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IDAHO PUBLIC
UTILITIES COMMISSION

JASON B. WILLIAMS
Corporate Counsel
jwilliams@idahopower.com

July 23, 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 Mountain Air Project,
LLC's Petition for Late Intervention

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of Idaho Power Company's Objection to Mountain Air Project, LLC's Petition for Late Intervention.

Very truly yours,

Jason B. Williams

JBW:csb
Enclosures

DONOVAN E. WALKER (ISB No. 5921)
 JASON B. WILLIAMS (ISB No. 8718)
 Idaho Power Company
 1221 West Idaho Street (83702)
 P.O. Box 70
 Boise, Idaho 83707
 Telephone: (208) 388-5317
 Facsimile: (208) 388-6936
dwalker@idahopower.com
jwilliams@idahopower.com

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 IDAHO PUBLIC
 UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S)	
REVIEW OF PURPA QF CONTRACT)	CASE NO. GNR-E-11-03
PROVISIONS INCLUDING THE)	
SURROGATE AVOIDED RESOURCE)	IDAHO POWER COMPANY'S
(SAR) AND INTEGRATED RESOURCE)	OBJECTION TO MOUNTAIN AIR
PLANNING (IRP) METHODOLOGIES FOR)	PROJECTS, LLC'S PETITION
CALCULATING PUBLISHED AVOIDED)	FOR LATE INTERVENTION
COST RATES.)	
)	

COMES NOW, Idaho Power Company ("Idaho Power") pursuant to Idaho Public Utilities Commission ("Commission") Rule of Procedure 73 and hereby objects to Mountain Air Projects, LLC's ("Petitioner" or "Mountain Air") Petition for Late intervention filed on July 16, 2012. 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”). 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.

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 eligibility cap for published avoided cost rates for wind and solar QFs. With Order No. 32262, the Commission stated that it was initiating “additional proceedings to allow the parties to investigate and analyze both the SAR Methodology and the IRP Methodology” and that “we [the Commission] 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 8-9. The Commission further defined the scope of the present proceedings, Case No. GNR-E-11-03, in its Notice of Review dated September 1, 2011: “The Commission anticipates that the scope of this inquiry will also include (but is not limited to) considerations regarding the dispatchability of varying resources, curtailment options, integration costs, renewable energy credits, delay security and liquidated damages, timing and schedule of negotiations, and contract milestones.” Order No. 32352 at 4.

Per a requirement in Order No. 32262, the parties convened and agreed to a procedural schedule for Case No. GNR-E-11-03. On November 2, 2011, the Commission issued Order No. 32388, which 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. Specifically, Idaho Power witness Tessia Park’s testimony seeks approval of a proposed Tariff Schedule 74 to apply a curtailment policy to “all PURPA contracts, both existing and new, that are projects which contain generator output control limiters (‘GOCLs’) and are 10 MW or larger in size.” Park, DI at 25.

Shortly thereafter, and continuing through the end of this week, 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 were due July 20, 2012. A three-day technical hearing is scheduled for August 7-9.

Petitioner submitted its petition for late-filed intervention on July 16, 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 for Late Intervention filed by Mountain Air for failure to state good cause for its untimely filing, disruption of the proceedings, prejudice to existing parties, and undue broadening of the issues in the case. In the alternative, should the Commission be inclined to grant Mountain Air's Petition in the case, the Commission should substantially limit the Petitioner's participation to that of an Interested Person and Public Witness as defined by RP 39 and RP 76.

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

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. Petitioner states that it “only became aware that Schedule 74 might be applied to existing contracts following May 4, 2012, when Commission Staff witness Rick Sterling submitted prefiled direct testimony” and that it was not until Mr. Sterling’s June 29, 2012, rebuttal testimony that “it became clear . . . that the issue of whether Schedule 74 will apply to existing QF contracts will continue to be a major issue in this proceeding.” Pet. for Late Intervention at 4.

In its prefiled, direct testimony filed on January 31, 2012, Idaho Power submitted the Direct Testimony of Tessia Park sponsoring its proposed Schedule 74 and proposing that Schedule 74 apply to both current and future QFs. Specifically, Ms. Park’s Direct Testimony states that the Company was proposing that Schedule 74 apply to all contracts Idaho Power had with QFs, not just new contracts:

Q. Is the Company proposing to implement this policy [Schedule 74] to only new PURPA contracts or to all current and new PURPA contracts?

A. The Company is proposing to apply this policy to all PURPA contracts, both existing and new, that are projects which contain generator output limiters (“GOLCs”) and are 10 MW or large in size.

Park, DI at 25. Thus, Idaho Power’s proposal that its proposed Schedule 74 would apply to both existing and new QF contracts has been publicly available for nearly six months. To suggest that it was not “clear” to Petitioner regarding whether Idaho Power’s proposed Schedule 74 would impact it until June 29, five months after Idaho Power submitted its direct testimony, is disingenuous and not a valid ground to grant late-filed intervention.

