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IDAHO PUBLIC  
UTILITIES COMMISSION

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

November 9, 2006

***Via Hand Delivery***

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

IAC-E-06-21

Re: Cassia Gulch Wind Park LLC and Cassia Wind Farm LLC v. Idaho Power Co.

Dear Ms. Jewell:

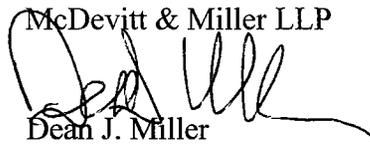
Enclosed for filing in the above matter please find the original and seven (7) copies of a Comments of Cassia Wind in Reply to the Initial Comments of Idaho Power, Avista and Pacificorp regarding the above referenced matter.

An additional copy of the documents and this letter is included for return to me with your file stamp thereon.

In its initial pleadings, Cassia Wind requested the opportunity for oral argument and we would appreciate if a date for argument could be scheduled as soon as it is convenient to the Commission.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh  
Encls.

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UTILITIES COMMISSION

*Attorneys Cassia Wind Gulch Park LLC and  
Cassia Wind LLC*

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

CASSIA GULCH WIND PARK LLC AND  
CASSIA WIND FARM LLC

Complainants  
v.

IDAHO POWER COMPANY

Respondent

Case No. IPC-E-06-21

**COMMENTS OF CASSIA WIND IN  
REPLY TO THE INITIAL  
COMMENTS OF IDAHO POWER,  
AVISTA AND PACIFICORP**

COMES NOW Cassia Gulch Wind Park LLC and Cassia Wind Farm LLC (collectively “Cassia Wind”), and pursuant to the Commission’s Notice of Comment Deadlines, Order No. 30135, dated September 27, 2006, replies to the Comments of Idaho Power, Avista and PacifiCorp (the “Utility Comments”) regarding this Commission’s policy on interconnections by “qualifying facilities” (or “QFs”) that sell all of their output to the host utility under the Public Utility Regulatory Policies Act (“PURPA”), as follows, to wit:

**Introduction**

As required by Order No. 30135, Idaho Power, Avista and PacifiCorp filed Comments in this matter on October 26, 2006. Taken together, the Utility Comments are lengthy, and in

**COMMENTS OF CASSIA WIND IN REPLY TO THE INITIAL COMMENTS OF IDAHO POWER,  
AVISTA AND PACIFICORP-1**

Cassia's opinion, in some cases touch on matters of limited relevance. Therefore, at the outset of these Reply Comments, it is important to clearly re-state the policy issue before the Commission as follows:

Recognizing that the QF will already be paying for all of the costs of the interconnection of the QF's project to the utility's transmission system network, and will also be required to disconnect its facilities from the network in certain circumstances to maintain reliability, should the QF developer also be required to provide the initial funding of any transmission system "network upgrades," instead of the utility, given that the costs of those network upgrades will (if prudent) still be included in the utility's rate base and recovered in the utility's rates?

For the reasons set forth in its Memorandum in Support of Complaint, Cassia asserts that the network upgrades, as has traditionally been the case, should be initially funded by the utility shareholders and debt-holders with the costs then rolled-into the utility's rates.<sup>1</sup> Idaho Power, on the other hand, proposes that the QF developers provide the initial funding, which would be treated as an Advance in Aid of Construction to be repaid to the QF over a period of time, with interest. (Idaho Power Answer and Comments, Pg. 7).

Because ratepayers will ultimately pay for the transmission network upgrades, and because the interconnection costs themselves are paid for fully by the QFs, there is no cross-subsidy of ratepayers under the Cassia proposal. Indeed, the Cassia proposal regarding the network upgrades is less expensive for ratepayers over time. The Cassia proposal also does not discourage the development of environmentally beneficial wind energy resources by forcing the wind QFs to act as the "banker" for the investor-owned utility on those transmission system network upgrades. QFs should only have to be responsible for the development of their wind projects and for the interconnection of those projects to the grid. This is a policy issue that the

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<sup>1</sup> The Commission should bear in mind that pursuant to the Jurisdictional Separations Process, a portion of these costs will be assigned to the FERC jurisdiction for inclusion in the interstate rate base, not in the Idaho jurisdiction rate base.

Commission should resolve on an expedited basis, so that millions of dollars in new investment in wind development in Idaho that is poised to begin almost immediately can in fact be realized.

