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IDAHO PUBLIC
UTILITIES COMMISSION

Chas. F. McDevitt
Dean J. (Joe) Miller

January 8, 2013

Via Hand Delivery

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

Re: Renewable Northwest Project—GNR-E-11-03

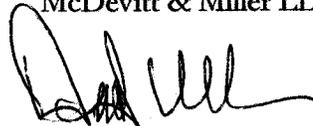
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find an original and seven (7) copies of a Petition for Reconsideration from Order No. 32697 of Renewable Northwest Project.

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 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

**PETITION FOR
 RECONSIDERATION FROM ORDER
 NO. 32697 OF RENEWABLE
 NORTHWEST PROJECT**

Pursuant to Rule 331 of the Idaho Public Utilities Commission Rules of Procedure, Renewable Northwest Project ("RNP") respectfully petitions the Idaho Public Utilities Commission ("Commission") for reconsideration on one issue—renewable energy certificate ("REC") ownership—decided in the Commission's December 18, 2012, Order No. 32697, in the above-referenced case ("the Order"). RNP does not request a hearing, but rather requests that the Commission reconsider its determination on REC ownership under the integrated resource planning methodology ("IRP methodology") by means of additional legal briefing. This issue merits reconsideration under Rule 331(01) because the Order lacks an adequate legal foundation for awarding qualifying facility ("QF") RECs to the utility. Even if the Order's legal foundation

were secure, its logic in relation to the IRP methodology is erroneous and unreasonable. RNP acknowledges the Commission's effort to achieve a reasonable compromise, but respectfully submits that the Order's conclusions with respect to REC ownership lack adequate legal and factual foundation.

A. The Order identifies no state law basis, whether in common law of property or in legislative enactment, for awarding QF RECs to utilities.

The Order concludes that a REC is an intangible asset whose existence arises only as a result of the Public Utility Regulatory Policy Act of 1978's ("PURPA's") "must purchase" provision. (*See* Order, pages 45-46.) While the Order's statement that "[t]here is no REC without the QF *generating* power" (page 46) is accurate, it does not follow that ownership of the REC necessarily follows the power, nor that selling power pursuant to PURPA vests the utility with an interest in the REC.

Indeed, decisions of the Federal Energy Regulatory Commission ("FERC") have led to broad agreement that PURPA does not control REC ownership. (*See* Order, page 45.) With PURPA providing no basis for awarding RECs to the purchasing utility, the Order must find a foundation for assigning ownership in Idaho law. Yet, beyond acknowledging that no Idaho legislative enactment specifically addresses REC ownership (*See* Order, page 45), the Order does not examine Idaho property law. The Order is unlawful because it awards RECs to purchasing utilities in contravention of the basic principle of Idaho common law that vests property rights in the owner who expends the time and effort to create the property. (*See Legal Brief of the Idaho Conservation League* (July 20, 2012), and *Legal Brief of RNP* (July 20, 2012)).

The Commission should grant reconsideration on the grounds that the Order identifies no state law basis for awarding QF-generated RECs to utilities, and seek briefing on how basic principles of Idaho's common law of property would apply to the question of REC ownership.

B. The Order's 50-50 split is not logically related to the IRP methodology and unreasonably discriminates against technologies that are forced to use the IRP methodology.

Even assuming a state law foundation for vesting ownership of QF-generated RECs in utilities, the Order's 50-50 split lacks a logical relationship to the IRP methodology and unreasonably penalizes wind and solar resources as compared with other technologies.

The Order's intended logic is apparently that QF-generated RECs should be awarded to the utility if the utility would have acquired RECs in connection with generating the same quantity of electricity itself. The Order reasons that the surrogate avoided resource ("SAR") methodology sets avoided cost rates based on a combined cycle generator ("CCCT") that would not produce RECs, whereas the IRP methodology sets rates based on a portfolio that includes some renewable resources. (*See Order, page 46.*) Thus, the Order concludes, QFs whose avoided costs are set using the SAR methodology will retain all their RECs, while QFs whose avoided costs are set using the IRP methodology will relinquish half of their RECs. (*See Order, page 46-47.*) This reasoning is flawed.

