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IDAHO PUBLIC
UTILITIES COMMISSION
October 27, 2006

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P. O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-06-21
*Cassia Gulch Wind Park LLC and Cassia Wind Farm LLC v. Idaho
Power Company*

Dear Ms. Jewell:

Please find enclosed an original and seven (7) copies of the following documents for filing in the above –referenced matter.

1. Answer and Comments of Idaho Power; and
2. Affidavit of David Sikes.

I would appreciate it if you would return a stamped copy of this transmittal letter in the enclosed self-addressed, stamped envelope.

Very truly yours,

Barton L. Kline

BLK:sh
Enclosures

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UTILITIES COMMISSION

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

CASSIA GULCH WIND PARK LLC AND)	
CASSIA WIND FARM LLC)	
)	Case No.: IPC-E-06-21
Complainants)	
v.)	ANSWER AND COMMENTS OF
)	IDAHO POWER
IDAHO POWER COMPANY)	
)	
Respondent)	

COMES NOW, Idaho Power Company ("Idaho Power" or "the Company") and submits the following Answer and Comments ("Comments") in response to the Complaint of Cassia Gulch Wind Park LLC and Cassia Wind Farm LLC ("Cassia" or "Projects") dated September 13, 2006.

I. SUMMARY OF ISSUES TO BE ADDRESSED

In this Complaint, Cassia is requesting that the Commission exempt PURPA Qualifying Facilities ("QFs") from paying their share of the cost of transmission system upgrades that Idaho Power must construct to interconnect and integrate new generating facilities, including QFs. A number of significant regulatory policy issues are raised by Cassia's Complaint. A description of those issues and a summary of Idaho Power's

position on each of the issues is as follows:

Issue 1:

Does this Commission or the FERC have jurisdiction over the allocation of transmission system upgrade costs to QFs?

Idaho Power's Position:

Both Idaho Power and Cassia agree that this Commission has exclusive jurisdiction to resolve the issues raised by Cassia. However, the FERC has considered many of the same policy issues presented to this Commission by Cassia's Complaint and Idaho Power believes that FERC's analysis and resolution provide persuasive precedent.

Issue 2:

Is requiring QFs to fund their share of the cost of required transmission system improvements consistent with the policies and orders of this Commission and the FERC?

Idaho Power's Position:

Both Idaho Power's Schedule 72, Interconnecting to Non-Utility Generation, and FERC's PURPA rules require QFs to fund system improvements needed to integrate their generation. Idaho Power has proposed a cost-sharing agreement to allow QF developers to fund the upgrade costs subject to refund. Idaho Power's proposal is consistent with both the FERC's rules and Schedule 72.

Issue 3:

Will adoption of Cassia's proposal to exempt QFs from paying their share of the cost of required transmission system upgrades violate PURPA avoided cost principles?

Idaho Power's Position:

Cassia's proposal to have QFs bear only a portion of the costs of integrating their generation resources will cause Idaho Power's customers incur costs for QF resources that exceed Idaho Power's approved avoided costs.

Issue 4:

Will adoption of Cassia's proposal to exempt QFs from paying their share of the cost of required transmission system upgrades accelerate the need for rate increases?

Idaho Power's Position:

Adoption of Cassia's proposal would immediately add the full cost of the required transmission system upgrades to Idaho Power's rate base. A return on Idaho Power's full investment in those upgrades increases Idaho Power's revenue requirement more rapidly than Idaho Power's proposal which would increase Idaho Power's revenue requirement in much smaller increments over a longer period of time.

Issue 5:

Will adoption of Cassia's proposal to exempt QFs from paying their share of the cost of transmission system improvements violate FERC's comparability requirements?

Idaho Power's Position:

Adoption of Cassia's proposal will result in QF resources receiving more favorable treatment than either Idaho Power's generating resources or merchant generation resources in the use of the Company's transmission system. This result is inconsistent with FERC's comparability requirements and could adversely affect Idaho Power's ability to require market generation developers to fund system improvements.

Issue 6:

Will adoption of Cassia's proposal to exempt QFs from paying their share of the cost of transmission system improvements adversely impact the Integrated Resource Planning process?

Idaho Power's Position:

Idaho Power's other major transmission investments are made in a manner that is consistent with the Company's Integrated Resource Plan. Adoption of Cassia's proposal will result in economically inefficient siting decisions by QFs because transmission costs are ignored. For the same reason it will result in scarce transmission investment dollars being allocated based on QF developers' plans rather than the Integrated Resource Plan.

Issue 7:

Will requiring QFs to fund their share of transmission system upgrades caused by their siting decisions discriminate against QFs?

Idaho Power's Position:

No. PURPA rules require QFs to fund all interconnection costs including system improvements. Idaho Power is proposing a cost-recovery program that is very similar to the Company's current Rule H that requires developers to initially fund the cost of line extensions they require to develop their projects.

