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July 20, 2012

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, Idaho 83702

Re: Case No. GNR-E-11-03
PURPA SAR and IRP Methodologies – Objection to Petition to Intervene of Big Wood Canal Company and American Falls Reservoir District No. 2

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of Idaho Power Company's Objection to Petition to Intervene by Big Wood Canal Company and American Falls Reservoir District No. 2.

Very truly yours,

Jason B. Williams

JBW:csb
Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S REVIEW OF PURPA QF CONTRACT PROVISIONS INCLUDING THE SURROGATE AVOIDED RESOURCE (SAR) AND INTEGRATED RESOURCE PLANNING (IRP) METHODOLOGIES FOR CALCULATING PUBLISHED AVOIDED COST RATES.	)	CASE NO. GNR-E-11-03 IDAHO POWER COMPANY'S OBJECTION TO PETITION TO INTERVENE BY BIG WOOD CANAL COMPANY AND AMERICAN FALLS RESERVOIR DISTRICT NO. 2

COMES NOW, Idaho Power Company ("Idaho Power") pursuant to Idaho Public Utilities Commission ("Commission") Rule of Procedure 73 and hereby objects to the July 13, 2012, Petition to Intervene by Big Wood Canal Company and American Falls Reservoir District No. 2 ("Petitioners"). The basis for Idaho Power's objection is as follows:

I. BACKGROUND

The issues being addressed in this case have been developing for nearly two years. On November 5, 2010, Idaho Power, Avista Corporation ("Avista"), and

PacifiCorp d/b/a Rocky Mountain Power ("PacifiCorp") (collectively the "Utilities") filed a Joint Petition requesting that the Commission lower the published rate eligibility cap for Qualifying Facilities ("QFs") and initiate an investigation to address avoided cost issues related to the Commission's implementation of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). In response, a number of QFs submitted comments objecting to the Utilities' request to lower the published rate eligibility cap, including the Petitioners who, while not parties to that proceeding, submitted comments to the Commission via letters dated December 17, 2010.[1] On February 7, 2011, the Commission issued Order No. 32176 in Case No. GNR-E-10-04, which granted in part and denied in part the Utilities' request to temporarily reduce the published rate eligibility cap for QFs. In addition, Order No. 32176 directed the parties to that proceeding to establish a procedural schedule to explore the possibility of developing a published avoided rate cap structure that allowed small wind and solar QFs to avail themselves of published avoided cost rates for projects producing 10 average megawatts or less and that 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 11.

That proceeding became Case No. GNR-E-11-01, which the Commission designated as "Phase II of GNR-E-10-04." In that case, Idaho Power submitted prefiled direct testimony which, among other things, proposed the use of the Integrated Resource Plan ("IRP") methodology to establish the published rate for eligible QFs. Avista and PacifiCorp submitted prefiled direct testimony in GNR-E-11-03 as well.

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[1] Letter dated December 17, 2010, to the Commission submitted in Case No. GNR-E-10-04 from Lynn Harmon, General Manager, American Calls Reservoir District No. 2 (http://www.puc.idaho.gov/internet/cases/elec/GNR/GNRE1004/public%20comments/20101221COMMENTS.PDF) and letter dated December 17, 2010, to the Commission from Lynn Harmon, General Manager, Big Wood Canal Company (http://www.puc.idaho.gov/internet/cases/elec/GNR/GNRE1004/public%20comments/20101220COMMENTS.PDF).

The Commission issued Order No. 32262 in Case No. GNR-E-11-01 on June 8, 2011, which, among other things, maintained the 100 kilowatt ("kW") eligibility cap for published avoided cost rates for wind and solar QFs and initiated "additional proceedings to allow the parties to investigate and analyze both the SAR Methodology and the IRP Methodology (GNR-E-11-03)." Order No. 32262 at 8. Notably, the Commission said, "We encourage a full examination of the application of the IRP Methodology and are open to considering alternatives to the current methodologies." Order No. 32262 at 9.