An avoided cost rate should be an estimate of the cost of the incremental utility generation that the QF allows the utility to avoid. The SAR methodology estimates this cost by assuming that the source of incremental generation is a new CCCT. The IRP methodology does so by evaluating the specific cost of the likely sources of incremental generation at the times that the QF is expected to deliver energy. There is no evidence in the current record that the sources of incremental generation identified by the IRP methodology are likely to be renewable

resources whose RECs would be owned by the utility. If the utility's incremental resource is not a renewable resource, it is not logical to assume that the utility would acquire RECs by generating the electricity itself. None of the relevant utilities' IRPs suggest that 50 percent of incremental utility generation is expected to come from renewable resources.

Furthermore, in this case, basing REC ownership on use of the SAR methodology versus the IRP methodology results in baseless discrimination against wind and solar QFs. The Order requires wind and solar QFs larger than 100 kW to use the IRP methodology, while retaining the SAR methodology for other resource technologies up to 10 average megawatts. Preventing "disaggregation" of large projects into PURPA-sized chunks is the only rationale for this differential treatment. (*See Order, pages 13-14.*) As our position in GNR-E-11-01 made clear, RNP strongly disagrees with using the blunt instrument of a 100 kW published rate threshold to address the problem of disaggregation. But the utility's incremental generating resource—the resource on which the avoided cost must be based—does not change based on one's view of the assertedly "unique characteristics of wind and solar resources to disaggregate" (*See Order, page 13*) or the best policy for addressing that problem. In other words, the rationale for using the IRP methodology (preventing disaggregation) does not relate to or support differential treatment for equivalent RECs. The Order unreasonably discriminates among generating technologies, with no discernible rationale, when it assigns RECs from QFs sized 100 kW to 10 aMW to utilities *only* for wind and solar technologies.

In short, the logical foundation of the Order's approach to REC ownership—that the utility's incremental generating resource might be a renewable resource from which it would earn RECs, such that the avoided cost includes some utility ownership of RECs—does not support the Order's conclusion that the incremental generation under the IRP methodology

would come from renewable resources in any quantity, let alone 50 percent. The effect of this determination is to treat RECs from wind and solar QFs differently from RECs from other, similarly-sized QFs with no logical foundation.

C. Conclusion

As argued in GNR E-11-01, RNP believes that the pricing and supply problems presented by disaggregation can and should be addressed by a policy instrument sharper than limiting wind and solar QFs to a 100 kW published rate threshold. This result is particularly inequitable for solar projects, for which no evidence of issues with disaggregation was presented. Should the Commission wish to revisit this differential treatment of generating technologies in the future, RNP remains interested in offering constructive suggestions.

For the present, RNP simply requests that the Commission reconsider its approach to REC ownership. The issue deserves a careful examination of the underlying principles of state property law, as well as the logic and fairness of assigning to utilities an asset that they would not generate themselves, and for which avoided cost rates do not compensate QFs.

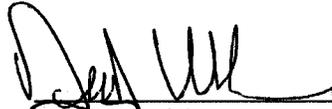
In this regard, RNP notes that the Order's 50-50 split depending on rate methodology appears to be a solution of the Commission's own invention. To RNP's knowledge, no party presented a similar concept on the record and parties did not have the opportunity to comment upon such a proposal. Granting Reconsideration would give the Commission the opportunity to consider opinions of the parties regarding the chosen methodology.

WHEREFORE, RNP respectfully requests:

1. That this Petition be granted;
2. That the Commission establish a schedule for the filing of additional legal briefs.

DATED this 8 day of January, 2013.

McDevitt & Miller, LLP

A handwritten signature in black ink, appearing to read "Dean J. Miller", written over a horizontal line.

Dean J. Miller

Attorney for Renewable Northwest Project

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2013, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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