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April 22, 2011

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

**Re: GNR-E-11-01
Renewable Northwest Project**

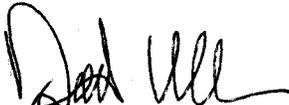
Dear Ms. Jewell:

Enclosed for filing, please find nine (9) copies of the Rebuttal Testimony of Megan Decker on behalf of Renewable Northwest Project and exhibits, with one copy designated as the "Reporter's Copy." A compact disk containing the Direct Testimony and exhibits of the above-named witness is also enclosed.

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh
Enclosures

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Renewable Northwest Project

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE
COMMISSION'S INVESTIGATION
INTO DISAGGREGATION AND
AN APPROPRIATE PUBLISHED
AVOIDED COST RATE
ELIGIBILITY CAP STRUCTURE**

Case No. GNR-E-11-01

**REBUTTAL TESTIMONY OF MEGAN DECKER
ON BEHALF OF RENEWABLE NORTHWEST PROJECT**

1 Q. PLEASE STATE YOUR NAME

2 A. My Name is Megan Decker.

3 Q. ARE YOU THE SAME MEGAN DECKER WHO SUBMITTED DIRECT PRE-
4 FILED TESTIMONY IN THIS MATTER?

5 A. Yes, I am.

6 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

7 A. I will discuss proposals for development of a "single QF rule" that have been submitted
8 in this docket by Staff, the Idaho Conservation League and Rocky Mountain Power and
9 offer suggestions for improvements to the Staff and Rocky Mountain proposals.

10 Q. WHAT IS THE PURPOSE OF DEVELOPING A FRAMEWORK TO DISTINGUISH
11 BETWEEN SINGLE AND MULTIPLE PROJECTS?

12 A. The purpose of adopting such a framework would be to prevent large projects from
13 gaining access to published rates by disaggregating, while retaining availability of
14 published rates for smaller projects that have less economic power to negotiate avoided
15 cost rates. *See Idaho Public Utilities Commission, Order No. 32176, page 11.* Any
16 framework must strike a balance between those two principles. (A future phase of this
17 proceeding should address the reasonableness of the current system for negotiating
18 avoided cost rates for PURPA projects above 10 aMW.) I recognize the challenge in
19 structuring a framework that successfully restricts large, disaggregated projects from
20 access to published rates without being so restrictive that single, smaller projects are also
21 captured and eliminated from eligibility. But the Commission should take care not to err
22 too far on the side of restrictiveness. Paying attention to how the framework affects

1 single, smaller renewable energy projects is necessary to carrying out the dual purposes
2 for adopting the framework.

3 Q. HOW DO YOU CHARACTERIZE THE METHODOLOGY REFLECTED IN THE
4 PROPOSALS PUT FORWARD IN THIS DOCKET?

5 A. As I explained in my Direct Testimony, the identity of the decision maker and the amount
6 of discretion available to that decision maker are the most significant features of a
7 framework for distinguishing between single and multiple projects. (Decker, Di – Page
8 10, Line 20 through Page 11, Line 20.) The “Single Project Requirement” proposed in
9 Exhibit No. 301 to the Direct Testimony of Rick Sterling on behalf of Staff of the Idaho
10 Public Utilities Commission (“Staff’s Proposal”) gives nearly absolute discretion to the
11 utilities and the Commission in applying a broad list of factors. The “Proposed Criteria
12 for Published Avoided Cost Eligibility” contained in Exhibit No. 203 to the Direct
13 Testimony of Bruce W. Griswold on behalf of Rocky Mountain Power (“RMP’s
14 Proposal”) retains significant discretion, but requires the utilities and the Commission to
15 find that at least three elements or categories pertaining to single project status are met:
16 project location (5 miles), timing of construction (24 months), and a discretionary factor
17 focused on evidence of economic linkage among projects. The “Strawman Mechanism
18 for Determining the Size of a Qualifying Facility That is Eligible to Receive the
19 Published Rate” filed by Idaho Conservation League (“ICL’s Proposal”) is a non-
20 discretionary framework containing four specific criteria—energy source, ownership,
21 location, and timing—that must be met to find that aggregation is present. ICL’s
22 Proposal is a refinement of the RNP-ICL Discussion Draft presented in public comments
23 in Case No. GNR-E-10-04, (see Decker, Di – Page 6, Lines 15-23 through Page 7, Lines

1 1-4 and Exhibit 1901), which also formed a starting point for Staff's Proposal (Sterling,
2 Di – Page 6, Lines 22-25).