Notably, Petitioner concedes that it “had previously been aware that there was an ongoing avoided cost proceeding at the Commission.” Petition for Late Intervention at 5. In spite of Petitioner’s admission that it was aware of the proceeding, Petitioner offers no reasonable explanation as to why it only recently became aware that these proposals may have an impact on it even though several hundred pages of testimony and supporting documents describing these proposals were filed in January 2012. Petitioner asserts that it was not until Staff raised this issue on May 4, 2012, that it “became aware” of the issue, and that it was not until Staff reasserted its position on June 29, 2012, that it “became clear” to Petitioner that this was an issue in the case.

Petitioner’s failure to read and comprehend the issues raised in the Company’s January 2012 testimony, and its failure to understand the impacts of the issues filed in Staff’s May 2012 testimony, is not a substantial reason for delay under Rule 73. Petitioner has had notice of the issues in this case for at least six months and, by its own admission, has had notice of Staff’s May testimony addressing the curtailment issue. The Petition for Late Intervention fails to describe why it then had to wait until one week before legal briefs were 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 become aware of the potential impacts of this case.

Petitioner has had ample time to review the testimony and make a determination regarding whether the case will impact them. Instead, Petitioner put off filing for intervention until one week prior to the date on which briefs were due by the parties. Petitioner’s 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 inability to ascertain whether issues will impact them is not a substantial reason for untimely filing.

B. The Commission Should Deny the Petition for Late Intervention Because It Will Disrupt the Case, Prejudice the Parties, and Unduly Broaden the Issues.

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

Petitioner has chosen to intervene so late in the proceedings that such intervention cannot be accommodated without considerable disruption in the case. Notably, this very objection to their late-filed Petition is due one business day following the due date for legal briefs in the case. Idaho Power devoted significant time and energy toward preparing its legal brief (as well as all other aspects of this case) and this filing diverted its attention from that important pleading in order to object to Mountain Air's untimely Petition. This alone is a substantial disruption and hardship to Idaho Power.

Additionally, due to the proximity of the Petition seeking late intervention 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.¹ 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, and in-and-of itself has broadened

¹ E-mail from Kristine Sasser, Deputy Attorney General, to parties of record in Case No. GNR-E-11-03.

the proceedings and issues with its own consideration. Specifically, the Commission has to engage in special procedure to allow this to occur. In addition, Petitioner's late request will also disrupt the case as, if granted, Petitioner's attorney will need to be afforded the opportunity to participate in the hearing, including cross examining the Utilities' witnesses. This will require additional time at the technical hearing; thus, disrupting the case. The Commission should not disrupt these proceedings simply to accommodate the Petitioner's untimely request and should deny Petitioner's request for intervention.

Similarly, this extremely late filing prevents the opportunity for discovery and timely assessment of issues as they may relate to Petitioner and the impact its intervention could have on the pending 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 a new potential party to join. The hearing in this case set for August 7-9 is effectively the culmination of close to two years of pleadings, Commission decisions, discovery, prefiled testimony, legal briefs, and other efforts. It is the tail end of a very involved case and is detrimental to current parties in the case to allow an extremely late filed intervenor to enter the fray.

Furthermore, the inclusion of the Petitioner is likely to unduly broaden the issues in the case. Petitioner sates that its intervention will not broaden the scope of the proceeding and that it does not seek to introduce new issues. However, one of the Petitioner's stated issues is to "conduct cross examination" and "protect its interest in the proceeding." Petition at 6. It is unclear how the Petitioner can maintain that its interests are not protected and yet it will protect those interests without introducing new issues in

the case. Because the discovery cut-off in this proceeding has already occurred, the parties have no opportunity to submit discovery requests to Petitioner to determine the scope of the issues which Petitioner seeks to address.

Idaho Power believes that the Petitioner's interests may already be represented by other parties to the case. It is possible Petitioner is a member 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 its 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.

Petitioner is a large wind developer. Several other wind developers have already timely intervened in this proceeding, submitted testimony, and will participate at the hearing. Since Petitioner is similarly situated to several other parties in this proceeding, it is likely that Petitioner's interests will be adequately represented by other parties to this proceeding. Petitioner purports to present evidence and argument in opposition to Idaho Power's proposed Tariff Schedule 74. Several of the other intervening parties have presented testimony and argument in opposition to Schedule 74, as well as filing the same, or similar, objections to Schedule 74 with the Federal Energy Regulatory Commission. Petitioner has failed to demonstrate how its interests in opposing the proposed Schedule 74 are not all ready adequately represented before this Commission.