### Argument

#### Cassia Wind's Proposal Does Not Create a Ratepayer Subsidy.

The Utility Comments each contend that Cassia Wind's proposal will create some kind of subsidy flowing from ratepayers to wind QFs.<sup>2</sup> This is simply not the case. It is important to emphasize, again, that the issue in this case is who, as between the QF and the utility, should be responsible for the up-front financing of the utility's network upgrades, as opposed to the costs to interconnect the QF project to the utility network (for which the QFs are already fully responsible). Under both Cassia Wind's and Idaho Power's proposals, ratepayers will have ultimate responsibility for the cost of the network upgrades, either sooner at the utility's cost of capital, or later as refunds are made to QF's with capitalized interest. And Idaho Power's proposal to capitalize interest at the Federal Energy Regulatory Commission ("FERC") approved rate of 8.17% will be more expensive to ratepayers than Cassia's proposal for the utility to finance the network upgrades at the Idaho Commission approved rate of return of 8.1% over the 20 year life of the QF contract, assuming the relative relationship between the FERC rate and the Idaho approved rate of return remains more or less constant during that period of time.

Along similar lines, the Utility Comments observe that avoided costs as currently approved by the Commission do not include a component for transmission.<sup>3</sup> This is true, but irrelevant. Under previous versions of the Idaho Surrogate Avoided Resource, the avoided cost rate included a component for the recurring annual cost of sending energy from a remote location to Idaho Power's load center. When the Surrogate Avoided Resource was changed to one

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<sup>2</sup> Idaho Power Comments, Pgs 17—20; PacifiCorp Comments, Pgs. 3—4; Avista Comments, Pgs. 3—4.

<sup>3</sup> Idaho Power Comments, Pg. 18; Avista Comments, Pg. 4.

assumed to be located closer to the load center, the rate component for the annual cost of moving energy was eliminated.<sup>4</sup>

This case does not involve the question of what should or should not be included in the *rate* paid by utilities to acquire energy from QF resources. Rather, it involves responsibility for the one-time, up-front *financing* responsibility for costs associated with “network upgrades” to the utility grid. Again, these are costs that will still ultimately be borne by ratepayers in Idaho Power’s rate base.

**Idaho Power’s Schedule 72 Does Not Impose Responsibility for Network Upgrades.**

Idaho Power’s principal legal assertion is that its Schedule 72, governing interconnection of QF facilities, requires QF’s to fund the utility’s own transmission system “network upgrades.” (Idaho Power Answer and Comments, Pgs. 9-13). This assertion is wrong, for at least three reasons.

First, the tariff’s language, on its face, addresses only interconnection costs, not transmission system network upgrades. Schedule 72 defines interconnection facilities as follows:

**“Interconnection Facilities** are the facilities which are reasonably required by prudent electrical practices and the National Electric Safety Code to interconnect and to allow the delivery of energy from the Seller's Generation Facility to the Company's system, including, but not limited to, Special Facilities, Disconnection Equipment and Metering Equipment.”

The operative language is “to interconnect and to allow delivery of energy from the Seller’s Generation Facility to the Company’s system.” The tariff language does not indicate “to the Company’s system and to the Company’s load center.”

Similarly, the definition of Special Facilities addresses the costs of connecting to the system, not the costs of delivering energy to a load center:

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<sup>4</sup> See Order No. 25883

“Special Facilities are additions to or alterations of transmission and/or distribution lines and transformers, including, but not limited to, Upgrades and Relocation, to safely interconnect the Seller's Generation Facility to the Company's system. (emphasis added).”

In the context of Schedule 72, the word “Upgrades” also has a defined meaning. The Schedule defines them as:

“ . . . those improvements to the Company’s system which are reasonably required by Prudent electrical practices and the National Electric Safety Code to safely interconnect the Seller’s Generation Facility. Such improvements include, but are not limited to, additional or larger conductions, transformers, poles and related equipment.”

In this tariff context, “Upgrades” refers to improvements to the Company’s system required to *safely interconnect the generation to Idaho Power’s* system. In other words, it addresses upgrades on the utility system at the point of interface between the utility facilities and the QF’s facilities. Again, this does not include upgrades to deliver the energy to the Company’s load center. As discussed further below, there is a similar sounding phrase “Network Upgrades” which is a term of art with a defined, and different, meaning in the context of non-QF or “merchant” power plants, and which reaches beyond the interconnection interface to the kind of network improvements that Idaho Power is proposing now for QFs. If Idaho Power when it proposed Schedule 72, and the Commission when it approved Schedule 72, had intended to include those kinds of “Network Upgrades,” Schedule 72 could have said so, but it does not.

To continue the analogy suggested by Cassia in its Memorandum in Support of Complaint, Schedule 72 requires contributions from the QF to construct the “driveway” necessary to reach the transmission “highway,” and it does not address changes to the “highway” beyond the interface between the “driveway” and the “highway.” The “driveway” and the interface-type of upgrade costs are “interconnection costs” under Schedule 72; the changes to the “highway” beyond the interface are “network upgrades” not included in Schedule 72.