II. BACKGROUND

1. Events Leading to the Complaint.

In June 2006, Idaho Power completed a Generator Interconnection System Impact Study ("System Impact Study" or "Study") addressing the impacts on the

Company's system arising out of interconnection requests adding up to more than 200 MW of new generation on the 138 kV transmission system in the Twin Falls area. The System Impact Study was prepared in accordance with the requirements of the Company's Federal Energy Regulatory Commission ("FERC") approved Open Access Transmission Tariff ("OATT") and FERC Order Nos. 2003, 2003-A, 2003-B and 2006 ("Order 2003 et seq.").¹ As Cassia notes on page 1 of its Memorandum in support of its Complaint, the Projects are PURPA Qualifying Facilities and were included in the cumulative group of new generating resources that were included in the System Impact Study.

Resources that are included in the 200 MW cumulative total include several windfarms in addition to the Cassia Projects, Idaho Power's Shoshone Falls' hydroelectric generation capacity increase project and several other generation resources, a number of which are QF resources currently holding contracts through which they would sell all of their output to Idaho Power.

As noted in the Affidavit of David Sikes which accompanies these Comments, the System Impact Study concluded that four (4) phases of transmission system improvements need to be constructed to provide network resource interconnection service to the 200 MW of new generation.

Each of the four phases incrementally increase in cost. Idaho Power has proposed to fund the first phase which is estimated to cost approximately \$300,000. The remaining three phases would provide sufficient capability to interconnect all of the

¹ FERC Order No. 2003, et seq. specifically deal with both large and small generating projects interconnecting with utility systems. These orders describe FERC policy governing cost responsibility for such interconnections.

generation projects that had requested interconnection in the Twin Falls area at the time of the study and will cost a total of approximately \$58 million.

2. Idaho Power's Efforts to Address the Problem.

After the Study was presented to Cassia and others, several developers expressed dissatisfaction with the prospect of paying any portion of these transmission system improvement costs. In response, Idaho Power invited the Commission Staff, Cassia and all of the other generating projects located in the group of projects that have made requests for interconnection and would be a part of the group of resources impacting the Company's 138 kV transmission system in the Twin Falls area, to meet in Boise on August 15, 2006. The purpose of the meeting was to discuss the possibility of the parties agreeing on an arrangement that would equitably share the cost of upgrading Idaho Power's transmission network to accommodate the various generating projects. This type of sharing arrangement is referred to by the FERC as a "cluster" approach. (FERC Order No. 2003 ¶ 155, pp 37-38). Others refer to it as a "cumulative" approach.

Representatives from the vast majority of affected generating projects attended the August 15, 2006 meeting. Others who did not attend but signed the Confidentiality Agreement were subsequently briefed by the Company regarding its proposal presented at the meeting.

3. Idaho Power's Proposed Cumulative Approach.

At the August 15, 2006 meeting, Idaho Power presented a "straw man" proposal to address funding of the required system upgrades. Idaho Power's proposal is summarized as follows:

a. All projects, both QF and non-QF, including Idaho Power's Shoshone Falls hydro generation project capacity increase would contribute their pro-rata share of the required transmission upgrade costs based on project capacity. Their contributions would be based on the costs assigned to each of the four phases and the projects' respective places in the transmission application "Queue." In other words, those projects that made application for interconnection early in the process and paid for studies of interconnection costs and impacts were allocated costs based on the time of their application. This approach spreads the total upgrade costs over a large amount of generating capacity thereby lowering total costs per project. This approach also is consistent with the FERC's requirements for allocating transmission capacity and upgrade costs as described in FERC Order No. 2003, et seq.

b. Idaho Power would treat these payments by the various resource developers as advances in aid of construction with the advances to be repaid in full with interest over a period of time not to exceed the term of the contract between the resource developer and Idaho Power. The duration of the repayment period could be shorter, depending on how well a project performed its power sales contract. Idaho Power would pay interest on the unamortized balance of the advance at the rate of interest the FERC periodically establishes for refunds. This is the same interest rate the Company would pay to wholesale transmission customers when these customers fund network upgrades under the FERC's rules established in Order No. 2003, et seq.

c. At the August 15 meeting Idaho Power emphasized that its proposal had not been previously discussed with the Commission Staff nor has it been approved by the Commission; and there is no guarantee that the Commission would approve any

arrangement developed by the parties. However, Idaho Power indicated its preference to present a mutually-agreeable voluntary proposal to the Commission with the intent of avoiding the delays that would accompany litigation of this issue. Idaho Power also expressed its willingness to consider modifications to its proposal so long as those modifications did not violate FERC comparability standards. These comparability standards are discussed in greater detail later in these comments.

d. At the August 15, 2006 meeting, several parties expressed interest in pursuing the cumulative approach and indicated it was their intention to provide written comments to the Company regarding its proposal. One party has provided such comments and others have informally expressed interest in further discussions to implement Idaho Power's proposal.

e. Cassia filed its Complaint on September 13, 2006.

