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January 17, 2013

**OVERNIGHT SERVICE:**

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

RE: GNR-E-11-03

Dear Ms. Jewell,

Enclosed for filing please find the original and seven copies of *Mountain Air Projects, LLC's Answer to Idaho Power Company's Petition for Clarification and/or Reconsideration*. Thank you for your assistance.

Sincerely,



Cathleen N. Uda  
Legal Secretary  
To Michael J. Uda

Enclosures

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE COMMISSION'S</b>	)	<b>CASE NO. GNR-E-11-03</b>
<b>REVIEW OF PURPA QF CONTRACT</b>	)	
<b>PROVISIONS INCLUDING THE</b>	)	
<b>SURROGATE AVOIDED RESOURCE (SAR)</b>	)	<b>ANSWER TO IDAHO POWER</b>
<b>AND INTEGRATED RESOURCE PLANNING</b>	)	<b>COMPANY'S PETITION FOR</b>
<b>(IRP) METHODOLOGIES FOR</b>	)	<b>CLARIFICATION AND/OR</b>
<b>CALCULATING PUBLISHED AVOIDED</b>	)	<b>RECONSIDERATION</b>
<b>COST RATES.</b>	)	
	)	

Pursuant to Rule of Procedure 331 of the Idaho Public Utilities Commission (the "Commission"), Mountain Air Projects, LLC ("Mountain Air") submits this Answer to Idaho Power Company's ("Idaho Power") January 8, 2013 Petition for Clarification and/or Reconsideration (the "Petition") of the Commission's Order No. 32697 issued on December 18, 2012 in this proceeding (the "December 18 Order").<sup>1</sup> Mountain Air respectfully requests that the Commission deny Idaho Power's request for clarification regarding curtailment because its requested clarification is flatly contradicted by the plain language of the December 18 Order, and because its request is not supported by the language in the existing contracts at issue in this proceeding or by any other evidence in the record.

<sup>1</sup> Mountain Air acknowledges this Answer is beyond the seven (7) days for filing an answer permitted under Commission Rule 331.05 (time calculated pursuant to Commission Rule 331.02.) Mountain Air respectfully moves the Commission for leave to file this answer out of time pursuant to Commission Rule 256, but Mountain Air does not request expedited treatment of this motion pursuant to Commission Rule 256.2.

In the Petition, Idaho Power requests that the Commission clarify its finding that Idaho Power may not rely on Section 292.304(f) of the regulations of the Federal Energy Regulatory Commission ("FERC"), 18 C.F.R. § 292.304(f), to curtail purchases from qualifying facilities ("QFs") under existing contracts entered into pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Specifically, the Commission found that:

[W]hile each power purchase agreement (PPA) that we have reviewed contains a general reference to 18 C.F.R. § 292.304(f), curtailment under this section *was not reasonably contemplated when the parties entered into their agreements*. The apparent need for such authority to curtail under these circumstances has only presented itself within the last several years in Idaho - and, as evidenced by the testimony, seems to be a problem only on Idaho Power's system.

December 18 Order at 36. In the Petition, Idaho Power requests clarification that:

[T]he Commission's finding that curtailment under 18 C.F.R. § 304(f) "was not reasonably contemplated when the parties entered into their agreements" refers only to the factual, operation circumstances that exist today, that may not have existed at the time of contracting, and *specifically does not mean that the parties did not contemplate the application of FERC regulations or federal law to the PURPA contracts when entering into those agreement, including 18 C.F.R. § 304(f)*.

Petition at 5-6 (emphasis added). In other words, Idaho Power is requesting that the Commission "clarify" that it meant the *opposite* of what it actually found, *i.e.*, that the Commission's finding that the parties to Idaho Power's existing PURPA contracts *did not contemplate* curtailment under 18 C.F.R. § 292.304(f) actually means that the parties *did contemplate* curtailment under this provision. Because Idaho Power's requested clarification is directly contradicted by the actual language in the December 18 Order, the Commission should deny Idaho Power's request for clarification regarding curtailment.

In addition, Idaho Power's request for clarification is not supported by the provisions of the existing PURPA contracts at issue in this proceeding. According to Idaho Power, each of its PURPA contracts "contained a *specific reference to 18 C.F.R. § 292.304* and its applicability to that purchase agreement." Petition at 5 (emphasis added). Idaho Power's claim is misleading, at best. Each of Mountain Air's six affiliated QFs entered into a PURPA contract with Idaho Power (which were approved by the Commission by order dated December 23, 2010). Mountain Air has reviewed these existing PURPA contracts, and the only provision that could be construed

as referring to 18 C.F.R. 292.304 is the following provision in Article VII (“Purchase Price and Method of Payment”), namely, Article 7.7, which provides as follows:

Continuing Jurisdiction of the Commission - This Agreement is a special contract and, as such, the rates, terms and conditions contained in this Agreement will be construed in accordance with ... 18 CFR § 292.303-308.

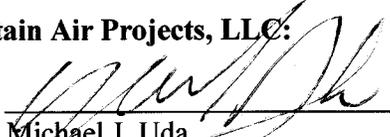
Therefore, there is no a “specific reference” to 18 C.F.R. § 292.304, much less a reference to the narrow curtailment provisions in 18 C.F.R. § 292.304(f). Instead, the reference in the contracts is a general reference to the FERC regulations governing relations between a QF and its host utility, namely, the rules governing the host utility’s obligations to QFs (18 C.F.R. § 292.303), rates for purchases from QFs (18 C.F.R. 292.304), rates for sales to QFs (18 C.F.R. § 292.305), interconnection costs (18 C.F.R. § 292.306), system emergencies (18 C.F.R. § 292.307), and standards for operating reliability (18 C.F.R. § 292.308). It is therefore inaccurate to suggest that the parties to these contracts contemplated that the contracts’ general reference to this broad range of FERC regulations equated to a mutual agreement to allow curtailment under the specific low-loading conditions governed by 18 C.F.R. 292.304(f).

Finally, there is no other evidence in the record that Mountain Air’s affiliated QFs, or any other similarly-situated party, contemplated curtailment pursuant to 18 C.F.R. § 292.304(f) when entering into the existing PURPA contracts at issue in this proceeding. Consequently, the Commission should deny the request for reconsideration and reaffirm its finding that “curtailment under [18 C.F.R. § 292.304(f)] was not reasonably contemplated when the parties entered into their agreements.” December 18 Order at 36.

For these reasons, Mountain Air respectfully requests that the Commission deny Idaho Power’s request for clarification and/or reconsideration of the Order’s findings regarding curtailment.

Respectfully submitted this 17th day of January, 2013.

**Mountain Air Projects, LLC:**

By: 

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Idaho Power Company's Petition for Clarification and/or Reconsideration was served via e-mail on this 17th day of January, 2013 upon the following:

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