3 Q. HOW DO YOU EVALUATE THOSE DISTINCT METHODOLOGIES?

4 A. As I stated in my Direct Testimony, a discretionary framework is more appropriate when
5 a neutral regulatory body is the decision maker, and less appropriate when the framework
6 will be applied by an interested negotiating party, as in the PURPA context. (Decker, Di
7 – Page 10, Line 20 through Page 11, Line 20.) I also, however, noted that flexibility and
8 discretion can prevent technicalities from controlling decisions. (Decker, Di – Page 11,
9 Lines 1-2.) In other words, flexibility and discretion can prevent “gaming,” and also can
10 prevent unusual project characteristics from eliminating a single project’s eligibility for
11 published rates. Because I believe that comments on crafting a workable, compromise
12 discretionary framework will be most helpful to the Commission, my testimony will
13 focus primarily on reactions to Staff’s Proposal and RMP’s Proposal, which both involve
14 discretion and subjectivity.

15 To illustrate one way in which my general comments on Staff’s Proposal could be
16 translated into a compromise framework, I have included a red-lined version of Staff’s
17 Proposal as Exhibit 1907 to this testimony. My red-lined version of Staff’s Proposal is
18 similar in structure and substance to RMP’s Proposal. RMP’s Proposal contains a mix of
19 objective and subjective criteria, in addition to the virtues of brevity and clarity. With the
20 refinements I suggest below, RMP’s Proposal could be the best foundation for a
21 compromise framework.

22 Q. WHAT IS YOUR PRIMARY CONCERN WITH STAFF’S PROPOSAL, AND HOW
23 WOULD YOU ADDRESS THAT CONCERN?

1 A. My primary concern with Staff's Proposal is that, taken as literally written, it would
2 permit projects to be combined for purposes of the eligibility threshold upon finding only
3 *one* of factors (a)-(o) was satisfied. There is no rational basis on which to find
4 aggregation of two projects that share, for example, *only* the same motive force or fuel
5 source, or *only* close proximity, or *only* the same operations and maintenance entity. It
6 may be that Staff did not intend to allow each single factor alone to result in a conclusion
7 that multiple projects will be considered a single project (*i.e.*, a "one strike, you're out"
8 framework). Staff may rather have intended to give the utilities and the Commission the
9 widest possible discretion to reach a "we know it when we see it" conclusion. Whatever
10 Staff's intent, it is not helpful for a written framework to state that a single one of the
11 factors (a)-(o) would be sufficient to conclude that multiple projects will be aggregated
12 for purposes of the eligibility threshold.

13 It may be that the intent of Staff's Proposal was to provide the utilities and the
14 Commission with absolute discretion to decide when multiple projects should be
15 combined. In that case, I believe that Staff's Proposal allows for more subjectivity—and
16 offers less certainty and predictability—than is reasonably appropriate for this type of
17 regulatory framework. The Commission will be delegating its policy judgment to the
18 utilities as the initial and, likely, most frequent arbiters of project size. With such a broad
19 delegation of authority comes the responsibility to establish guidance and parameters for
20 the exercise of authority. Merely making review of utility decisions available, without
21 communicating what the Commission believes are the key overarching principles or most
22 significant determinants of single/multiple project status, would leave the utilities to
23 guess at the Commission's unexpressed policy judgment. Moreover, the absence of any

1 defined parameters for applying the framework will make it impossible for potential
2 project owners and financing partners to make an educated assessment of which projects
3 are likely to be eligible for published rates.

4 To address what may be either excessive restrictiveness or excessive subjectivity
5 in Staff's Proposal, I suggest (1) isolating at least one factor as a threshold criterion that
6 must be met in addition to the discretionary analysis; and (2) for the discretionary portion
7 of the determination, requiring a finding that at least two factors are present.

8 Specifically, I would make same motive force/fuel source and a *defined* geographic
9 proximity the objective threshold criteria, and reform the list of discretionary factors to
10 ensure that a conclusion of aggregation will be based on at least two appropriate indicia
11 of economic linkage between projects. I note that these changes, illustrated in Exhibit
12 1907, would make Staff's Proposal more similar in structure to RMP's Proposal, which
13 contains a mix of objective criteria and subjective factors.