III. ARGUMENT AND LEGAL ANALYSIS

1. Jurisdiction of the Commission.

With one exception, wholesale rates and rules governing interconnection and transmission by generation developers making wholesale sales is within the exclusive jurisdiction of the FERC. However, in the case of QFs intending to sell all of their output to the interconnection utility, Idaho Power agrees with Cassia that FERC has delegated its wholesale ratemaking authority to this Commission and this Commission possesses exclusive jurisdiction over the recovery of costs incurred to integrate QF resources. FERC Orders 2003, et seq. clearly hold that this Commission has jurisdiction to allocate costs incurred to integrate QF resources when the QFs intend to sell *all* of their output

to the interconnecting utility.² (FERC Order No. 2003 ¶ 813, pp. 172-173; see also *Western Massachusetts Electric Co.*, 61 FERC ¶ 61, 182 at 61, 661-62 (1992) (*Western Massachusetts*), *af'd sub nom. Western Massachusetts Electric Co. v. FERC*, 165 F. 3d. 922, 926 (D.C. Cir. 1999)). However, as will be discussed in more detail later in these comments, the FERC's policy considerations and determinations regarding cost responsibilities for initial funding of network upgrades provide persuasive precedent.

2. Idaho Power's Schedule 72 Requires QFs to Fund Interconnection Costs Including System Upgrades.

Idaho Power's Schedule 72 is the tariff governing interconnection with QFs. Cassia concedes that, under Schedule 72, it is obligated to fund the cost of interconnecting its projects to Idaho Power's system. Cassia argues, however, that in approving Schedule 72, the Commission intended to draw a distinction between upgrades and equipment needed on the *distribution* side of the interconnection point and upgrades and equipment needed on the *transmission* side of the interconnection point.³ Neither the FERC PURPA definition of Interconnection Facilities nor Idaho Power's Commission-approved Schedule 72 definitions that implement FERC's rules draw such a distinction. In fact, both FERC and this Commission's rules addressing interconnection of QFs identify the need for the Company to construct facilities and install equipment required to provide safe and reliable service to customers. Where such equipment is physically located on the system has never been an issue. Both FERC's PURPA rules and Schedule 72 definitions explicitly include transmission

² Not all of the generating resources in the "cluster" are QFs, and the non-QF resources have not committed to sell their output to Idaho Power. As such, they would be covered by FERC's cost allocation rules. However, because Idaho Power's cost sharing proposal is consistent with the FERC's "cluster" approach, Idaho Power believes FERC would accept inclusion of the non-QFs in the "cluster."

³ This is Cassia's "driveway" and "highway" distinction. Cassia Memorandum p. 5.

investment as potential costs to be allocated to QFs as part of the interconnection process. (18 CFR 101(b)(7), 18 CFR 292.306, Idaho Power's Schedule 72 Interconnections to Non-Utility Generation). Interconnection costs for QFs under PURPA are defined by the FERC in 18 CFR §292.101(b)(7):

Interconnection costs means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs. (emphasis added).

The above-quoted FERC regulation shows that interconnection costs include transmission costs incurred to permit interconnected operations with a QF. As Mr. Sikes states in his affidavit in support of these Comments, the interconnection of Cassia's projects and the other projects in the Twin Falls area requires the addition of transmission upgrades to maintain safe, reliable electric service to customers. (Sikes Aff. at p. 4).

The FERC's delegation of wholesale ratemaking authority to this Commission under PURPA requires that the Commission implement the FERC's regulations. (18 CFR § 292.401). Schedule 72 is consistent with the requirement embodied in the above-referenced FERC PURPA regulations. Schedule 72 requires QFs to fund the costs of additions, alterations and upgrades to transmission lines and other facilities that

are required to safely interconnect the QF's generation facility to the Company's system. The definition of interconnection facilities in Schedule 72 provides:

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.

Schedule 72 further defines Special Facilities as:

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).

As was the case with the FERC definition of interconnection equipment, the definition of interconnection equipment in Schedule 72 covers "all additions to or alterations of transmission and/or distribution lines and transformers, . . . to safely interconnect the Seller's Generation Facility to the Company's system." If system safety and reliability require that the Company make "additions to or alterations to transmission" and "transformers" in order to accommodate the QFs delivery of energy to Idaho Power's system, Schedule 72 includes those transmission investments and allocates cost responsibility to the QFs. Mr. Sikes's affidavit confirms that safety and system reliability require the additional facilities.