Per a requirement in Order No. 32262, the parties convened and established a procedural schedule for Case No. GNR-E-11-03. On November 2, 2011, the Commission issued Order No. 32388, which reiterated the scope of the issues that could be addressed in Case No. GNR-E-11-03: "To review the terms of PURPA power purchase agreements including, but not limited to, the surrogate avoided resource (SAR) and Integrated Resource Planning (IRP) methodologies for calculated avoided cost rates." Order No. 32388 at 1 *citing* Order No. 32352. Order No. 32388 also established a procedural schedule for the case, specifically providing deadlines for the submittal of testimony, discovery cut-offs, the filing of legal briefs, and the date of the hearing.

On January 31, 2012, pursuant to the procedural schedule set by Order No. 32388, Idaho Power, Avista, and PacifiCorp submitted prefiled direct testimony. Idaho Power submitted testimony from five witnesses covering a broad array of PURPA-related issues. Shortly thereafter, and continuing until just very recently, Idaho Power responded to numerous, detailed discovery questions consisting of hundreds of pages of responsive materials. Commission Staff and numerous intervenors submitted

prefiled testimony on May 4, 2012. Discovery among all parties ensued; discovery served on the utilities continued. On June 29, 2012, parties submitted rebuttal testimony. The discovery cut-off on rebuttal testimony occurred on July 6, 2012. Legal briefs in this case are due July 20, 2012. A three-day technical hearing is scheduled for August 7-9.

Petitioners submitted its petition for late-filed intervention on July 13, 2012.

II. ARGUMENT

Idaho Public Utilities Commission Rule of Procedure 73 sets forth timeliness requirements for petitions to intervene in a Commission proceeding. The rule states:

> Petitions not timely filed must state a substantial reason for delay. The Commission may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition.

Idaho Power objects to the Petition to Intervene for failure to state good cause, disruption of the proceedings, prejudice to existing parties, and unduly broadening of the issues in the case. In the alternative, should the Commission allow Petitioners to intervene in the case, they should be strictly limited to accept the record as it exists up to this point and in scope of issues identical to that of the parties they are joining in order to prevent undue expansion of the issues.

A. The Petition to Intervene Should be Denied for Failure to State Good Cause for the Delay.

In this case, the time for which petitions to intervene must be filed was set by Order No. 32352 as September 8, 2011—more than 10 months ago. Pursuant to RP 73, petitions filed after that date must state a substantial reason for delay. Petitioners

state that they were "only recently able to confirm" that the proposals made by the Utilities in this proceeding could have a substantial impact on their rights and obligations. Pet. to Intervene at 2. Specifically, Petitioners state that the issues which could directly or indirectly affect their rights and obligations include Schedule 74 "curtailment," the absence of carbon related costs in the proposal, proposed contract terms, and standard offer cap limits.

In its expansive prefiled testimony filed on January 31, 2012, Idaho Power submitted testimony sponsoring its proposed Schedule 74, the removal of carbon costs from the Company's proposed IRP-based, hourly incremental pricing methodology, as well as testimony proposing a variety of changes to terms and conditions of standard PURPA contracts. Thus, these proposals have been publicly available for nearly six months. Petitioners offer no explanation as to why they could "only recently" confirm that these proposals may have an impact on them even though several hundred pages of testimony and supporting documents describing these proposals were filed in January 2012.

More glaring, the issue of "standard offer cap limits" was the issue teed-up by the Utilities' Joint Petition in November 2010 and was the primary issue in Case No. GNR-E-10-4. As noted above, Petitioners submitted comments in that proceeding opposing the Utilities' proposal to reduce the standard rate eligibility cap to 100 kW on December 17, 2010—more than 18 months ago. Thus, Petitioners had actual notice more than 1 ½ years ago that standard offer cap limits for QFs is an issue before the Commission. For Petitioners to now assert that they are "only recently able to confirm" that the proposals related to standard offer cap limits could impact them is disingenuous at best.