14 Q. WHICH FACTORS IN STAFF'S PROPOSAL ARE DUPLICATIVE OR OF LIMITED
15 RELEVANCE IN DETERMINING ECONOMIC LINKAGE BETWEEN PROJECTS?

16 A. As I stated in my Direct Testimony, the purpose of PURPA published rates is to reduce
17 transaction costs for projects that lack economic power and may not anticipate revenues
18 sufficient to negotiate unique avoided costs and contracts with utilities. (Decker, Di –
19 Page 4, Line 7 through Page 6, Line 12.) A single/multiple project framework therefore
20 should attempt to determine the extent to which projects are jointly developed and
21 economically interdependent. Several of the criteria in Staff's Proposal are duplicative or
22 of limited relevance in determining economic linkage between projects.

1 The first is factor (h) from Staff's Proposal, which reads, "is operated and
2 maintained by the same entity." A reality of smaller projects is that their owners, often
3 local landowners or local governments, do not have the expertise to operate and maintain
4 renewable energy projects. Another reality is that there are very few operations and
5 maintenance ("O&M") service providers willing to serve small-scale projects. Therefore,
6 it is very likely that economically distinct projects will be serviced by the same O&M
7 provider. Thus, while it could be relevant to ask whether multiple projects are serviced
8 under the same O&M agreement, receiving O&M service from the same entity is in no
9 way predictive of economic linkage.

10 Similarly, I would clarify factor (j) ("uses common debt or equity financing") to
11 ensure that it applies only to interdependent financing—*i.e.*, financing pursuant to the
12 same or interdependent agreements or collateral packages—and not merely to using the
13 same financing entity. As with O&M providers, there are only a limited number of
14 financial partners nationally that will work with smaller projects.

15 Another factor that I believe to be of limited relevance in determining economic
16 linkage is factor (d)—shared interconnection facilities. While shared interconnection
17 facilities is a characteristic of many aggregated projects, it is not a predictor of
18 aggregation. In other words, connection to the same substation would not indicate
19 economic linkage or interdependence; rather, it would indicate that the projects are close
20 together and that unnecessary duplication of transmission infrastructure is not good
21 public or business policy. The same would be true, for example, of a shared access road.
22 As I said in my Direct Testimony, it may be appropriate to consider shared transmission
23 infrastructure in the totality of the circumstances, but it would only be relevant if factors

1 significant to economic linkage between projects are also present. (Decker, Di – Page 13,
2 Line 19 through Page 14, Line 4.) A better solution would be to remove shared
3 transmission infrastructure entirely as a determinant of aggregation, as it is essentially
4 duplicative of geographic proximity.

5 Likewise, while common timing is an appropriate factor to consider in connection
6 with other factors, it is not alone a predictor of connection between projects. Therefore, a
7 timing factor would not be appropriate in a “one-strike” framework. If a “two-strike” or
8 “three-strike” framework were to be employed, I would recommend combining factors
9 (c) and (g), which both pertain to timing, so that a conclusion of aggregation cannot be
10 based on timing and distance with no other evidence of connection between projects.

11 Q. DO YOU HAVE ANY CONCERNS WITH THE ADMINISTRATION AND
12 ENFORCEMENT ELEMENTS OF THE STAFF PROPOSAL?

13 A. If the Commission declines to refine the factors and eligibility criteria in Staff’s Proposal
14 to introduce more objectivity and predictability, as I have outlined above, then I do not
15 believe that the utility should have a decision making role. The first, and only
16 determination of compliance should come from the Commission applying its own policy
17 judgment. Without addition of guideposts for the analysis, I also believe that it would be
18 impossible for a seller to warrant that its project satisfied the Single Project Requirement.

19 If the Commission did introduce more objectivity and predictability into the
20 application of the criteria, then Staff’s basic administration and enforcement model could
21 be appropriate, with three refinements. The first is a better definition of the
22 administrative process. To promote certainty in the process, utilities should be required
23 to make determinations of single project status within a defined time period, in writing,

1 and with reference to particular facts and criteria, and project proponents should be
2 required to seek Commission review within a defined period of time.