Contrary to Idaho Power's attempt to blur the distinction between "interconnection costs" and "network upgrade costs" (Idaho Power Comments, Pg. 13-14, Sikes Affidavit, Pg. 7), the distinction between the two is well-established by Idaho Power's own interconnection procedures for merchant plants (as opposed to pure QF plants). As required by FERC in Order No. 2006, Idaho Power adopted FERC-mandated procedures for connection of small generators who will utilize Idaho Power's transmission services under its FERC-regulated "Open Access Transmission Tariff" (or "OATT").<sup>5</sup> The following definitions may be found in Attachment 1 to the Idaho Power Small Generator Interconnection Procedure ("SGIP"):

**"Interconnection Facilities-** The Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades."

**"Network Upgrades -** Additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Small Generating Facility interconnects with the Transmission Provider's Transmission System to accommodate the interconnection with the Small Generating Facility to the Transmission Provider's Transmission System. Network Upgrades do not include Distribution Upgrades."

Thus, Idaho Power's own documents and procedures for dealing with both QFs (Schedule 72) and merchant plants (the SGIP) recognize the distinction between "network upgrade" costs, on the one hand, and "interconnection" costs, on the other. Idaho Power's attempt to now claim that there is no difference between the two is feeble, at best.

The second reason in support of the conclusion that Schedule 72 does not address "network upgrade" costs is found in the history of the adoption and modification of the schedule

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<sup>5</sup> These interconnection procedures are published on Idaho Power's "OASIS" website. (See: [http://www.idahopower.com/pdfs/aboutus/business/smallGen\\_InterconnectionProcedures.pdf](http://www.idahopower.com/pdfs/aboutus/business/smallGen_InterconnectionProcedures.pdf)).  
**COMMENTS OF CASSIA WIND IN REPLY TO THE INITIAL COMMENTS OF IDAHO POWER, AVISTA AND PACIFICORP-6**

by the Commission. The schedule was first approved by the Commission in 1990 by Order No. 29092 and later modified in 2001 by Order No. 29092 (the “Orders”).

A review of the Orders indicates that the issues before the Commission had to do with the costs of interconnecting the QF *to the Company’s system*. Responsibility for “network upgrades” was not an issue presented to the Commission and, therefore, the Commission did not decide that particular issue.

Third, Idaho Power’s proposed treatment of “network upgrade” costs departs from Schedule 72 in an important way. Under Schedule 72, the QF is fully responsible for the Interconnection Costs through a non-refundable Contribution in Aid of Construction (“CIAC”). Under Idaho Power’s proposal for treatment of “network upgrade” costs, however, the QF would fund those costs through a refundable Advance in Aid of Construction (“AIAC”), as if the QF were being interconnected under Idaho Power’s OATT rather than under Schedule 72.<sup>6</sup> For clarity, Cassia is not proposing that “network upgrade” costs be recovered through a CIAC;<sup>7</sup> rather Cassia points out the distinction between an AIAC and a CIAC to further illustrate that “network upgrades” and “interconnection costs” are different types of costs from each other and are to be recovered in different ways. Cassia does not dispute that interconnection costs may appropriately be recovered from the QF through a CIAC. Cassia does, however, strongly dispute that “network upgrade” costs may be imposed on the QF through an AIAC, because it is a QF and not a merchant plant, and thus is subject only to Schedule 72 and not to Idaho Power’s OATT procedures.

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<sup>6</sup> The distinction between Contributions in Aid of Construction (CIAC) and Advances in Aid of Construction (AIAC) is well established from an accounting point of view. See Uniform System of Accounts 18 U.S.C. Part 101, IDAPA 31.12.1.

<sup>7</sup> In early Reply comments, PacifiCorp did suggest that a CIAC might also be imposed on QFs for “network upgrades,” but of course that would simply make it even more difficult for the QF to sell directly to the utility who owns the control area.

**Orders 2003, 2003-A and 2006 Do Not Alter FERC's Policy Favoring Rolled-In Treatment of Network Upgrade Costs.**

As pointed out in Cassia Wind's Memorandum in Support of Complaint, and as Exergy further explains in its Comments in this case, FERC has consistently held that all transmission customers share the responsibility for the ultimate cost of "network upgrades."