Thus, Petitioners have had notice of the issues in this case from anywhere between six and 18 months. The Petition to Intervene fails to describe why they had to wait until one week before legal briefs are to be filed in this case and only a little more than three weeks before the hearing in this case is to be held to "confirm" the potential impacts of this case. Instead, the Petition contains a statement that "Petitioners were only able to confirm through review of direct testimony and discovery and after joint meeting of both boards that the proposals by Idaho Power Company could have substantial impact on the Petitioners' right and obligations." Pet. to Intervene at 2. Idaho Power finds this assertion untenable. As noted above, Petitioners had actual notice of at least one issue they identify more than 18 months ago, and should have had notice of the other issue since January 31, 2012, when Idaho Power filed its direct testimony in this case.

Petitioners have had ample time to review the testimony and make a determination on whether the case will impact them. Instead, they put off filing for intervention until one week prior to the date on which briefs are due by the parties. Petitioners' failure to adequately assess the issues and make a timely determination even though all information needed to make such an assessment was publicly available for nearly six months previous does not constitute good cause for delay. The Commission should deny the Petition to Intervene because a potential party's prolonged decision making is not a substantial reason for untimely filing.

B. <u>The Commission Should Deny the Petition to Intervene Because It Will Disrupt the Case, Prejudice the Parties, and Unduly Broaden the Issues</u>.

Petitioners' significant delay in filing for intervention will disrupt the proceedings, prejudice existing parties, and unduly broaden the issues in the case.

Petitioners have chosen to intervene so late in the proceedings that they cannot be accommodated without considerable disruption in the case. Notably, this very objection to their late-filed Petition is due on the same day as legal briefs in the case. Idaho Power has devoted significant time and energy toward preparing its legal brief (as well as all other aspects of this case) and this filing diverts its attention from that important pleading in order to object to their untimely Petition. This alone is a substantial disruption and hardship to Idaho Power.

Furthermore, due to the proximity of the filing to the deadline for filing of briefs in the case, the Commission Staff Attorney directed that even potential parties should file legal briefs by the current schedule's July 20 deadline and that the Commission would make subsequent determination as to the admissibility of such legal briefs at its July 30 decision meeting.[2] The fact that non-parties to the case have an opportunity to submit legal briefs for subsequent evidentiary determination by the Commission is a disruption to this proceeding. Specifically, the Commission has to engage in special procedure to allow this to occur. The Commission should not disrupt these proceedings simply to accommodate the Petitioners' untimely request. The better approach is for the Commission to deny their request for intervention.

Similarly, this extremely late filing prevents the opportunity for discovery and timely assessment of issues as they may relate to Petitioners and the impact their intervention could have on Idaho Power's case. At this point in the case, when discovery is complete and the parties are wrapping up their issues for Commission decision, it is highly prejudicial to allow new potential parties to join. The hearing in this case set for August 7-9 is effectively the culmination of close to two years of research,

[2] E-mail from Kristine Sasser, Deputy Attorney General, to parties of record in Case No. GNR-E-11-03.

analysis, and efforts. It is the tail end of a very involved case and is detrimental to current parties in the case to allow extremely late filed intervenors to enter the fray.

Furthermore, the inclusion of the Petitioners is likely to unduly broaden the issues in the case. Petitioners state that they do not seek to present additional arguments. However, one of the Petition's stated issues is "the absence of carbon costs in the proposal." Petition at 2. Based on the dearth of information in the Petition, it is unclear what "proposal" this issue is related to. Idaho Power submitted testimony proposing an IRP-based, hourly incremental avoided cost pricing method that removed assumed carbon costs to establish the rate. Idaho Power assumes this is the issue referred to by the Petitioners. However, Petitioners may be referring to the absence of carbon costs in the Schedule 74 proposal. If this is indeed the case, it is potentially a new issue which would unduly broaden the issues already presented in this case. Importantly, because the discovery cut-off in this proceeding has already occurred, Idaho Power has no opportunity to submit discovery requests to determine the scope of the issues which Petitioners seek to address.

Idaho Power believes that the Petitioners' interests may already be represented by other parties to the case. It is possible Petitioners are members of the Northwest Intermountain Power Producers Coalition, the Renewable Energy Coalition, and/or another industry organization that is already a party to this case and that those organizations will adequately represent their interests. Again, because the time for discovery has passed, it is impossible for Idaho Power or this Commission to know whether this is the case.