3 The second refinement relates to confidentiality. Documentation of factors
4 pertaining to economic linkage may require disclosure of proprietary contracts and
5 financial arrangements to the utility. The Commission should make clear that
6 documentation provided to the utilities is permitted to be heavily redacted and subject to
7 a confidentiality agreement or protective order, and to provide an administrative process
8 for resolving disputes about sensitive information and appropriate documentation.

9 The third refinement relates to the seller warranty. When originally proposed by
10 RNP and Idaho Conservation League in public comments in GNR-E-10-04, the concept
11 of a seller warranty was proposed as a way to promote self-policing of objective, non-
12 discretionary criteria by involving the project lender in due diligence regarding
13 disaggregation. With discretionary factors, however, it will not be possible for a seller or
14 lender to predict how those factors will be applied or whether the project will be found to
15 satisfy them. Therefore, a seller warranty will not serve the purpose for which RNP
16 originally intended it.

17 With some refinements to Staff's Proposal, however, a seller warranty could help
18 to ensure the accuracy of the facts relied upon by the utility or the Commission in making
19 the final discretionary determination and could help to prevent the seller from later
20 modifying the project to alter the facts upon which the final determination relied. After
21 receiving a written determination of single project status, in which specific facts are
22 applied in relation to defined criteria, the seller would be able to warrant that those
23 particular facts are accurate and that they will not change in the future. In other words, it

1 would not be reasonable to ask a seller to warrant that it met a set of discretionary factors,
2 but once those factors have been applied in a specific way, it could be reasonable to ask a
3 seller to confirm that the particular application of those factors was based on accurate
4 facts and conclusions.

5 Q. CAN YOU SUMMARIZE YOUR RESPONSES TO STAFF'S PROPOSAL?

6 A. In summary, my primary comments in response to Staff's Proposal are (1) as literally
7 written, it suggests a "one strike, you're out" standard; (2) even if not intended as a "one
8 strike" framework, it is too discretionary to be consistently applied by the utilities or
9 understood by those who must meet it (and warrant that they meet it); (3) several of the
10 factors could capture small projects that are not linked in any economically significant
11 way; and (4) the administration and enforcement provisions are vague, and should be
12 modified to contain timelines and to adapt the seller warranty to a discretionary
13 framework. These comments are incorporated into Exhibit 1907.

14 In the next section of my testimony, I will respond to RMP's Proposal.

15 Q. WHAT IS YOUR GENERAL REACTION TO RMP'S PROPOSAL?

16 A. First, RNP appreciates RMP's willingness to engage in discussion toward developing a
17 framework for distinguishing single from aggregated projects, even though such a
18 framework may not be RMP's first choice of outcomes. Second, I continue to be
19 concerned with the use of a discretionary framework that is to be applied by an interested
20 party in the negotiation. Provision (a)(3) of RMP's Proposal is open-ended and allows
21 the decision maker to exercise significant subjectivity and discretion in determining
22 whether sufficient characteristics of a single development are found. Nonetheless, I have
23 focused my comments on whether a framework could channel discretion and reduce

1 subjectivity sufficiently to form a compromise solution. In that spirit, I believe that the
2 Commission should give serious consideration to RMP's Proposal.

3 RMP's Proposal addresses several of my primary concerns with Staff's Proposal
4 and, in its structure and much of its substance, is similar to the red-lined version of Staff's
5 Proposal that I drafted to illustrate my comments (Exhibit 1907). RMP's Proposal
6 contains a mix of objective and subjective criteria. Importantly, it contains threshold
7 criteria—motive force, distance and timing—that will signal to utilities and potential
8 project owners when a discretionary analysis of the more subjective indicia of
9 aggregation will be necessary. RMP's Proposal also defines the timeline and form for the
10 utility's initial decision. Finally, by including an illustrative application form for
11 gathering information relevant to the size determination, RMP gives a very helpful
12 indication of how its Proposal would be applied. One further benefit of RMP's Proposal
13 is that it is written very clearly and succinctly.

14 In short, although I believe that some refinements to RMP's Proposal are needed,
15 it represents a solid foundation from which the Commission could develop a compromise
16 solution.