This Commission reiterated the requirement for QF interconnection cost responsibility under Schedule 72 in Order No. 29092 issued on August 27, 2002 in Case No. IPC-E-01-38. On page 8 of the Order, in response to requests from some intervenors that some QF interconnection costs be transferred from QFs to Idaho

Power, the Commission stated: “regarding interconnection cost responsibility, we find that it is important for the tariff to explicitly state that all interconnection costs will be borne by the customer/generator. If interconnection requires more than the customer-furnished standard equipment, it is the customer/generator’s responsibility to bear those additional interconnection expenses.” (Order No. 29092). (emphasis added).

In its Complaint on page 5 Cassia argues that because Idaho Power has proposed a cumulative approach to funding the transmission system upgrades identified by the System Impact Study, the Company has admitted that Schedule 72 does not apply to transmission system upgrades. Cassia is incorrect. Idaho Power’s proposal to develop a voluntary contractual arrangement to share the funding of system upgrade costs is permitted under Schedule 72. Schedule 72 provides that Idaho Power and QFs may enter into written agreements to develop alternative arrangements to address costs of interconnecting generating facilities. Specifically the section of Schedule 72 entitled “PAYMENT FOR INTERCONNECTIONS COSTS” states:

PAYMENT FOR INTERCONNECTION FACILITIES

Unless specifically agreed otherwise by written agreement between the Seller and the Company, the Seller will pay all costs of interconnecting a Generation Facility to the Company’s system.

Unless specifically agreed otherwise in a written agreement between the Seller and the Company, an initial cost estimate of Company-owned Interconnection Facilities will be provided to the Seller. Payment of the estimated cost will be required prior to the Company’s ordering, installing, modifying, upgrading, or performing in any other way work associated with the Interconnection Facilities. Upon completion of the Company-owned Interconnection Facilities, the actual costs will be reconciled against the estimated cost previously paid by the Seller and the appropriate billing or refund will be processed. The

Company reserves the right to collect additional costs from the Seller for any additional Company equipment, modifications, or upgrades the Company deems necessary to operate and maintain a safe, reliable electrical system as a result of the Interconnection of the Seller's Generation Facility to the Company's system. (emphasis added).

The language of Schedule 72 contemplates that Idaho Power and QFs may negotiate and enter into written contracts to allocate costs of interconnection in a way that is mutually agreeable to Idaho Power and the QF. Any such contract would include a provision requiring that the contract be filed with and approved by this Commission before it would become effective. This is precisely the procedure Idaho Power followed in its negotiations with the various Twin Falls area resource developers prior to the filing of Cassia's Complaint.

3. Cassia's Distinction Between "Interconnection" and "Network Upgrades" is a Distinction Without a Difference.

Cassia urges the Commission to adopt a policy that distinguishes between the costs associated with interconnecting its Projects to Idaho Power's system and the costs associated with transmission improvements needed to allow the energy flowing over the interconnection to be safely and reliably integrated by Idaho Power. As Mr. Sikes explains on page 7 of his affidavit in support of these Comments, interconnection and the need for network upgrades are, for system planning and reliability purposes, inseparable. The FERC recognized this inseparability in Order 2003, et seq.

In those Orders the FERC ruled that if improvements to the transmission system are required to integrate generation, those transmission improvements will be funded by the interconnecting customer subject to refund. (Order No. 2003-B ¶ 32). In Order No. 2003-A issued in Docket RM02-1-001, the FERC determined it was appropriate for

interconnection customers to initially fund the costs of network upgrades occasioned by their interconnection request. Under the rules FERC adopted, the cost of network upgrades advanced by the interconnection customer is subsequently refunded to the interconnection customer in the form of credits applied to transmission charges levied by the transmission provider as the interconnection customer delivers energy from its generation facility. (Order 2003, p. 139, ¶ 694).

On rehearing following the issuance of Order No. 2003-A, a number of potential interconnection customers objected to FERC's decision to require interconnection customers to provide upfront funding of network upgrades. In FERC Order No. 2003-B the Commission responded:

32. In Order No. 2003-A, the Commission revised the rules governing transmission credits to place the Interconnection Customer at a greater risk for the cost of Network Upgrades occasioned by the Interconnection Request. The Commission was concerned that to do otherwise would not lead to efficient siting decisions and would not adequately protect native load and other Transmission Customers from having to bear Network Upgrade costs if the Generating Facility were to retire early. In their arguments opposing the modifications, Intergen and others state that the cost of Network Upgrades is typically small compared to the cost of the Generating Facility and that the Interconnection Customer will often embark on a project even though Network Upgrade costs are unknown. This suggests that placing the risk for the cost of Network Upgrades on the Interconnection Customer does not place a significant burden on the Interconnection Customer and thus is completely appropriate. Also, Intergen states that the Interconnection Customer has a strong incentive to maximize its use of the Transmission System because it only makes money if it is selling output from its Generating Facility. The crediting policy, however, reinforces that incentive by linking transmission credits directly to the output of the Generating Facility.