In light of the burdensome nature of the request, its disruption of proceedings, prejudice to other parties, and expansion of issues, the Petitioners' lingering decision-

making process is not an adequate, much less a substantial, reason for delay that justifies granting the Petition to Intervene. Accordingly, the Commission should deny Petitioners' request for intervention.

C. If the Commission Grants the Petition to Intervene, Petitioners' Participation in the Case Should Be Limited.

In the alternative, if the Commission grants the Petition to Intervene, in order to mitigate the adverse effects on existing parties to the case, the Commission should make such inclusion conditional. Notably, the Petitioners have offered that their "participation will be limited to joining the position taken by Twin Falls Canal Company and North Side Canal Company, and the presentation of the same evidence, cross-examination briefing and argument." Pet. to Intervene at 3. Accordingly, if the Commission grants Petitioners' intervention, the Commission should strictly limit Petitioners participation and they should be required to accept the record as it currently exists as objections to the record at this stage in the proceeding would create undue hardship and expansion of the issues. In addition, Petitioners should also be strictly limited to joining the scope of inclusion and positions taken by the Twin Falls Canal Company and North Side Canal Company in order to avoid unduly expanding the issues to be addressed.

III. CONCLUSION

Because the Petitioners have not shown good cause or a substantial reason for untimely filing of the Petition to Intervene and because granting the Petition would create disruption, prejudice, and unduly expand the issues, Idaho Power respectfully requests that the Commission deny the Petition to Intervene. In the alternative, if the Commission grants the Petition, Idaho Power respectfully requests that the Commission

substantially limit the Petitioners' ability to alter the record and limit them to joining in the arguments of the Twin Falls and North Side Canal Companies.

DATED at Boise, Idaho, this 20th day of July 2012.

JASON B. WILLIAMS
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July 2012 I served a true and correct copy of IDAHO POWER COMPANY'S OBJECTION TO PETITION TO INTERVENE BY BIG WOOD CANAL COMPANY AND AMERICAN FALLS RESERVOIR DISTRICT NO. 2 upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff Kristine A. Sasser Deputy Attorney General Idaho Public Utilities Commission 472 West Washington (83702) P.O. Box 83720 Boise, Idaho 83720-0074	_X_ Hand Delivered ____ U.S. Mail ____ Overnight Mail ____ FAX _X_ Email kris.sasser@puc.idaho.gov
Avista Corporation Michael G. Andrea Avista Corporation 1411 East Mission Avenue, MSC-23 Spokane, Washington 99202	____ Hand Delivered _X_ U.S. Mail ____ Overnight Mail ____ FAX _X_ Email michael.andrea@avistacorp.com
PacifiCorp d/b/a Rocky Mountain Power Daniel E. Solander PacifiCorp d/b/a Rocky Mountain Power 201 South Main Street, Suite 2300 Salt Lake City, Utah 84111	____ Hand Delivered _X_ U.S. Mail ____ Overnight Mail ____ FAX _X_ Email daniel.solander@pacificorp.com
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Christa Bearry

Christa Bearry, Legal Assistant

NON-PARTY CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July 2012 I served a true and correct copy of the IDAHO POWER COMPANY'S OBJECTION TO PETITION TO INTERVENE BY BIG WOOD CANAL COMPANY AND AMERICAN FALLS RESERVOIR DISTRICT NO. 2 upon the following individuals who are not named parties in this proceeding by the method indicated below, and addressed to the following:

Big Wood Canal Company and American Falls Reservoir District No. 2 C. Thomas Arkoosh CAPITOL LAW GROUP, PLLC 205 North 10th Street, 4th Floor P.O. Box 2598 Boise, Idaho 83701-2598	____Hand Delivered _X_ U.S. Mail ____Overnight Mail ____FAX _X_ Email tarkoosh@capitollawgroup.com
Mountain Air Projects, LLC J. Kahle Becker The Alaska Center 1020 West Main Street, Suite 400 Boise, Idaho 83702	____Hand Delivered _X_ U.S. Mail ____Overnight Mail ____FAX _X_ Email kahle@kahlebeckerlaw.com
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Christa Bearry

Christa Bearry, Legal Assistant