17 Q. HOW WOULD YOU MODIFY RMP'S PROPOSAL?

18 A. My primary concern with RMP's Proposal is to make sure that it would not allow
19 shared interconnection and other factors that are not predictive of economic
20 interdependence from being relied upon too heavily as determinants of aggregated status.
21 I described those factors above in my discussion of Staff's Proposal (*supra* Page 6, Line 4
22 through Page 7, Line 7). The simplest way to modify RMP's Proposal to resolve this
23 concern would be to add a sentence like the following to the end of (a)(3): "None of the

1 following characteristics, whether alone or in combination with one another, may be
2 relied upon as the sole determinant of single development status; shared interconnection
3 facilities; unrelated arrangements with the same operations and maintenance entity;
4 unrelated arrangements with the same financing provider.”

5 RMP’s Proposal appears not to contemplate that projects would provide copies of
6 financial agreements, but rather relies upon an attestation by the project proponent that
7 answers to questions about those elements are accurate. *See* RMP Exhibit No. 203, page
8 3. Confidentiality concerns are mitigated by this approach, but if other forms of
9 documentation are requested then they should be permitted to be redacted and kept
10 confidential to protect proprietary information.

11 I recommend two additional minor modifications to RMP’s Proposal. First, I
12 would replace “nameplate capacity” with “expected monthly average energy generation”
13 to correspond with Idaho’s 10 aMW published rate threshold. Second, I would specify
14 that project *generating equipment* must be separated by five miles. *Cf., e.g.,* 18 C.F.R.
15 § 292.204(a)(2)(ii) (FERC rules defining one-mile separation with reference to
16 generating equipment). Because completely separate projects in a similar area may share
17 a connection to an existing substation, that connection point should not determine their
18 distance from one another.

19 Q. CAN YOU SUMMARIZE YOUR RESPONSE TO RMP’S PROPOSAL?

20 A. In summary, I believe that RMP’s Proposal is a good foundation for a
21 compromise framework because it contains a mix of objective and subjective elements,
22 defines timelines and content for utility decisions and review, and is succinct and clear. I
23 would introduce additional parameters to the discretionary portion of RMP’s Proposal, by

1 directing utilities not to base their determination with respect to criterion (a)(3) solely on
2 three specific factors that are not predictive of economic linkage.

3 Before I conclude my testimony, I will address two other issues raised in various
4 parties' direct testimony: "gaming" and the published rate threshold.

5 Q. WILL USING A FIVE-MILE DISTANCE CRITERION PROMOTE "GAMING"?

6 A. Retaining a defined distance criterion like the five-mile criterion in RMP's Proposal is
7 very important. If a discretionary framework is to be used, it is necessary to have some
8 threshold objective criteria to channel the analysis and give some predictability to both
9 utilities and potential projects. At the same time, some have expressed concern that a
10 definite, objective proximity criterion is susceptible to gaming in that developers of
11 aggregated projects would be able to defeat any application of the rule by placing
12 generating equipment 5.1 miles apart. One way to address this concern without losing all
13 of the benefits of a defined, predictable distance criterion could be to allow for exceptions
14 to the distance criterion in special cases where projects within 10 miles of one another
15 also present a greater than usual number of characteristics suggesting economic
16 interdependence.

17 Q. HOW DO YOU RESPOND TO THE UTILITIES' CONCERN THAT THE PARTIAL
18 STIPULATION IN PLACE AT THE OREGON PUBLIC UTILITIES COMMISSION
19 (OPUC) HAS NOT PREVENTED "GAMING"?

20 A. The Partial Stipulation used by the OPUC is an agreed upon set of objective criteria for
21 applying the PURPA published rate threshold. (*See* Decker, Di – Exhibit No. 1902;
22 Griswold, Di – Exhibit No. 202.) No set of objective regulatory criteria will eliminate
23 100% of the behavior that the criteria are intended to address, but a regulation may still

1 capture most of that behavior. In that vein, it is worth noting that each of the utilities
2 points to the same 65 MW aggregated project as its example of why the OPUC Partial
3 Stipulation has not prevented gaming. (Kalich, Di – Page 32, Line 12 through Page 33,
4 Line 2; Stokes, Di – Page 15, Lines 11-15; Griswold, Di – Page 18, Line 19 through Page
5 20, Line 12.) In other words, they demonstrate that one project that most would consider
6 to be aggregated leaked through the Partial Stipulation. It is significant that, since
7 Oregon modified its rules for evaluating single/multiple project status for purposes of the
8 Business Energy Tax Credit in response to that same 65 MW project (Decker, Di –
9 Exhibit 1903), no similar anecdotes have emerged.