33. We strongly encourage policies that promote efficient investment decisions and protect native load and other Transmission Customers from having to bear the burden of the Interconnection Customer's Network-Upgrade costs. Given these concerns, we continue to find that the Order No. 2003-A crediting policy provides a reasonable balance between the objectives of promoting competition and infrastructure development, protecting the interests of Interconnection Customers, and protecting native load and other Transmission Customers. (Order 2000-B, p. 12-13).

In its Memorandum on page 10, Cassia claims incorrectly that the FERC agrees with Cassia's position that QFs should only pay interconnection costs and the additional costs of network upgrades should be socialized and paid by all customers. In support of that position, Cassia cites a FERC decision entitled *Western Massachusetts Elec. Co.*, 77 FERC ¶. 61, 268 (1996), affirmed *Western Massachusetts Elec. Co. v. FERC*, 165 F.3d 922 (D.C. App. 1999). While Cassia's Memorandum accurately describes the FERC's decision in the 1996 *Western Massachusetts Company* case, Cassia fails to disclose that, in the FERC's more recent decisions in Order Nos. 2003 et seq., the FERC has reversed its position taken in *Western Massachusetts*.

Cassia also notes that the FERC cited the *Western Massachusetts* decisions in Order Nos. 2003 and 2006. Cassia's reference to Order Nos. 2003 and 2006 implies the *Western Massachusetts* decisions remain good precedent for cost responsibility when in fact they do not. The FERC's citations to the *Western Massachusetts* decisions in Order Nos. 2003, et seq. were in support of those portions of the FERC's 2003, et seq. Orders in which the FERC confirmed that state commissions, not the FERC, had jurisdiction over QF interconnections. In Order No. 2003, et seq. the FERC did *not* cite the *Western Massachusetts* decisions as precedent for a rolled-in allocation of transmission costs. In fact, in FERC Order No. 2003, et seq. the FERC concluded that,

to adequately protect native load and other transmission customers from having to bear network upgrades costs, FERC will require that interconnection customers like Cassia initially fund the cost of network upgrades subject to refund. Idaho Power's cumulative cost sharing proposal, including refunds, is entirely consistent with the FERC approach and procedure. (See FERC Order No. 2003-A p. 4, ¶ 9 and 2003-B p. 4-5, ¶¶ 10, 32 and 56). Cassia's proposal is not.

Cassia's proposal that this Commission exempt QFs' resources from paying the costs of transmission system improvements required by their interconnections presents the same policy consideration for this Commission as it did for the FERC. FERC received dozens of comments on exactly this same policy question. Non-utility merchant generators urged the Commission to roll in the cost of transmission upgrades to promote the development of merchant generation and to stimulate the construction of new transmission resources. FERC considered the policy arguments on both sides of this issues and ultimately concluded in Orders Nos. 2003-A and B that if resource developers have no upfront cost responsibility for Network Upgrades, then their resource siting decisions may be made inefficiently as compared to siting decisions where the total cost of the resource, including transmission cost is considered. Allowing resource developers to make inefficient siting decisions will shift costs and risks to customers that should rightfully be assumed by resource developers.

In its Memorandum on page 11, Cassia makes the same argument that the merchant generators made to FERC; QFs should be excused from paying their share of transmission system improvements required by their decision to site generating resources in a particular location because this policy will encourage the development of

new QF generation. Undoubtedly that is true. Subsidies almost always encourage investment. Unfortunately, holding QF developers harmless from the full costs of their decisions to site resources at particular locations on the utility system will also encourage inefficient siting decisions. Some of Idaho's best QF resource sites are in very remote locations far from load centers. Cassia's recommendation that only a portion of the costs Idaho Power incurs to interconnect and integrate a QF resource be funded by the QF developer, with the balance socialized to all of Idaho Power's customers, will almost certainly ensure that Idaho Power's customers will pay more than the Commission-approved avoided cost rate for QF power.

Idaho Power recognizes the fact that the FERC has chosen to require resource developers to assume their share of expenses of interconnection and transmission system improvements is not binding on this Commission. However, Idaho Power believes that the policy considerations that convinced the FERC to require generation developers to fund system improvements subject to refund should be equally compelling for this Commission.

