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IDAHO PUBLIC
UTILITIES COMMISSION

March 12, 2007

Ms. Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, Idaho 83702

VIA FEDERAL EXPRESS

RE: **Case No. IPC-E-05-22**
In The Matter Of the Petition of Idaho Power Company For An Order
Temporarily Suspending Idaho Power's PURPA Obligation

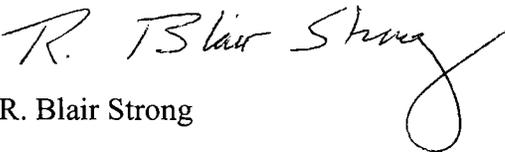
Dear Ms. Jewell:

Enclosed for filing please find the original and seven copies of the ***Answer of Avista Corporation to Exergy Development Group of Idaho's Motion for Order to Close This Docket and Reinstate the 10 MW Threshold for PacifiCorp and Avista***, as well as a ***Motion for Limited Admission for R. Blair Strong*** in the above-referenced matter.

If you should have any questions, please do not hesitate to contact me. Please conform and return the additional copies in the enclosed self-addressed stamped envelope. Thank you for your assistance.

Very truly yours,

PAINE HAMBLÉN LLP



R. Blair Strong

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Enclosure

cc: Service List

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Attorneys for Avista Corporation

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	
IDAHO POWER COMPANY FOR AN)	
ORDER TEMPORARILY SUSPENDING)	No. IPC-E-05-22
IDAHO POWER'S PURPA OBLIGATION TO)	
ENTER INTO CONTRACTS TO PURCHASE)	ANSWER OF AVISTA
ENERGY GENERATED BY WIND-)	CORPORATION TO EXERGY
POWERED SMALL POWER PRODUCTION)	DEVELOPMENT GROUP OF IDAHO'S
FACILITIES)	MOTION FOR ORDER TO CLOSE
)	THIS DOCKET AND REINSTATE
)	THE 10 MW THRESHOLD FOR
)	PACIFICORP AND AVISTA
)	

I.

INTRODUCTION

Avista Corporation ("Avista") answers the Motion of Exergy Development Group of Idaho ("Exergy"), and requests the Commission to deny Exergy's motion.

Exergy is requesting the Commission, in effect, to rescind or amend a final order and revise existing PURPA rates applicable to wind projects larger than 100 kW, although Exergy has no standing to initiate a Commission proceeding to change rates. Also, Exergy is asking the

Commission to amend or rescind its prior order as applied to Avista before Avista has had an opportunity to present its recommendations and study conclusions regarding wind integration, which are soon to be filed with the Commission.

II.

BACKGROUND

Idaho Power Company filed a petition with the Commission on June 17, 2005, in Case No. IPC-E-05-22 requesting that the Commission suspend its obligations under Sections 201 and 210 of the Public Utility Regulatory Policies Act (PURPA), to enter into new contracts to purchase energy generated by wind powered Qualifying Facilities (QF's). On June 28, 2005, Avista filed a "Petition and Comments", in which it requested that the Commission temporarily suspend Avista's PURPA purchase obligations in the same manner as requested by Idaho Power, and also requested intervention in the docket. On July 1, 2005, in Order No. 29815, the Commission granted Avista's intervention. Avista participated in the public hearing, and oral argument, conducted before the Commission on August 4, 2005.

Rather than temporarily suspending wind power purchase obligations as requested by the utilities, in Order No. 29839 issued on August 4, 2005, the Commission reduced the published rate eligibility cap for intermittent QF wind projects from 10 average MW per month to 100 kW and required individual contract negotiations for QF's larger than 100 kilowatts. Subsequently, in Order No. 29872, the Commission finalized prior orders in the docket and afforded parties the opportunity to appeal. No appeals were filed from Order No. 29839. Therefore, the PURPA rates, terms and conditions established in Order No. 29839 are final and may not be revised by merely closing the docket as requested by Exergy.

III.