10 The Partial Stipulation is a completely different model from the frameworks put
11 forth by Staff and RMP in this proceeding and addressed in this testimony. The Partial
12 Stipulation represents an entirely objective, non-discretionary framework. This structure
13 can be preferable where there is a desire to minimize involvement of agency regulators or
14 other parties in making subjective, discretionary determinations, but it can be more
15 susceptible to “gaming.” With a compromise that contains both objective and subjective
16 elements, as offered by RMP and discussed herein, there is less opportunity for
17 “gaming.”

18 Q. IS RNP’S SUPPORT FOR A COMPROMISE FRAMEWORK PREDICATED ON
19 RETAINING THE 10 aMW SIZE THRESHOLD?

20 A. Yes. Retaining the 10 aMW published rate threshold for single projects is the reason that
21 RNP could support a compromise framework for preventing aggregated projects from
22 receiving the published rate.

1 At the same time, it is important to point out that permanently setting the
2 published rate threshold at 100 kW, as the utilities recommend, is not the only alternative
3 mechanism available to the Commission to address the consequences of disaggregation.
4 There is a vast distance between 100 kW and 10 aMW, and there is no support for the
5 suggestion that only projects smaller than 100 kW are “truly small.” (*Cf., e.g., Kalich, Di*
6 *– Page 35, Lines 7-8.*) Even if projects in the lower end of that range were to be
7 aggregated, the consequences to the utilities would be much less significant than those
8 with which the Commission is now concerned.

9 Indeed, because the consequences of aggregation at smaller project sizes are much
10 more limited than they are when projects approach the 10 aMW threshold, the
11 Commission may wish to consider requiring only projects with a nameplate capacity
12 larger than three or four megawatts (or some other number) to be evaluated in the
13 single/multiple project framework. Applying the single/multiple project framework will
14 require some administrative effort on the part of projects, utilities, and the Commission.
15 To reduce administrative burden while still achieving the Commission’s goal to avoid
16 significant consequences from aggregation, the Commission could establish a minimum
17 size larger than 100 kW for application of the single/multiple project framework.

18 Q. DO YOU HAVE ANYTHING ELSE TO ADD TO YOUR TESTIMONY?

19 A. Not at this time.

Exhibit No. 1907
Case No. GNR-E-11-01
M. Decker, Renewable Northwest Project

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Single Project Requirement

A Single Project is eligible to receive published avoided cost rates if it generates no more than 10 average MW monthly. A Single Project that generates more than 10 average MW monthly and whose nameplate capacity does not exceed 80 MW is eligible to receive avoided cost rates calculated using the IRP Methodology.

Single Project Criteria

For purposes of determining eligibility for published avoided cost rates for projects larger than 100 kW, the Commission will consider the following criteria in determining whether ~~a project with multiple generation sources that use the same motive force or fuel source and are located in close proximity to each other~~ qualify~~ies~~ as a Single Project. In any such determination, the Commission will consider all relevant factors, including, but not limited to, the factors listed below. Whether ~~each multiple generation sources within the Project:~~

- ~~a. uses the same motive force or fuel source;~~
- b. is are owned or controlled by the same person(s) or affiliated person(s);
- c. is are placed in service within 12 months of an

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- ~~affiliated Project's each others' commercial operation dates, as specified in the power sales agreements, or have power sales agreements executed within 12 months of each other;~~
- ~~d. shares a common point of interconnection or interconnection facilities;~~
 - e. shares common control, communications, and operation facilities;
 - f. shares a common transmission interconnection agreement;
 - ~~g. has a power sales agreement executed within 12 months of a similar facility in the same general vicinity;~~
 - ~~h. is operated and maintained by the same entity;~~
 - i. is are constructed by the same entity within 12 months;
 - j. ~~uses common~~obtain debt or equity financing pursuant to a shared agreement or interdependent agreements;
 - k. is are subject to a revenue sharing arrangement;
 - l. obtains local, state and federal land use permits under a single application or as a single entity;