In light of the burdensome nature of the request, its disruption of proceedings, prejudice to other parties, and expansion of issues, the Petitioner's failure to promptly

address an issue that was raised on January 31, 2012, and again on May 4, 2012, is not an adequate, much less a substantial, reason for delay that justifies granting the Petition for Late Intervention. Accordingly, the Commission should deny Petitioner's request for intervention.

C. If the Commission is Inclined to Grant the Petition to Intervene, Petitioner Should be Granted the Status of "Interested Person" and "Public Witness" Rather than that of a "Party."

In the alternative, if the Commission is inclined to grant the Petition for Late Intervention, in order to mitigate the adverse effects on existing parties to the case, the Commission should limit Petitioner's involvement to that of an "Interested Person" and a "Public Witness" pursuant to the Commission Rules of Procedure 39 and 76. RP 39, RP 76. RP 39 allows for the participation, and the receipt of Notice, in administrative proceedings by entities that are not parties to the case but are "interested persons." RP 39. RP 76 provides that persons that are not parties and not called by a party to testify can participate in a Commission proceeding and have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, but otherwise do not have parties' rights to examine witnesses or otherwise participate in the proceedings. Public Witnesses' written or oral statements and exhibits are subject to examination and objection. If the Commission is inclined to allow Petitioner to participate in this proceeding, it should grant Petitioner "interested person" status to allow Notice and Service upon Petitioner—and grant "public witness" status to Petitioner, allowing Petitioner to submit written comments prior to the completion of the technical hearing, the anticipated time when the evidentiary record in this case will close. Allowing participation as an "interested person" and "public witness" strikes an

appropriate balance from a due process standpoint as it will allow Petitioner an opportunity to provide evidentiary submissions into the record without unduly prejudicing other parties and disrupting the case.

III. CONCLUSION

Because the Petitioner has not shown good cause or a substantial reason for the untimely filing of the Petition to Intervene, and because granting the Petition at this late date 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 is inclined to grant the Petition, Idaho Power respectfully requests that the Commission substantially limit the Petitioner's participation to that of an Interested Person and Public Witness as defined by RP 39 and RP 76.

DATED at Boise, Idaho, this 23rd day of July 2012.



JASON B. WILLIAMS
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July 2012 I served a true and correct copy of IDAHO POWER COMPANY'S OBJECTION TO MOUNTAIN AIR PROJECTS, LLC'S PETITION FOR LATE INTERVENTION 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

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email kris.sasser@puc.idaho.gov

Avista Corporation

Michael G. Andrea
Avista Corporation
1411 East Mission Avenue, MSC-23
Spokane, Washington 99202

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 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
 U.S. Mail
 Overnight Mail
 FAX
 Email daniel.solander@pacificorp.com

**Exergy Development, Grand View Solar II,
J.R. Simplot, Northwest and Intermountain
Power Producers Coalition, Board of
Commissioners of Adams County, Idaho,
and Clearwater Paper Corporation**

Peter J. Richardson
Gregory M. Adams
RICHARDSON & O'LEARY, PLLC
515 North 27th Street (83702)
P.O. Box 7218
Boise, Idaho 83707

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email peter@richardsonandoleary.com
greg@richardsonandoleary.com

Exergy Development Group of Idaho, LLC

James Carkulis, Managing Member
Exergy Development Group of Idaho, LLC
802 West Bannock Street, Suite 1200
Boise, Idaho 83702

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email jcarkulis@exergydevelopment.com

Dr. Don Reading
6070 Hill Road
Boise, Idaho 83703

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email dreading@mindspring.com
dr@benjohnsonassociates.com

Grand View Solar II
Robert A. Paul
Grand View Solar II
15690 Vista Circle
Desert Hot Springs, California 92241

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email robertapaul08@gmail.com

J.R. Simplot Company
Don Sturtevant, Energy Director
J.R. Simplot Company
One Capital Center
999 Main Street
P.O. Box 27
Boise, Idaho 83707-0027

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email don.sturtevant@simplot.com

**Northwest and Intermountain Power
Producers Coalition**
Robert D. Kahn, Executive Director
Northwest and Intermountain Power
Producers Coalition
1117 Minor Avenue, Suite 300
Seattle, Washington 98101

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email rkahn@nippc.org

**Board of Commissioners of Adams
County, Idaho**
Bill Brown, Chair
Board of Commissioners of
Adams County, Idaho
P.O. Box 48
Council, Idaho 83612

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email bdbrown@frontiernet.net

Clearwater Paper Corporation
Marv Lewallen
Clearwater Paper Corporation
601 West Riverside Avenue, Suite 1100
Spokane, Washington 99201

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email marv.lewallen@clearwaterpaper.com

Renewable Energy Coalition and Dynamis Energy, LLC

Ronald L. Williams
WILLIAMS BRADBURY, P.C.
1015 West Hays Street
Boise, Idaho 83702

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email ron@williamsbradbury.com