ARGUMENT

A. Exergy Does Not Have Standing To Initiate A Change To Existing PURPA Rate.

Exergy's motion is styled as a motion to close the docket and reinstate the 10 average MW threshold for Avista and PacifiCorp. In actual legal effect, Exergy's pleading is a complaint that asks the Commission to rescind, revise or amend existing PURPA rates applicable to projects larger than 100 kW as established in Order No. 29839. Therefore, Exergy's pleading is governed by Idaho Code, § 61-612 which provides, in part:

No complaints shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rate or charges of any gas, electric, coal, water or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission or other legislative body of the city or county or city or town, if any, within which the alleged violation occurred, or not less than 25 consumers or purchasers or prospective consumers or purchasers of such gas, electricity, water or telephone service.

(Emphasis added.) Exergy is not an officer of any city, county or town, and therefore does not have standing under the statute to initiate a challenge to the reasonableness of existing PURPA rates.

B. Granting Exergy's Motion Without An Opportunity For An Evidentiary Hearing Would Be Contrary To Law.

Even if Exergy has standing to file its motion, granting Exergy's motion without an opportunity for Avista to present evidence at hearing would fail the legal standard for rescinding, altering or amending a prior order of the Commission. Idaho Code § 61-624 states that:

The commission at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it.

(Emphasis added.) Additionally, Idaho Code § 61-617 requires that, "[a]t a time fixed for hearing before the commission, . . . the complainant and the corporation or person complained of, . . . shall be entitled to be heard to introduce evidence."

Absent adequate evidence, Exergy is not entitled to, and the Commission should not issue, a new order that rescinds or revises Order No. 29839. The Supreme Court has stated:

. . .in regularly pursuing its authority the Commission must enter adequate findings of fact based upon competent and substantial evidence. *See Boise Water Corp. v. Idaho Public Utilities Commission*, 97 Idaho 832, 555 P.2d 163 (1976); *Hartwig v. Pugh*, 97 Idaho 236, 542 P.2d 70 (1975). Thus "[a]n order based upon a finding made without evidence . . . or upon a finding made upon evidence which clearly does not support it . . . is an arbitrary act against which courts afford relief." *Oregon Shortline Railroad v. Public Utilities Commission*, 47 Idaho 482, 484, 276 P. 970, 971 (1929).

Washington Water Power v. P.U.C., 101 Idaho 567, 575, 617 P. 1242 (1980) (emphasis added).

In this case, Exergy has tendered no evidence whatsoever to demonstrate that the existing threshold for receiving published avoided cost rates from Avista is unreasonable or that Exergy, or anyone else, is prejudiced by existing PURPA rates and policies. Absent a hearing at which Exergy meets its evidentiary burden, Exergy's motion must be denied.

C. Exergy Mischaracterizes Avista's Legal Standing In This Docket

Exergy asserts that Avista never formally intervened in this docket. However, the record reflects that the on June 30, 2005, the very same date on which the Commission issued an order granting Exergy's intervention in this matter, the Commission also issued Order No. 29815, granting Avista's motion to intervene. Since that date, Avista has fully participated in this docket, including filing prepared testimony and a legal memorandum regarding suspension of PURPA Mandatory Purchase Obligations.

D. Exergy Misinterprets Order No. 29839 When It Alleges That Avista Has Ignored Mandates Imposed By The Commission.

Exergy suggests that Order No. 29839 required Avista and PacifiCorp to conduct workshops separate from those of Idaho Power. This is not the case. Avista complied with Order No. 29839 by fully participating in the workshops hosted by Idaho Power. Moreover, Avista has also conducted its own independent wind integration study, the results of which it expects to release in final form and file with the Commission by the end of March, 2007, or shortly thereafter.

On January 31, 2006, Idaho Power filed the "Phase II Workshop – Final Report," which summarized the status of the workshops and informed the Commission of the lack of a consensus among the participants at the final settlement conference. It would have been superfluous for Avista to file reports that repeated the same information reported in Idaho Power's Final Report, or to host its own settlement conference, given the absence of consensus experienced at Idaho Power's hosted events.