1 m. shares engineering and/or procurement contracts;

2 n. shares common land leases; ~~or~~

3
4 ~~e. is in close proximity to other similar facilities.~~

5 Eligibility for Published Rates

6 ~~A project consisting of m~~Multiple generation sources
7 that (1) use the same motive force or fuel source; (2) are
8 located in close proximity to each other; (3) that
9 satisfyies at least ~~one~~ two of (a)-(o) above; and (4)
10 delivers more than 10 aMW per month may be deemed by the
11 Commission to be ~~aggregated~~ a Single Project for purposes of
12 determining eligibility for published rates and for purposes
13 of calculating avoided cost rates.

14
15 Definitions

16
17 As used above, the term "person(s)" means one or more
18 natural persons or legal entities. "Affiliated person(s)"
19 means a natural person or persons or legal entity or
20 entities sharing common ownership, management or acting
21 jointly or in concert with or exercising influence over the
22 policies or actions of another person or entity.
23 "Affiliated person(s)" does not include passive investors
24 whose sole ownership benefit is using production tax
25 credits, green tag values, or depreciation, or a combination

1 of these.

2 Multiple generation sources are located in "close
3 proximity to each other" if any of their electrical
4 generating equipment is separated by fewer than 5 miles.

5 For hydropower projects only, multiple generation sources
6 are in "close proximity" only if they use the same
7 impoundment within a natural watercourse or are located at
8 the same location where the water level changes within a
9 non-natural watercourse (i.e., canal drop).

10 Project Responsibilities

11 Administration and Enforcement

12 Upon request, the Projectthe proponent of a generation
13 source seeking a power purchase agreement for the published
14 rate ("project proponent") will provide to the utility any
15 relevant information reasonably necessary and in reasonably
16 sufficient detail to allow the utility to make an initial
17 determination of compliance with the Single Project criteria
18 listed above. The utility shall maintain the
19 confidentiality of such information in the manner customary
20 for proceedings before the Commission.

21 Within thirty (30) days of receiving information from
22 the project proponent, the utility shall make an initial
23

1 written determination of compliance ("Initial
2 Determination"). The utility's Initial Determination must
3 describe the criteria and documentation upon which it made
4 such determination. Failure to provide the Initial
5 Determination within this time period, and failure to refer
6 to the criteria and documentation upon which the
7 determination is based, will operate as an admission by the
8 utility that the project meets the Single Project
9 Requirement.

12 If the parties agree with the utility's Initial
13 Determination, then it will serve as the Final Determination
14 and will be incorporated into the power purchase agreement.

15 Any dispute concerning a Project's generation source's
16 entitlement to published rates or the information necessary
17 to determine its entitlement shall be presented to the
18 Commission for resolution. If a project proponent disagrees
19 with the Initial Determination, then the project proponent
20 may request Commission review no later than 30 days after
21 the Initial Determination is issued. The Commission will
22 review the documentation, may request further documentation,
23 and will independently apply the criteria for eligibility.
24 The Commission's decision will be the Final Determination.
25

1 In each contract for payment of published rates, the
2 seller shall:
3

4 (i) warrant that the project satisfies the Single
5 Project requirement as applied in the Final
6 Determination;

7 (ii) warrant and represent that the seller will not
8 make any changes ~~in its ownership, control or~~
9 ~~management~~ during the term of the contract that
10 would cause it not to be in compliance with the
11 Single Project requirement as applied in the Final
12 Determination;

13 (iii) agree to provide buyer with documentation of
14 compliance with the Single~~separate~~ ownership
15 Project requirement as applied in the Final
16 Determination upon buyer's request, made no more
17 frequently than every 3 years, subject to the
18 buyer maintaining the confidentiality of the
19 documentation provided;
20

21 (iv) acknowledge that the buyer may ask the Commission
22 to make a new determination of compliance with the
23 Single Project requirement as applied in the Final
24 Determination; and
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(iv)(v) acknowledge that, upon a Commission finding that the Single Project requirement as applied in the Final Determination is no longer met, the seller will be in default under the contract.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of April, 2011, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing Rebuttal Testimony of Megan Decker, upon:

Jean Jewell, Secretary
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BY: Heather Houle
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