4. **Cassia's Proposal to Exempt QFs From Paying Their Share of Required System Improvements Violates PURPA Principles.**

Under PURPA, the avoided cost rates an electric utility pays for electric energy from a QF must "be just and reasonable to the electric consumers of the electric utility and in the public interest." 16 USC§824a-3(b). To comply with PURPA requirements, avoided cost rates set by this Commission cannot exceed the incremental cost to the electric utility of alternative electric energy. 16 USC§824a-3(b). The term "incremental cost of alternative electric energy" means the cost to the electric utility of electric energy which, but for the purchase from such co-generator or small power producer, such utility

would generate or purchase from another source. 16 USC §824a-3(d). Stated another way, after the Commission has set avoided costs, customers should be economically indifferent to whether the utility purchases an amount of energy from QFs, generates the same amount of energy itself, or purchases the energy on the whole market. This is often referred to as the ratepayer neutrality test.

In setting avoided costs in Idaho, this Commission has consistently utilized a surrogate avoided resource (“SAR”) as the benchmark for determining avoided costs for the three Idaho electric utilities. Each time the Commission has established new avoided costs rates, it has also considered how much, if any, transmission cost associated with the SAR should be included in setting the avoided cost rates. Adding avoided transmission investment and expenses to the avoided cost payment fully compensates QFs for any transmission savings their resource development may bring to the utilities resource portfolio and establishes avoided costs at a level that meets the customer neutrality test. However, current avoided cost rates do not include a component for transmission expense because the current SAR is a combined cycle combustion turbine which can be sited at an optimal location on the utility’s transmission system, thereby avoiding the need for transmission investment.

Cassia’s proposal violates the above-described PURPA principles in several ways. First, by arguing QFs should not fund the additional transmission investment expense caused by QF interconnection, Cassia is urging the Commission to violate the ratepayer neutrality test. If, in addition to paying the QF the full avoided cost for the generation resource, Idaho Power is forced to fund additional transmission investment and expenses required to interconnect the QF resource, customers will be paying more

than avoided cost for QF resources. On the other hand, if QF resource developers are required to initially fund the cost of transmission expenses they cause the utility to incur, or if avoided cost rates are reduced to reflect the additional cost of transmission system improvements, ratepayer neutrality is maintained.

Second, Cassia's proposal asks the Commission to bypass the normal avoided cost rate setting process. Allowing QF developers to escape paying the additional costs for transmission system improvements necessitated by their interconnection has the same effect as increasing avoided cost rates. Historically, this Commission has strongly resisted changing avoided cost prices outside of a technical avoided cost rate setting proceeding.

Third, if the Commission accepts Cassia's proposal and rules that only distribution-related expenses directly associated with interconnection QFs to the system should be funded by the QF developer, it will be ignoring the impact of the more expensive transmission-related expenses in determining avoided costs. The upshot of accepting Cassia's proposal will be that the total cost of QF resources will exceed the approved incremental cost of alternative resources available to the utility. This is inconsistent with PURPA principles and violates PURPA's ratepayer neutrality test.

Finally, Under PURPA principles, a valid argument can be made that QF developers should not receive *any* refunds of principal or interest they contribute to construct system upgrades required to accommodate their projects. Idaho Power acknowledges that its proposal to treat QF payments as advances in aid of construction subject to refund may result in QF payments that are higher than currently approved avoided cost rates. Nevertheless, the Company believes there is a balancing of

interests in the refund proposal it has made and is willing to proceed with its proposal so long as the Commission is willing to allow Idaho Power to recover these QF-related costs in the Company's rates.

5. Other States Require QFs to Fund System Improvements.

On page 9 of its Memorandum, Cassia cites a Vermont Public Service Board case. (*Petition of Missisquoi Associates*, 1985 WL 287030 (Vt. P.S.B. 1985). In the cited order, the Vermont Public Service Board indicates that it cannot predict what costs the utility would have incurred had it not interconnected with the QF. The Vermont Board "solved" the problem by presuming that the utility would have needed to construct the system improvements to accommodate the QF sometime in the future anyway so customers would not be harmed if they funded them today.

Of course in Idaho, that is not how avoided costs are set. In Idaho, system improvements the SAR would require that can be avoided by QF purchases are established in an avoided cost case. If transmission costs can be avoided by QF purchases, those avoided transmission costs are reflected in higher avoided cost rates. Simply presuming that purchases from QFs will always allow the utility to avoid incurring costs equal to QF system improvement costs required to accept QF energy is almost certain to be wrong. Making such a presumption will either disadvantage the utility's customers or the QF developer. Vermont's approach as articulated in 1985 may be simple but it is neither accurate nor consistent with PURPA.

Other states nearby have recently confirmed that they will require QFs to pay for the costs of the system upgrade facilities necessary to integrate generation.

