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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Exergy Development Group of Idaho LLC

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	
IDAHO POWER COMPANY FOR AN ORDER)	CASE NO. IPC-E-005-22
TEMPORARILY SUSPENDING IDAHO)	
POWER'S PURPA OBLIGATION TO ENTER)	
INTO CONTRACTS TO PURCHASE)	ANSWER AND/OR
ENERGY GENERATED BY WIND-)	PETITION TO INTERVENE
POWERED SMALL POWER PRODUCTION)	OF EXERGY DEVELOPMENT
FACILITIES)	GROUP OF IDAHO LLC

COMES NOW, Exergy Development Group of Idaho LLC by and through its attorney of record, Peter J. Richardson, and pursuant to Rule 57 of the Rules of Procedure issued by the Idaho Public Utilities Commission ("Commission") and hereby lodges its Answer to Idaho Power Company's ("Idaho Power" or the "Company") above captioned Petition. In support hereof Exergy says as follows:

Exergy files this Answer out of concern that the Commission may take substantive action on Idaho Power's Petition at its Decision Meeting scheduled for tomorrow afternoon, June 28, 2005. Exergy is concerned that this Commission may accept Idaho Power's unsubstantiated assertions without first obtaining or allowing input from vitally interested and affected parties.

Exergy specifically requests that the Commission not take subsequent action until all interested

ANSWER AND/OR PETITION TO INTERVENE OF EXERGY
DEVELOPMENT GROUP OF IDAHO- 1

and affected parties have and an opportunity to comment. However, should the Commission does take substantive action, then this pleading should be considered in full as an Answer as well as a Petition to Intervene. Should the Commission decide only procedural questions at tomorrow afternoon's meeting without unilaterally suspending the current avoided cost rates for wind, then Exergy asks that this Answer be disregarded and considered as a simple petition for intervention.

I.

NEITHER PURPA NOR THE FERC'S REGULATIONS (18C.F.R. PART 292) AUTHORIZE A STATE TO SUSPEND ELECTRIC UTILITY PURCHASE OBLIGATIONS UNDER PURPA SECTION 210

Idaho Power's Petition asks this Commission to issue an order "temporarily suspending Idaho Power's obligation, under §§ 201 and 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA")" Petition p. 1. While charged with implementing PURPA, this Commission cannot repeal it. The federal government has completely preempted the field with respect to mandating utilities' purchase of power under PURPA. *FERC v. Mississippi*, 456 U.S. 742 (1982). Idaho Power's petition requests relief not authorized under federal law and this Commission lacks jurisdiction to repeal a federal statutory requirement.

II

THE COMMISSION CANNOT CHANGE RATES WITHOUT FIRST FINDING THE NEW RATES ARE IN THE PUBLIC INTEREST

While FERC preempts this Commission's authority with respect to a utility's obligation to purchase, PURPA specifically delegated to the states the power to implement that obligation by administratively determining avoided cost rates. Those rates must be just and reasonable and in the public interest. 18 C.F.R. § 292.304(a)(i) The rates must also be non-discriminatory against qualifying facilities and small power production facilities. 18 C.F.R. 292.304(a)(ii). A "suspension" of Idaho Power's obligation to purchase would de facto set the avoided cost rate for this utility at zero without the benefit of a record upon which to base that finding. By definition it would not meet the just and reasonable standard.

III.
A STAY OF IDAHO POWER'S PURPA
OBLIGATION WITHOUT A HEARING AND OPPORTUNITY
FOR INTERVENORS TO BE HEARD
IS A VIOLATION OF BOTH SUBSTANTIVE AND
PROCEDURAL DUE PROCESS

There are many potential PURPA developers who are relying on the predictability and stability of this Commission's decisions regarding QF power sales to Idaho Power. They will be irreparably harmed by a unilateral suspension of Idaho Power's obligation to purchase because many have made substantial investments in turbine orders to be able to respond to rapidly escalating steel prices and the looming expiration of the federal investment tax credit. Literally millions of dollars of investment will be lost if this Commission suspends the existing avoided cost structure. For that reason alone, this Commission must not act without first giving those affected parties an opportunity to be heard.

IV
IDAHO POWER'S PETITION
IS AN ILLEGAL COLLATERAL
ATTACK ON FINAL COMMISSION ORDERS

Idaho Power had the opportunity to petition this Commission for reconsideration of the last avoided cost order that set the rates of which it now complains. It did not do so. Asking this Commission to suspend those rates undermines the validity of that order through a collateral attack disguised as a concern over wind integration issues. "The legislature has afforded the orders of the Commission a degree of finality similar to that possessed by judgments made by a court of law." *Utah-Idaho Sugar Co. v. Intermountain Gas*, 100 Idaho 368, 597 P.2d 1058 (1979). Collateral attacks on final Commission orders are prohibited by Idaho Code § 61-625.

The Commission, is of course, permitted to change, modify or alter its final orders. It may do so, however, only:

upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints

Idaho Code § 61-624.

Thus the statute sets forth a mandatory process for amending, altering or rescinding a final order of the Commission. Suspension of a party's right to a benefit conferred by that order is tantamount to altering the order itself and is therefore prohibited by Idaho law.

PETITION TO INTERVENE

Exergy Development Group of Idaho, LLC, is an Idaho limited liability company in the business of, inter alia, developing wind, and other renewable resource electric generating projects, for sale to electric utilities under PURPA. As such it is vitally interested in the outcome of this proceeding and seeks an order from this Commission granting status as a party with all of the rights appurtenant thereto.

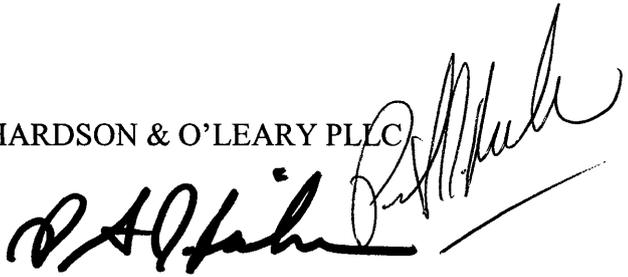
Correspondence and pleadings relating to Exergy's participation in this matter should be addressed to Mr. Richardson and Mr. James T. Carkulis at the address noted above.

Wherefore it is respectfully requested that this Petition to Intervene of Exergy Development Group of Idaho be granted.

DATED this 27 day of June 2005.

RICHARDSON & O'LEARY PLLC

By


Peter J. Richardson

Attorneys for Exergy Development Group
of Idaho, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, June 27, 2005, I caused a true and correct copy of the foregoing **ANSWER AND/OR PETITION TO INTERVENE OF EXERGY DEVELOPMENT GROUP OF IDAHO LLC** to be served by the method indicated below, and addressed to the following:

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Barton L. Kline
Idaho Power Company
PO Box 70
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- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

John R. Gale
Idaho Power Company
PO Box 70
Boise ID 83707-0070 .

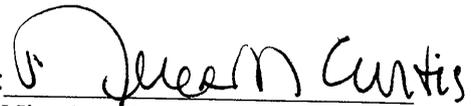
- U.S. Mail, Postage Prepaid
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Monica Moen
Idaho Power Company
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- Overnight Mail
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Scott Woodbury
Idaho Public Utilities Commission
424 W Washington Street
Boise ID 83702

- U.S. Mail, Postage Prepaid
- Hand Delivered
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- Facsimile
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Signed: 

Nina M. Curtis