Idaho Power suggests that FERC Orders 2003, 2003-A and 2006 abandoned the rate-making policy of rolled-in treatment. (Idaho Power Answer and Comments Pgs. 14-17). The contrary is true. In Order No. 2003-A, Para. 580, FERC stated, "In Order No. 2003, the Commission did not intend to abandon any of the fundamental principles that have long guided our transmission pricing policy." Although FERC altered the financing scheme for new generators connecting under an open access transmission tariff by requiring refundable advances, the refunded advances would ultimately be rolled into rates and become the responsibility of all Transmission Service Customers (the ratepayers in an OATT regime).

In the FERC proceeding, Idaho Power apparently understood this was the effect of Order No. 2003 and unsuccessfully argued for "direct assignment" of "network upgrade" costs to generators. Order No. 2003-A, Para. 570, recites that "Idaho Power argues that assigning the Costs of Network Upgrades to Transmission Customers [i.e., ratepayers] is discriminatory because, while they are held responsible for the costs they cause, the Interconnection Customer [i.e., generators] is not being made responsible for the costs it causes." FERC rejected Idaho Power's contention. *See* Order No. 2003-A, Para 585, Pg.130 ("For this reason the Commission has consistently priced the transmission service of a non-independent Transmission Provider based on the cost of the grid as a whole, and has rejected proposals to directly assign the cost of Network Upgrades.").

**With Respect to Network Upgrade Costs, The Idaho Commission May Properly Adopt for QF Projects a Policy Different From the Policy FERC Adopted for Merchant Plants.**

All parties to this case agree that PURPA, the FERC's regulations implementing PURPA, and the FERC Orders 2003 and 2006 leave state commissions free to set appropriate interconnection policies for QF's that, like Cassia Wind, will sell their entire output to the host utility under PURPA. FERC's policy under the Federal Power Act of requiring merchant plants to provide up-front financing for "network upgrades" is, arguably, sensible in that non-QF context. A merchant plant, using the host utility system to transfer electric power to a third party purchaser, provides only incidental benefit to the retail customers of the transmitting utility. A QF selling its entire output to the host utility is different—it provides a direct benefit to the host utility's customers – the supply of the energy they consume – along with the environmental and other societal benefits that come from that energy in the case of renewables such as wind power. Creating a barrier to entry for projects that directly benefit the host utility's customers in the form of QF responsibility for up-front financing of "network upgrades" is not appropriate.

FERC's policy requiring up-front financing of "network upgrades" by merchant plants was first adopted in Order No. 2003, the proceeding addressing Large Generation Interconnections (projects greater than 20 MW). The Commission in Order No. 2006, addressing policies for Small Generation Interconnections, decided to carry forward the up-front financing policy in the interest of consistency and because FERC assumed these requirements would not be burdensome to small generators. "However, we expect that for most Small Generating Facilities there will be no Network Upgrades." Order No. 2006-A, Para 52, Pg. 28.

PURPA, and state implementation of it, would be meaningless if it could only be implemented in a manner identical to how the Federal Power Act is implemented by FERC. Schedule 72 already provides for inclusion in "interconnection costs" of those upgrades that are

necessary to safely connect the QF to the network (i.e., at the interface), and does not include upgrades to the network used to deliver the energy to load centers. To now require QFs to also provide the financing for Idaho Power for the “network upgrades” that Idaho Power will still ultimately include in its rate base negates PURPA, and discourages QF development, contrary to the federal statutory policy under PURPA of encouraging QFs.

**The Utility Comments Ignore the Law of Idaho Regarding Cost Causation.**

Each of the Utility Comments argue, in slightly different ways, that responsibility for network upgrades should be assigned to Cassia Wind and similarly situated QFs because they “cause” the need for the upgrades.<sup>8</sup>

All of the Utility Comments, however, fail to address head-on the Idaho Supreme Court decision in *Building Contractors of Southern Idaho v. IPUC*, 128 Idaho 534, 916 P.2d 1259 (1997), discussed in Cassia’s Memorandum in Support of Complaint. They instead attempt to distinguish the case “factually” just because it does not involve generation interconnections. The *Building Contractors* Court held that existing customers contribute just as much as new ones to the need for system expansions and assigning costs of system expansion to new entities connecting to the system is discriminatory, as a matter of law. In other words, the State of Idaho follows the principle of “rolled-in average pricing” rather than “direct assignment” for utility system expansions. And *Building Contractors* is not an aberration. It follows the nearly identical case of *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984). The law of cost causation in Idaho is therefore well settled. While *Building Contractors* and *Homebuilders* did not involve the precise question of QF interconnection to the grid, they established the applicable legal principle of non-discrimination regarding system expansions.