Moreover, in its Final Report, Idaho Power indicated its intention to complete an Integration Study in 2006 and its further intention to provide periodic informal status reports to interested persons. In Case No. IPC-E-07-03, Idaho Power filed its study with the Commission.

Similarly, Avista initiated its own integration study nearly a year ago. In particular, Avista retained a leading industry consultant, EnerNex, to prepare a wind integration study, the final report for which is expected to be delivered to Avista, soon. Avista has shared some preliminary information from the draft final report for inclusion in the Phase I Report of the Northwest Wind Integration Action Plan of the Bonneville Power Administration ("BPA") and Northwest Power and Conservation Council ("NPCA"). Avista is currently reviewing EnerNex's

draft final report, and by the end of March, 2007 or shortly thereafter, Avista expects to file the final report and recommendations with the Commission.

Exergy is simply wrong in contending that Avista did not have a serious intent to examine integration issues. Not only did it actively participate in the Idaho Power workshops, it commissioned its own study of wind integration issues for the Avista system and participated in regional forums regarding the subject. Rather than endeavoring to shut down wind development, as contended by Exergy, Avista has systematically analyzed wind integration issues in order to develop recommendations to the Commission to facilitate the appropriate integration of wind power into Avista's system.

E. If Exergy's Motion Is Granted, Developers Would Have An Opportunistic And Unneeded Window Of Opportunity To Sell Power Under the Published Avoided Cost Rates

If the Commission grants Exergy's motion and increases the eligibility for published avoided cost rates to 10 average MW, Avista could be required to purchase significant amounts of wind energy under the published rates, before the Commission has even had the opportunity to consider Avista's recommendations and the information contained in the EnerNex study. That result would be contrary to the intention of Order No. 29839, which encouraged utilities to study wind integration issues in the first place.

There is no need to depart from the policies established in Order No. 29839. Developers of projects of all sizes remain entitled to long term PURPA contracts under Order 29839, because the order expressly permits purchases and sales at negotiated rates for projects larger than 100 kW. Exergy does not allege, much less prove, that developers have sought, and have been unable to obtain contracts from utilities at individually negotiated avoided cost rates.

Nothing in Exergy's motion demonstrates any need to revise the PURPA rate structure currently in effect, and the Commission should not consider any revisions at least until it has the opportunity to fully consider Avista's integration study.

IV.

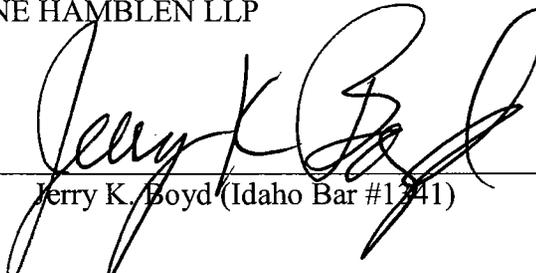
CONCLUSION

For the foregoing reasons, the Commission should deny Exergy's motion.

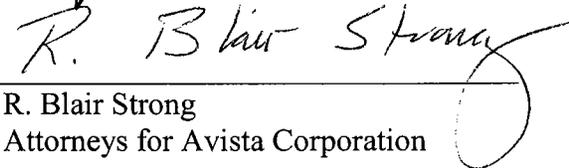
RESPECTFULLY SUBMITTED this 12th day of March, 2007

PAINE HAMBLEN LLP

By: _____


Jerry K. Boyd (Idaho Bar #1341)

By: _____


R. Blair Strong
Attorneys for Avista Corporation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 2007, I caused to be served a true and correct copy of **ANSWER OF AVISTA CORPORATION TO EXERGY DEVELOPMENT GROUP OF IDAHO'S MOTION FOR ORDER TO CLOSE THIS DOCKET AND REINSTATE THE 10 MW THRESHOLD FOR PACIFICORP AND AVISTA** upon the following named parties by the method indicated below, and addressed to the following:

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ANSWER OF AVISTA CORPORATION TO EXERGY
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AVISTA - PAGE 9

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