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IDAHO PUBLIC UTILITIES COMMISSION

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

Petitioner Mountain Air Projects, LLC's ("Mountain Air"), by and through undersigned counsel, hereby files its reply in support of its Petition for Late intervention filed on July 16, 2012. At the outset, Mountain Air understands that its Petition is undeniably late. However, Mountain Air has a substantial and very concrete economic interest because six of its qualifying facility ("QF") subsidiaries (the "Mountain Air QFs") have, under the Public Utility Regulatory Policy Act of 1978 ("PURPA"), each executed a power purchase agreement ("PPA") with Idaho Power Company ("Idaho Power"). Pursuant to these PPAs, the Mountain Air QFs will sell all of their net output to Idaho Power, at forecast avoided cost rates, ("the

Mountain Air PURPA PPAs"). Each of the Mountain Air PURPA PPAs was approved by order of the Idaho Public Utilities Commission ("Commission") on November 16, 2010.

Applying Schedule 74 to such existing PPAs, as proposed by Idaho Power and as supported Commission Staff, may result in serious and irreparable injury to Mountain Air. As stated in its petition, Mountain Air became concerned about the application of Schedule 74 to its existing PPAs following a review of the direct testimony of Commission Staff witness Rick Sterling on May 4, 2012. At this point, potential lenders and investors to the project began a due diligence inquiry and grew concerned that a curtailment of the scope proposed by Idaho Power in Schedule 74 could significantly disrupt the anticipated revenue streams to the Mountain Air QFs. This concern was elevated after reviewing Mr. Sterling's rebuttal testimony on June 29, 2012, a concern which motivated Mountain Air to file its petition to intervene.

Thus, Mountain Air has a significant investment backed interest in the outcome of this proceeding as it relates to Schedule 74. Without being permitted to participate fully as a party, Mountain Air will not be able to act to protect its interests. Although Idaho Power is correct that Mountain Air had notice of the existence of the instant proceeding, Mountain Air did not have actual notice of the potential that Schedule 74 could be applied to the Mountain Air PURPA PPAs until after May 4, 2012, and its potential lenders and investors did not grow substantially concerned until sometime thereafter. It became clear after June 29, 2012, that Mountain Air must do something to protect its economic interests in its existing PPAs.

At this point, it became apparent that no other party in this proceeding would or could act to protect Mountain Air's interests. Although Mountain Air concedes that its petition to intervene was submitted very late in the process, this lateness does not outweigh the potential economic injury to Mountain Air of a Commission order approving the application of Schedule 74 to Mountain Air's existing PPAs. Notably, Idaho Power does not contest that Mountain Air has a substantial interest in the outcome of this proceeding. Mountain Air must be permitted to intervene to protect those interests, and Idaho Power's concerns about the

lateness of Mountain Air's petition do not override that salient fact. If the Commission adopts schedule 74 without input from Mountain Air, Mountain Air will have suffered a substantial economic blow without any ability to act to protect its interests.

Idaho Power also argues that the lateness of Mountain Air's petition has already disrupted the proceeding, but the inconvenience to Idaho Power of having to respond to a late petition for an intervention cannot outweigh Mountain Air's undeniable interest in protecting its substantial investment in its existing PPAs. Moreover, if the burden of filing an opposition to a late filed petition to intervene were the sort of burdensomeness anticipated by Commission Rule 73 no late interventions could ever be granted. Plainly, this is not what Commission Rule 73 prescribes.

Idaho Power further contends that permitting Mountain Air's attorney to conduct cross examination at the hearing of this matter may extend the length of the technical hearing, currently set for August 7-9. Mountain Air does not believe there is any evidence to support such a claim. Mountain Air will carefully structure its participation so as to limit its examination to the relatively narrow issue of Idaho Power's proposed Schedule 74. Indeed, if Mountain Air perceives that the subject of proposed Schedule 74 is adequately covered by other parties, Mountain Air may choose not to conduct any cross examination. However, Mountain Air must be permitted the opportunity to do so to ensure that its substantial economic interests are adequately protected.

Idaho Power alleges that, without discovery, it cannot determine whether and how Mountain Air will be affected by the outcome of this proceeding. The relevant facts here do not need further discovery. Mountain Air has existing QF contracts. Idaho Power knows this to be the case. Idaho Power also knows it intends, if permitted by the Commission, to apply its Schedule 74 economic and/or environmental curtailments to existing PURPA PPAs, including the Mountain Air PURPA PPAs. There is no need for discovery on these issues.

Idaho Power also argues that since the issues in this proceeding have already been decided, Mountain Air must intend in some way to broaden the scope of the case. This is plainly untrue. Mountain Air's intention is to limit its participation in this proceeding to the issues raised by application of Schedule 74 to Mountain Air's existing PURPA contracts. Also, contrary to Idaho Power's assertion, Mountain Air does not belong to any of the wind development umbrella organizations identified by Idaho Power who are already parties to the proceeding. None of the existing parties to this proceeding has an interest in adequately protecting Mountain Air from an adverse ruling by the Commission, a ruling which could potentially undermine financial commitments made to the Mountain Air projects.

In conclusion, in balancing the interests of fairness as between the parties in deciding whether to permit Mountain Air's admittedly late intervention, the balance of equities is decidedly in favor of granting Mountain Air's late petition to intervene. Mountain Air has no recourse but to intervene given the potentially serious economic consequences to Mountain Air if the Commission decides to adopt Schedule 74's curtailment provisions as proposed by Idaho Power and Commission Staff and apply these curtailments to Mountain Air's fully executed PPAs. This potential for serious economic injury significantly outweighs the inconvenience to Idaho Power of having to respond to Mountain Air's petition to intervene. The other potential disruptions or inconveniences claimed by Idaho Power are, at best, speculative. Mountain Air has no intention of broadening the issues, conducting burdensome cross examination, or delaying the timely disposition of this proceeding. Frankly, such behavior is contrary to Mountain Air's interest, which is to attempt to convince the Commission as soon as possible that Schedule 74 should not be applied to Mountain Air's fully executed and Commission-approved PPAs. To engage in delay or other obstructionist behavior would ill suit this purpose. For this reason, Mountain Air respectfully requests the Commission grant Mountain Air's petition for late intervention.

DATED this 26th day of July 2012.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Mountain Air Project's Reply to Idaho Power's Objection to their Petition for Late Intervention was served via e-mail on this 26th day of July, 2012 upon the following:

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