 32176, the Commission opened a new docket to investigate the "disaggregation" problem. Specifically, the Commission stated:

[T]he 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.

Order No. 32176 at p. 11.

NIPPC filed a Petition for Reconsideration and attached a White Paper, asserting, in part, that the IRP Methodology implemented by each of the Joint Utilities does not compensate QFs for the full avoided costs, and does not faithfully implement the methodology as approved by the

Commission in Case No. IPC-E-95-09. *NIPPC's Petition for Reconsideration*, GNR-E-10-04, at pp. 10-14 and Attachment 1. In response, Rocky Mountain Power argued the IRP Methodology will be addressed at some unspecified, later date "when all parties will be able to present full evidence over the adequacy of the IRP Methodology." *Rocky Mountain Power's Answer to NIPPC's Petition for Reconsideration*, GNR-E-10-04, at p. 6. But Idaho Power and Avista both challenged NIPPC's assertions regarding the IRP Methodology. *Idaho Power's Answer to NIPPC's Petition for Reconsideration*, GNR-E-10-04, at pp. 8-12; *Avista's Answer to NIPPC's Petition for Reconsideration*, GNR-E-10-04, at pp. 4-5. Idaho Power also made the remarkable argument that "there is no . . . 'full avoided cost' standard," *Idaho Power's Answer to NIPPC's Petition for Reconsideration*, GNR-E-10-04, at p. 19, which is arguably a concession that NIPPC is correct regarding the IRP Methodology's failure to provide full avoided cost rates.

The Commission opened Case No. GNR-E-11-01 to investigate the perceived disaggregation problem. *See* Order No. 32195. NIPPC filed Production Requests on the Joint Utilities, inquiring into the Joint Utilities' implementation of the IRP Methodology on March 7, 2011, the responses to which NIPPC intends to use to develop its testimony for the hearing on May 10, 2011. Nine days after NIPPC filed its request, on March 16, 2011, Rocky Mountain Power filed the instant motions for clarification and protective order against NIPPC's inquiry into how it implements the IRP Methodology with its GRID Model. According to Rocky Mountain Power, implementation of the IRP Methodology is beyond the scope of this proceeding, and if the Commission allows NIPPC to comment on the matter at the May 5, 2011 hearing, Rocky Mountain Power "will not have a fair chance to produce [its] testimony and

refute that offered by NIPPC.” *Rocky Mountain Power’s Motion for Clarification and Motion for Protective Order*, Case No. GNR-E-11-01, p. 4.

LEGAL STANDARD

Rocky Mountain Power’s request for protective order is governed by IDAPA 31.01.01.221, and I.R.C.P. 26. Parties are entitled to discovery “regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to a claim or defense of the party seeking discovery or to the claim or defense of any other party.” I.R.C.P. 26(b)(1). “It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” A tribunal may issue a protective order to protect a party from “annoyance, embarrassment, oppression, or undue burden or expense,” but only “for good cause shown.” I.R.C.P. 26(c). “If the motion for protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.” *Id.*

ARGUMENT

NIPPC has repeatedly expressed its position that the mandatory purchase provisions of PURPA require utilities to pay each QF the full avoided costs, including any QF that is a small power production facility up to 80 megawatts in size and meets applicable distance separation characteristics. 18 C.F.R. § 292.304(a), (b); *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policy Act of 1978*, 45 Fed. Reg. 12,214, 12,222-12,223 (Feb. 25, 1980). The U.S. Supreme Court directly affirmed the “full-avoided-cost rule,” *American Paper Institute, Inc. v. FERC*, 461 U.S. 402,

417-18, 103 S.Ct. 1921, 1930 (1983), and that rule is still in effect today.

NIPPC submits that the adequacy of the methodology for calculating avoided cost rates for projects over the eligibility threshold for published avoided cost rates is the critical issue in any investigation into methods to prevent “disaggregation.” If there were a way to obtain a full avoided cost rate without the published rates, QFs able to aggregate small projects would have no incentive to choose to do so. NIPPC’s position on how to prevent “disaggregation” is obviously “relevant to the subject matter involved in the pending action.” I.R.C.P. 26(b)(1).