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<sup>8</sup> Idaho Power Comments, Pg. 16; PacifiCorp Comments, Pg. 4; Avista Comments, Pg. 3.  
**COMMENTS OF CASSIA WIND IN REPLY TO THE INITIAL COMMENTS OF IDAHO POWER,  
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### **Precedent From Other States Provides Little Guidance.**

PacifiCorp and Idaho Power direct the Commission's attention to other states to try to support their contentions that QFs should be responsible for "network upgrade" costs. Closer examination of the PacifiCorp and Idaho Power citations reveals that they add little to the utilities' contentions regarding Idaho law and policy.

PacifiCorp (Pg. 8) refers, first, to WUTC Order No. R-509. This Order appears to be a ministerial order correcting cross reference inconsistencies, not a substantive discussion of cost responsibility.<sup>9</sup> PacifiCorp next refers to "Utah schedule 38." This, apparently, is PacifiCorp's own tariff schedule which spells out general procedures for negotiating interconnection agreements, but contains no discussion of upgrade costs, network or otherwise, let alone a Commission determination regarding those costs.<sup>10</sup> The Oregon administrative rule cited by PacifiCorp, OAR 860-029-0060, contains a generalized statement of QF responsibility for interconnection costs, but no discussion of network upgrade costs.<sup>11</sup> Idaho Power is correct that in Colorado QFs are responsible for transmission system upgrades.<sup>12</sup> However, the Colorado avoided cost regime is much different from Idaho's. For example, Colorado utilizes a Request for Proposals and bidding process as part of the utility's integrated resource planning efforts. Idaho has rejected bidding as a method of QF resource acquisition.

In any event, regardless of what other states may or may not choose to do, it is clear that the State of Idaho has the right and opportunity to select a policy that makes sense for Idaho. Otherwise, the FERC would not have given states the discretion in its PURPA regulations to

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<sup>9</sup> <http://www.wutc.wa.gov/rms2.nsf/vw2005OpenDocket/B755EC73BB69F7B088256DD5007153BF>

<sup>10</sup> [http://www.pacificorp.com/Regulatory\\_Rule\\_Schedule/Regulatory\\_Rule\\_Schedule28325.pdf](http://www.pacificorp.com/Regulatory_Rule_Schedule/Regulatory_Rule_Schedule28325.pdf)

<sup>11</sup> [http://arcweb.sos.state.or.us/rules/OARS\\_800/OAR\\_860/860\\_029.html](http://arcweb.sos.state.or.us/rules/OARS_800/OAR_860/860_029.html)

<sup>12</sup> Idaho Power Comments, Pg. 21.

make the determination as to the interconnection costs for which a QF is responsible. Indeed, the Idaho Commission has already made that determination in Schedule 72, when it approved a tariff that imposes the full cost of interconnection to the grid on the QF, including the costs of upgrading the portion of the transmission system that interfaces with the interconnection facilities. Indeed, absent a tariff change authorization, Idaho Power cannot impose the financing responsibility for its “network upgrades” on QFs just because other jurisdictions, including FERC, may do that to certain generators.

**Idaho Power’s Concern About FERC “Compatibility” Problems is Overblown.**

Idaho Power is concerned that a policy refusing to impose on QF’s the obligation to provide up-front funding of the utility’s “network upgrade” costs will expose it to potential “compatibility” liability at FERC. By this, Idaho Power seems to indicate that state interconnection policies regarding QF interconnection under PURPA must exactly mirror FERC interconnection policies for merchant generators under the Federal Power Act. The FERC, however, has expressly stated that interconnection policies under PURPA for QF generators selling their entire output to the transmitting utility (such as Cassia Wind) are within the jurisdiction of the state commissions, and not within the FERC’s jurisdiction under the Federal Power Act. (*See*, FERC Order No. 2006, Para. 516.) Idaho Power agrees with this. (*See*, Idaho Power Answer and Comments, Pgs. 8—9). It would not be consistent for FERC to recognize state jurisdiction for QF interconnection policies and then penalize Idaho Power for implementing an Idaho Commission policy, which Idaho Power opposed. Moreover, the concept of “undue discrimination” allows for factual differences, such as different jurisdictional requirements, to be taken into account. Therefore, Idaho Power’s contention is a red herring.

**The Affidavit of Jared Grover Should be Accepted as True for the Limited Purpose of Establishing the Proper Context for This Policy Proceeding.**

In his Affidavit, filed with the Complaint herein, Mr. Grover states that requiring Cassia Wind to provide up-front financing of Upgrade Costs would seriously impair or destroy the project economics. In particular, Mr. Grover states:

“The cost of a \$55 million dollar upgrade is much more than the total investment (including costs for Turbines, electrical collection system, local interconnection costs, construction, road improvements, and local permits) of the Cassia projects. Even if Cassia were responsible for 20% of the \$55 to \$60 million in upgrade costs, that would still be a \$10 to \$12 million burden, on top of the multimillion direct interconnection costs and the multi-million wind turbines and construction investment. It is simply unbearable for a small QF to proceed with such a cost burden.”