Renewable Energy Coalition

John R. Lowe, Consultant
Renewable Energy Coalition
12050 SW Tremont Street
Portland, Oregon 97225

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email jravenesanmarcos@yahoo.com

Dynamis Energy, LLC

Wade Thomas, General Counsel
Dynamis Energy, LLC
776 East Riverside Drive, Suite 150
Eagle, Idaho 83616

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email wthomas@dynamisenergy.com

Interconnect Solar Development, LLC

R. Greg Ferney
MIMURA LAW OFFICES, PLLC
2176 East Franklin Road, Suite 120
Meridian, Idaho 83642

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email greg@mimuralaw.com

Bill Piske, Manager
Interconnect Solar Development, LLC
1303 East Carter
Boise, Idaho 83706

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email billpiske@cableone.net

Renewable Northwest Project, Idaho Windfarms, LLC, and Ridgeline Energy LLC

Dean J. Miller
Chas. F. McDevitt
McDEVITT & MILLER LLP
420 West Bannock Street (83702)
P.O. Box 2564
Boise, Idaho 83701

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email joe@mcdevitt-miller.com
chas@mcdevitt-miller.com

Megan Walseth Decker
Senior Staff Counsel
Renewable Northwest Project
421 SW 6th Avenue, Suite 1125
Portland, Oregon 97204

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email megan@rnp.org

Idaho Windfarms, LLC

Glenn Ikemoto
Margaret Rueger
Idaho Windfarms, LLC
672 Blair Avenue
Piedmont, California 94611

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email glenni@envisionwind.com
margaret@envisionwind.com

Twin Falls Canal Company and North Side Canal Company

C. Thomas Arkoosh
CAPITOL LAW GROUP, PLLC
205 North 10th Street, 4th Floor
P.O. Box 2598
Boise, Idaho 83701-2598

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email tarkoosh@capitollawgroup.com

ELECTRONIC SERVICE ONLY

Lori Thomas
CAPITOL LAW GROUP, PLLC
205 North 10th Street, 4th Floor
P.O. Box 2598
Boise, Idaho 83701-2598

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email lthomas@capitollawgroup.com

ELECTRONIC SERVICE ONLY

Donald W. Schoenbeck
RCS, Inc.
900 Washington Street, Suite 780
Vancouver, Washington 98660

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email dws@r-c-s-inc.com

ELECTRONIC SERVICE ONLY

Twin Falls Canal Company
Brian Olmstead, General Manager
Twin Falls Canal Company
P.O. Box 326
Twin Falls, Idaho 83303

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email olmstead@tfcanal.com

ELECTRONIC SERVICE ONLY

North Side Canal Company
Ted Diehl, General Manager
North Side Canal Company
921 North Lincoln Street
Jerome, Idaho 83338

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email nscanal@cableone.net

Birch Power Company

Ted S. Sorenson, P.E.
Birch Power Company
5203 South 11th East
Idaho Falls, Idaho 83404

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email ted@tsorenson.net

Blue Ribbon Energy LLC

M.J. Humphries
Blue Ribbon Energy LLC
3470 Rich Lane
Ammon, Idaho 83406-7728

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email blueribbonenergy@gmail.com

Arron F. Jepson

Blue Ribbon Energy LLC
10660 South 540 East
Sandy, Utah 84070

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email arronesq@aol.com

Idaho Conservation League

Benjamin J. Otto
Idaho Conservation League
710 North Sixth Street (83702)
P.O. Box 844
Boise, Idaho 83701

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email botto@idahoconservation.org

Snake River Alliance

Liz Woodruff, Executive Director
Ken Miller, Clean Energy Program Director
Snake River Alliance
P.O. Box 1731
Boise, Idaho 83701

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email lwoodruff@snakeriveralliance.org
kmiller@snakeriveralliance.org

Energy Integrity Project

Tauna Christensen
Energy Integrity Project
769 North 1100 East
Shelley, Idaho 83274

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email tauna@energyintegrityproject.org

Idaho Wind Partners I, LLC
Deborah E. Nelson
Kelsey J. Nunez
GIVENS PURSLEY LLP
601 West Bannock Street (83702)
P.O. Box 2720
Boise, Idaho 83701-2720

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email den@givenspursley.com
kin@givenspursley.com


Christa Barry, Legal Assistant

NON-PARTY CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of July 2012 I served a true and correct copy of the IDAHO POWER COMPANY'S OBJECTION TO MOUNTAIN AIR PROJECTS, LLC'S PETITION FOR LATE INTERVENTION 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
 U.S. Mail
 Overnight Mail
 FAX
 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
 U.S. Mail
 Overnight Mail
 FAX
 Email kahle@kahlebeckerlaw.com

Michael J. Uda
UDA LAW FIRM, P.C.
7 West 6th Avenue, Suite 4E
Helena, Montana 59601

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email muda@mthelena.com


Christa Barry, Legal Assistant