In 1998, the Colorado Public Utilities Commission issued an order authorizing the Public Service Company of Colorado to develop a bidding procedure to establish avoided costs for capacity purchases from qualifying cogeneration and small power production facilities. *Re Public Service Company of Colorado*, Decision No. C88-726, 93 P.U.R. 4th 384, 1988 WL 391456 (Colo. P.U.C.). The Colorado Commission found that “it is proper for Public Service to require QFs to pay for all internal transmission system upgrades needed to move QF power to the Denver load, because QFs may locate wherever they choose within the State and without. Thus, transmission upgrades, if needed, and the contribution of interconnection facilities may be necessitated solely by the location of the QF on the System.”

Last year the Colorado Commission reaffirmed its finding that QFs will be required to pay for all Company transmission system upgrades necessary to transport power to the Denver load center as part of QF interconnection costs in Docket No. 04S-164E, Decision No. C05-0412. *Re: The Investigation and Suspension of Tariff Sheets Filed by Public Service Company with Advice Letter No. 1411 – Electric*, 240 P.U.R. 4th323, 2005 WL 850285 (Colo. P.U.C.). See also *Re Chapter 480-107 WAC*, Docket No. UE-030423, Gen. Order No. R-530, 2006 WL 1650702 (Wash. U.T.C.).

As Mr. Sikes indicates in his Affidavit, in the ordinary course of business Idaho Power would not construct the system improvements described in the System Impact Study to address load growth in the Twin Falls area. The only reason that Idaho Power would construct these system improvements is to accommodate the generation that would be injected into the system by the generation facilities described in the System Impact Study. (Sikes Aff. p. 7-8).

6. **Adoption of Cassia's Proposal Could Expose Idaho to Expensive FERC Compatibility Rulings.**

Since the FERC issued its landmark Order No. 888, in 1997, the FERC has made sweeping changes to transmission rules to eliminate the possibility that utilities will use their control of their transmission facilities to favor network resources such as utility and QF generating resources serving predominately native loads, to the detriment of merchant generators seeking to use the transmission system to deliver energy to wholesale markets. This Commission is well aware of the lengths the FERC has gone to manage the transmission system to protect merchant generators seeking to move power in the wholesale markets, sometimes to the detriment of generating utilities serving native loads.

In some instances, FERC has levied substantial fines against utilities that it believes are maintaining practices that do not provide equitable treatment between the utilities generation function and merchant generators. FERC uses the term "comparability" when it is looking at how utilities operate their transmission system in dealing with the utilities' own resources as compared to how they operate the system to accommodate merchant generation and wholesale transactions moving across the transmission system. See *Carolina Power & Light Co.*, 93 FERC ¶ 61, 032 (2000).

In an effort to comply with the FERC's comparability concerns, Idaho Power's Delivery Business Unit ("Delivery") currently conducts its transmission engineering analyses and system impact studies for both QFs and non-QFs in the same manner prescribed by the FERC. (Aff. at 2-3). This allows Delivery to manage its workflow by implementing policies and procedures in a uniform way, thereby ensuring equal treatment to all entities seeking interconnection. Delivery imposes the same payment,

processing and improvement funding requirements on Idaho Power's own power supply business unit when it makes application to interconnect new resources to the Company's system even when those new resources will serve native load almost exclusively.

Adopting Cassia's proposal would give QFs preferential treatment compared to Idaho Power's own new generation and new merchant generation developers. Idaho Power is concerned that giving preferential treatment to QF developers will invite negative repercussions or even precipitate a FERC investigation. It is certainly possible that a non-QF resource seeking to interconnect with the Company's system and/or transport its power across the Company's system will complain to the FERC if it is required to initially fund network upgrades when QF network resources are not required to do the same. If Idaho Power's concerns are realized, FERC's response could be to require Idaho Power to provide initial funding of transmission upgrades for wholesale transmission customers including merchant generating plants seeking to interconnect with Idaho Power's system and transport their energy over Idaho Power's transmission system.

Consider this hypothetical. Assume that the Commission had adopted Cassia's proposal that Idaho Power's general body of customers fund QF network upgrades and Sempra Energy had received permission to construct a merchant coal-fired generating resource near Jerome. Under FERC's comparability standard, Sempra could logically argue to the FERC that Idaho Power should be required to initially fund the system improvements needed to transmit Sempra's generation across Idaho Power's transmission system. This would have required Idaho Power to undertake additional

financing, perhaps to the detriment of its ability to finance needed infrastructure improvements needed to serve native load.