Idaho Power has not submitted an Affidavit disputing these facts, but instead asks the Commission to give the Affidavit little weight based on the generalized, un-authenticated assertion that QF developers sometimes make “dire predictions” about the consequences of a Commission decision. (*See Idaho Power Answer and Comments, Pg. 32*).

What other developers at other times and places may have said in un-verified statements is, of course, wholly irrelevant to the content of Mr. Grover’s Affidavit. Moreover, it does not take a trained economist to see that, when the “network upgrade” cost which Idaho Power proposes that Cassia Wind fund up front (\$55 million) is much more than the total investment in the Cassia Wind projects themselves, the economics of the wind projects are obviously impacted in a most serious and adverse manner. Mr. Grover’s Affidavit simply establishes the fact that Idaho Power is proposing that Cassia Wind projects become a “banker” to Idaho Power on its “network upgrades” in an amount greater than what the financier for the Cassia Wind projects is having to finance for the installation of the wind farms themselves. Common sense allows the Commission to judge whether this makes for good policy.

And, with respect to the factual assertions Idaho Power itself advances, Idaho Power asks the Commission to accept them as true and to follow the procedure courts utilize in considering motions for summary judgment, which Idaho Power describes this way: “In considering a motion for summary judgment, a court assumes that the facts alleged by the entity against whom the motion for summary judgment is directed are correct.” (Idaho Power Answer and Comments. Pg. 30). Idaho Power should not have it both ways. By asking the Commission to accept its factual allegations as true, Idaho Power may not then ask the Commission to disregard Cassia Wind’s sworn factual allegations.

To be clear, the Grover Affidavit is simply providing the factual context for the policy decision the Commission must make in this proceeding. Neither Cassia Wind nor Idaho Power are asking the Commission to render any factual determination in this proceeding based on the respective affidavits. To the extent there is conflict between the affidavits, this simply highlights the need for a bright-line rule regarding cost responsibility by QFs interconnecting to the host utility’s grid in order to sell their entire output to the host utility under PURPA. That bright-line test, again, should be that the QF is responsible for the interconnection cost to connect to the grid, and is not responsible for financing the costs of “network upgrades.”

**Imposing Up-Front Financing Responsibility on QFs Will Not Encourage More Efficient Siting Decisions.**

The Utility Comments argue that placing responsibility for “network upgrades” upon QF’s will create an incentive for QF’s to locate their projects at places where such network upgrade costs will be minimized.<sup>13</sup> This argument, which might seem plausible in the abstract, has little bearing on wind QF’s in practice, for three reasons.

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<sup>13</sup> Idaho Power Comments, Pg.4; PacifiCorp Comments, Pgs.6—7.

First, wind QF's have little lee-way in determining where to locate a project—the project must be located where there is sufficient wind resource to provide motive force. A publication of the American Wind Energy Association explains it this way:

“A second key characteristic of wind projects is that they must be located at the site of the wind resource. Wind cannot be piped or sent by rail like coal, uranium or natural gas. Moreover, good wind sites are often located remotely from electric loads. This means that wind facilities are more dependent upon long-distance transmission and less able to avoid transmission problems than other technologies.”<sup>14</sup>

Second, as the sequence of events in this case illustrates, at the time siting decisions are made, the extent of any “network upgrades” is both unknown and unknowable. The interconnection procedures adopted by Idaho Power, as required by Schedule 72 for QF projects and by FERC Orders 2003 and 2006 for merchant plants, contemplate that studies of transmission system impacts are made long after, not before, the project location decision has been made.

Third, QFs do not have the ability to simply add investment to rate base and pass higher costs through to ratepayers, unlike utilities. Instead, QFs are by their nature required to be efficient in order to be successful. This includes locating a wind farm in a manner that not only captures the wind resource but is also located as close as possible to available transmission facilities. In this way, QF projects are already concerned with siting projects economically.

**Avista's Proposal for Individual Negotiations is Not Clear.**

In its comments, Avista suggests that a utility should be free to individually negotiate transmission agreements with QFs.<sup>15</sup> The FERC-mandated Small Generator Interconnection Procedures, within certain parameters, already permit negotiations that would take into account the individual needs and configuration of any specific project. Schedule 72 also appears to

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<sup>14</sup> American Wind Energy Association, *Fair Transmission Access for Wind: A Brief Discussion of Priority Issues*. <http://www.awea.org/policy/documents/transmission.PDF>.

