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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE RATEBASING OF THE BENNETT MOUNTAIN POWER PLANT.	**CASE NO. IPC-E-03-12** **REPLY COMMENTS OF MOUNTIN VIEW POWER, INC.**

Mountain View Power, Inc. (MVP), by and through its Attorney, Ronald L. Williams, provide these Reply Comments to Staff Comments of December 15, 2003, only as they relate to Staff's analysis and recommendations concerning tax increment financing and sales taxes.

Tax Increment Financing

Staff recommends, to the extent tax increment financing (TIF) in excess of three million dollars benefits the Bennett Mountain Project (the "Project"), that additional construction savings be passed on to Idaho Power. (Staff Comments, page 26) Staff also recommends Idaho Power's audit capability of MVP's books be extended to Staff auditors. (Staff Comments, page 37) Both of these recommendations should be rejected by the Commission, as they were derived from an in-accurate representation of the facts, and in essence, are recommendations for rate-of-return regulation of MVP and Siemens-Westinghouse Power Corporation (Siemens).

First, Staff is in error in assuming $3 million in TIF financing remained in MVP's bid. The $3 million referred to by Staff was an amount assumed by MVP in MVP's original bid to Idaho Power. That bid was subsequently revised later, and MVP's assumptions regarding the likelihood of TIF financing assistance were also revised.

In addition, MVP and Siemens revised the risk allocation between them concerning TIF. Staff's recommendation would require revisions to both the Idaho Power-MVP Agreement, and the MVP-Siemens Agreement, concerning allocation of TIF construction financing assistance. Staff's recommendation asserts regulatory authority over the profitability of a contractor and a sub-contractor to a regulated utility. The Commission should reject Staff's recommendation to re-align construction benefits without also realigning construction risk.

MVP currently carries 100% of the risk that TIF funds will not be available, in some amount less than MVP's revised TIF estimate. For TIF funds to assist in construction financing, significant work must be performed by MVP, at substantial expense. Idaho Power is not assisting MVP in this effort. Idaho Power' interest in the TIF has already vested. Ratepayers are already benefiting from MVP's assumption (in its revised bid price) that some amount of TIF will offset Project construction costs. If no TIF funds are available, then MVP and Siemens – not Idaho Power, or its ratepayers – absorb the additional construction cost. Staff's recommendation avoids discussion of the risk, expense and effort concerning TIF.

Alternatively, MVP's supports Staff's recommendation, provided that it is revised to address both reward <u>and risk</u> concerning TIF. If TIF funding is available for project infrastructure that exceeds the revised TIF estimate[1], MVP will share that "bonus" with the Company, as a reduction to the contract price. Conversely, if MVP receives TIF funding below the estimate, there will be a contract price increase by the amount of the shortfall. Staff can have full TIF audit rights. Under this adjustment to Staff's recommendation, TIF rewards and risks are now in balance.

<u>Sales Taxes</u>

Staff comments on page 26 that "the turbine intended for the project has been purchased from a secondary market" and therefore, sales taxes on the turbine "have already been paid by the previous buyer." (Staff Comments, Page 26, 27)

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[1] Which <u>is</u>, and always has been, a <u>confidential and proprietary</u> number, comprising what MVP and Siemens would describe as contingent profitability.

Staff is in error. The Westinghouse 501FD turbine generator to be installed at the Project site by Siemens is a brand new unit Siemens will manufacture for this Project. There is no previous buyer of the turbine.

MVP's did investigate the secondary market for turbines, and whether one was available on which sales taxes had been paid. MVP's investigation showed that such a buyer-turned-seller would then immediately claim a sales tax refund from their respective taxing jurisdiction, claiming a "purchase for resale" sales tax exemption. This would then nullify MVP's ability to claim a "credit" for sales tax previously paid another taxing jurisdiction, as allowed by Idaho Code § 63-3621(j).

For the reasons outlined above the Commission should reject Staff's recommendations concerning tax increment financing and the phantom payment of sales taxes.

Respectfully submitted this 17th day of December, 2003.

Ronald L. Williams

/s/ Ronald L. Williams
Ronald L. Williams
Vice President and General Counsel
Mountain View Power, Inc.