That the adequacy of the IRP Methodology is central to solving any perceived disaggregation problem is highlighted by Rocky Mountain Power’s own testimony. With regard to the Cedar Creek wind QF, Rocky Mountain Power’s PURPA contracts administrator, Bruce Griswold, testified:

In March 2010, the developer requested QF pricing for two 78 MW projects. The projects were priced using the Commission-ordered IRP-methodology for Idaho QFs over 10 aMW. RMP prepared and delivered avoided cost prices which were rejected by the developer due to the price being too low. In May 2010, the developer resubmitted five individual projects totaling 133 MW and requested published avoided cost prices.

Direct Testimony of Bruce Griswold, Rocky Mountain Power, Case No. GNR-E-10-04, p. 5.

According to Mr. Griswold and Rocky Mountain Power, the problem is that the QFs refuse to go through the IRP Methodology and instead “disaggregate” their projects. Rocky Mountain Power

then stated at oral argument that its GRID model values “both energy and capacity of a QF.” Tr., GNR-E-10-04, pp. 101-02.¹

Under these circumstances – where Rocky Mountain Power itself has attempted to rely on the IRP Methodology in its arguments regarding disaggregation in its January 20, 2011 testimony and its January 27, 2011 oral argument – the adequacy of the IRP Methodology is clearly relevant to the matter of disaggregation. To test Rocky Mountain Power’s arguments, NIPPC’s pending Production Requests have asked Rocky Mountain Power to run its self-built Rolling Hills wind farm through its IRP Methodology to test the model’s ability to generate rates that accurately reflect the value of that project’s output. *See Rocky Mountain Power’s Motion for Clarification and Motion for Protective Order*, Case No. GNR-E-11-01, Exhibit A, p. 7. In theory, the rates produced by the IRP Methodology should be similar to the rates Rocky Mountain Power charges its customers for that rate-based facility to place prospective QFs on equal footing with the utility. In sum, the adequacy of the methodology to calculate non-published rates is highly relevant to any investigation into ways to prevent large QFs from obtaining published rates.

¹ But the Cedar Creek QF indicated that, after three months of waiting, Rocky Mountain Power provided it with an unbelievably low calculation of \$37 per MWh. Tr., Case No. GNR-E-10-04, at pp. 55-57. The principle of the Cedar Creek QF stated in a sworn affidavit that, “based on CCW’s bidding experience with PacifiCorp in earlier wind or renewable RFPs, the rates proposed by PacifiCorp were far below ‘market’ prices for wind generated electricity being built by PacifiCorp, bid to PacifiCorp and/or sold to PacifiCorp.” *Affidavit of Dana Zentz*, Case No. PAC-E-11-01, ¶ 11 (Jan. 26, 2011). NIPPC is also aware of one wind QF that recently requested IRP Methodology rates from Rocky Mountain Power, but never received any estimated rates whatsoever. *See XRG LLCs’ Answer to Rocky Mountain Power’s Motion for Summary Judgment*, Case No. PAC-10-08, p. 6 (Feb. 22, 2011) (stating that Rocky Mountain Power never provided IRP Methodology rates for two over-10aMW wind QF projects).

Rocky Mountain Power's argument regarding its ability to prepare by May 5, 2011 is further undermined by the fact that Avista is working cooperatively with NIPPC's expert to demonstrate how it implements the IRP Methodology in response to NIPPC's production requests. NIPPC's expert, Dr. Don Reading is, in fact, traveling to Spokane on Monday, March 21, 2011 for that purpose.

CONCLUSION

For the reasons set forth above, NIPPC respectfully requests that the Commission deny Rocky Mountain Power's motions, and order Rocky Mountain Power to respond to NIPPC's Production Requests.

Respectfully submitted this 18th day of March, 2011.

RICHARDSON AND O'LEARY, PLLC



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of March, 2011, a true and correct copy of the within and foregoing **NIPPC'S ANSWER TO MOTION FOR CLARIFICTION AND MOTION FOR PROTECTIVE ORDER** was served as shown to the following parties:

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