<sup>15</sup> Avista Corporation Comments, Pgs. 1—2.

provide some negotiating latitude. If Avista is only suggesting that these interconnection opportunities be confirmed for dealings with QF projects, Cassia Wind does not disagree.

If, however, Avista is suggesting that a utility be given unfettered discretion to impose or require varying and onerous interconnection requirements for QFs, including proposal that go beyond the terms of the utility's current tariffs, with the only recourse for QFs being expensive complaint proceedings to this Commission, the proposal should be rejected. Otherwise, the possibility for discrimination and creation of barriers to entry is too great.

**Remedial Action Schemes Obviate the Need for More Expensive "Network Upgrades."**

In the Sikes Affidavit (pg. 6), Idaho Power admits that a remedial action scheme ("RAS") is an engineering method to prevent system instability and outages, and is willing for RAS deployment to serve as a "temporary solution" to the "network upgrades" it wants to construct. Idaho Power says that a RAS is not a long-term solution, but never says why. If a RAS can protect the system, then it should be a solution, short-term or long-term. And as PacifiCorp's comments note (at pg. 5), it gives QFs the option of generation curtailment (which is what an RAS would implement) instead of network upgrades.

While Cassia Wind, therefore, does not believe that the "network upgrades" which Idaho Power wants to build are necessarily required, for purposes of this proceeding it is not asking this Commission to make that determination. Instead, Cassia Winds points out this difference of opinion, so that the Commission can see that there is another policy reason for adopting a bright-line rule regarding cost responsibility by QFs interconnecting to the host utility's grid in order to sell their entire output to the host utility under PURPA. That bright-line test, again, should be that the QF is responsible for the interconnection cost to connect to the grid, and is not responsible for financing the costs of "network upgrades." Such a bright-line test will eliminate

the need for arguments between QFs and the utility (and thus avoid time-consuming complaint cases at the Commission) over whether or not the “network upgrades” are in fact necessary.

Finally, the availability of a RAS transforms the “cost” issue from one of “cost-causation,” as the utilities would have it be viewed, to one of unnecessary cost imposition, as Cassia Wind posed it in its Complaint. Implementation of a RAS at each QF wind farm is consistent with, indeed required by, Schedule 72. Because a Remedial Action Scheme fully protects the reliability of the network, as even Idaho Power admitted for “temporary purposes,” that form of system protection obviates the need for multi-million dollar “network upgrades.” Indeed, because under the Idaho Power proposal the utility will ultimately roll in the cost of the “network upgrades” into its rates along with the carrying costs paid with the refunds to the QFs, it in theory should be indifferent to whether it funds those costs or QFs fund those costs (assuming no significant different in the time value from the different carrying costs). But it is not indifferent, simply because the imposition of the funding obligation on QFs can stymie their wind developments, and thus helps protect the integrated utility’s generation assets from non-utility generation competition. Indeed, that appears to be exactly what happens, given that PacifiCorp’s Comments (at p. 6) indicate all 11 potential wind projects dropped their interconnection requests when PacifiCorp sought to impose “the high cost of transmission infrastructure” on them. Again, this Commission should adopt a bright-line test that makes the QF only responsible for the “driveway” and thus eliminates the ability to use “network upgrades” as a means of suppressing competition from wind development.

**The True Purpose of “Network Upgrades” Can be Unclear, at Best.**

Idaho Power alleges that the “network upgrades” that it proposes are necessary solely because of the QF projects such as those of Cassia Wind that are proposed for development. In

contrast, it appears that public information indicates that those upgrades were apparently already previously planned as reliability upgrades.<sup>16</sup> In addition, one of the other utility's comments, Avista (at p. 2), even admitted that "transmission arrangements may be influenced by the utility's plans to expand transmission." Therefore, it is often hard to tell whether or not and to what extent a "network upgrade" is being constructed to serve QF projects, utility generation projects, or other reasons, and those reasons can also change over time. As a result, it is not only difficult to identify precisely why a "network upgrade" may be needed, but it is subject to potential abuse by a utility that seeks to use it in a manner that prevents the development of non-utility generation on its integrated generation, transmission, and distribution utility system.

Again, Cassia Wind is not asking this Commission to determine what is, in fact, the case with the "network upgrades" at issue here, but simply points to this conflicting information as further policy support for a bright-line rule regarding QF interconnection cost responsibility under PURPA that does not include financing the costs of "network upgrades."

**"Ratepayer Neutrality" Arguments Misapprehend the Situation.**

The PacifiCorp comments (at pgs. 3-4) argue that the Cassia Wind proposal would violate the principle of "ratepayer neutrality" that is represented by "avoided cost" rates under PURPA. This argument stretches the principle beyond its recognized and intended meaning. In *A.W. Brown v. Idaho Power*, IPC-E-88-9, Order No. 23271, the Commission explained the principle as follows:

Under PURPA a state commission cannot authorize a rate which exceeds the incremental cost to the electric facility of alternative energy. This ceiling is defined as "the cost to the electric utility of the electric energy, which but for the purchase from such cogenerator or small power producer, such utility would generate itself or purchase from another source." 16 U.S.C. §824(A)-3(d). This

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<sup>16</sup> See "Assessment of Load Service Capability of the NW Transmission System," Reliability Assessment of the NW Transmission System Subcommittee (Sept. 2006), found at <http://209.221.152.82/pdf/2006%20rants%20report%20final%20draft.pdf>.

is the utility's avoided cost. With this ceiling upon rates, the ratepayer is indifferent or neutral as to whether the utility purchases energy from a cogenerator or generates electricity itself. The price to the ratepayer is the same.

Thus, when properly understood, the phrase “ratepayer neutrality” is a short-hand description of the statutory requirement that avoided cost *rates* for energy purchases not exceed the cost to the utility which, but for the purchase from such cogenerator or small power producer, such utility would generate itself or purchase from another source. The principle is inapplicable to the separate question of how to allocate costs of connecting the QF to the electric grid. Indeed, the FERC’s PURPA regulations make clear that “[i]nterconnection costs do not include any costs included in the calculation of avoided costs.” 18 C.F.R. § 292.101(b)(7).” And under Schedule 72, QFs are already required to pay the full amount of the interconnection costs. It thus is mixing apples – network upgrade costs – and oranges – interconnection costs – to argue as PacifiCorp does that rate payer neutrality issues apply to the network upgrades, as opposed to the interconnection costs.

In a related argument, PacifiCorp (at p. 7) and Avista (at p. 3) suggest that treating QFs different from merchant plants is somehow unlawful discrimination. To the contrary, QFs and merchant plants operate under two different sets of statutes – PURPA versus the Federal Power Act – and two different sets of implementing rules – FERC’s PURPA regulations as implemented in varying manners by each of the 50 states versus FERC’s open access transmission regulations and tariff requirements. In addition, “small power production” QFs, unlike merchant plants, are by definition smaller in size than conventional power plants. Finally, as to renewable resources, they are much different from conventional generation, as Cassia Wind’s Memorandum in Support (at pp. 8-9) pointed out:

Renewable resources are distinctly different from coal or natural gas. The wind and solar energy not captured and used today vanishes and can not be recovered.

In addition, they are distinctly different in their ability to be transported. Coal and gas can be transported to a suitable location for conversion to electricity, but most renewable resources must be exploited where they are found. . . . Using these resources will improve the air quality, yet their environmental benefits are wasted unless they are exploited.

25 Tex.Reg. 82, 99 (2000).

Something that also should not be lost in the discussion of “costs” is the fact that the Utilities Comments’ focus on “costs” from an accounting perspective only. They completely ignore the beneficial economics for ratepayers from the development of wind energy, specifically the fuel cost savings, price stability, reduced dependence on fossil-fuels, and the water consumption savings, given that wind does not consume fuel and water to generate electricity, unlike coal and natural gas.

#### **Request for Expedited Consideration**

Cassia Wind continues to believe that the straight-forward policy question presented by this Complaint can be resolved without an evidentiary hearing. Cassia Wind is poised to immediately move forward with construction of the project, which will result in the investment of tens of millions of dollars in this State. Accordingly, Cassia Wind again, respectfully, requests that the Commission issue its Order as promptly as is possible in the circumstances.

#### **Conclusion**

Based on the reasons and authorities cited herein, Cassia Wind respectfully requests the Commission to determine and declare that QFs selling their entire output to the host utility and already paying for their interconnection costs should also not be required to finance the utility’s cost of “network upgrades.”

DATED this 9th day of November, 2006.

Respectfully submitted,

MCDEVITT & MILLER LLP

A handwritten signature in black ink, appearing to read 'D. Miller', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of November, 2006, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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472 West Washington Street	Fax	<input type="checkbox"/>
P.O. Box 83720	Fed. Express	<input checked="" type="checkbox"/>
Boise, ID 83720-0074	Email	<input checked="" type="checkbox"/>
<a href="mailto:jjewell@puc.state.id.us">jjewell@puc.state.id.us</a>		

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