7. **Cassia's Proposal to Exempt QFs From Paying Their Share of Requested Transmission System Improvements Will Accelerate Increases in Customer Rates.**

On page 13 of its Memorandum, Cassia states: "Under normal circumstances, in the regular course of the rate-making process, utility investments of the nature proposed here [transmission system improvements] would be subject to prudence review in a general rate case at the time Idaho Power proposes to include them in rate base. Among other things, the Commission would examine whether the investments were *the least cost solution to the identified problem.*" (emphasis added). Idaho Power agrees. Unfortunately, when QF resources are driving the requirement for the Company to make an investment, the normal Commission review process is stymied. In this instance, several QF developers have decided they want to develop resources in the Twin Falls area. Idaho Power is required to purchase the power generated by these resources. The QF developers' decisions will require Idaho Power to make \$50 - \$60 million in transmission upgrades in order to accommodate their resources.

If Cassia's proposal is adopted, because Idaho Power is required by law to purchase energy from QF resources, the transmission investment must be made to integrate the resource whether or not it is the "least cost solution to the identified problem." (Cassia Memorandum p. 13). In fact, it is almost a certainty that the resources will not be least cost if the cost of transmission system upgrades needed to accommodate the new generation are shifted up front to customers. If Cassia's proposal is accepted by the Commission as its new policy on transmission cost funding,

QF developers can ignore transmission interconnection costs when they select the least expensive location *for them* to site a generation resource even in extremely remote locations.

Cassia is correct that, under Idaho Power's proposal, the initial cost of the transmission upgrade investment would not be added to the Company's rate base in a single generation rate case as would be the case if the Commission adopts Cassia's position and requires rate base treatment of the entire transmission upgrade investment. (Cassia Memo p. 13). Cassia is also right that under Idaho Power's proposal the entire cost of the transmission upgrade would not be an issue in a single rate case. (Cassia Memo p. 13). Only a small portion of the system upgrade cost would be included in rates each time the utility conducted a general revenue requirement proceeding. What Cassia does not say however, is that the upward pressure on retail rates would be substantially reduced under Idaho Power's proposal as compared to Cassia's proposal.

On page 13 of its memorandum Cassia argues that rolled-in treatment of grid related upgrades is the least -cost approach for rate payers. Cassia's assertion ignores basic ratemaking facts. Under Cassia's proposal, a return on all of the QF-driven transmission system improvement investment will immediately become a part of Idaho Power's revenue requirement. Under Idaho Power's proposal, customers will see slower growth in revenue requirement due to smaller investment increments over a longer period of time. As a result, Idaho Power's proposal will exert less upward pressure on retail rates than will Cassia's proposal.

Cassia goes on to argue that Idaho Power's cost of capital is less than the cost of financing available to QF developers so it would be better for society, on a global basis, to require Idaho Power to bear the cost of transmission system improvements. The Company has never been permitted to undertake discovery to determine the actual cost of capital for QFs. Therefore, the accuracy of Cassia's cost-of-capital association can neither be confirmed nor denied by Idaho Power.

It is important to note that Idaho Power is not proposing to pay interest on the QF developers' contribution in aid of construction at the QF developers' actual cost of capital. Idaho Power has proposed to pay interest at the FERC interest rate for refunds. This is the rate Idaho Power would pay to FERC jurisdictional customers under FERC's rules. The FERC rate is a floating rate that is currently set at 8.17%. (see www.ferc.gov/legal/acctmatts/interestrates.asp). That rate can go up or down depending upon the prime rate of interest. Idaho Power's current authorized rate of return is 8.1%.

Finally, Cassia's cost-of-capital proposal seems to presuppose that Idaho Power has an unlimited supply of capital to make transmission investments. That simply is not correct. As Mr. Sikes notes on page 7 of his Affidavit, there are numerous other locations on Idaho Power's system where spending limited transmission investment dollars would provide more benefit to Idaho Power's transmission system than transmission investments in the Twin Fall area. That is why Idaho Power includes major transmission projects in its Integrated Resource Plan that it files with the Commission every two years. Allocating scarce transmission capital investment should be done in an orderly and planned way. Adoption of Cassia's proposal would mean that

QF developers' decisions to build resources in locations favorable to QF developers will drive transmission capital investment rather than the more systematic approach embodied in the integrated resource planning process.

8. Requiring QFs to Initially Fund Their Share of Transmission Upgrades Will Not Stop Renewable Resource Development.

Cassia argues that renewable resources are unique because the siting of those resources is dependent upon the location of the motive force. (Cassia Memorandum p. 9). In fact, one of the renewable resources that is included in the "cluster" is Idaho Power's proposed Shoshone Falls hydro plant capacity upgrade. This increase in renewable resource generation capacity must be installed at the existing Shoshone Falls project site to take advantage of the existing infrastructure. Unlike Cassia, Idaho Power understands that the cost of system improvements to integrate Shoshone Falls should be included in the Commission's consideration of whether a certificate of convenience and necessity should be issued for the Shoshone Falls upgrade. Idaho Power knows it must demonstrate that the Shoshone Falls upgrade is cost-effective, *including* additional transmission cost, when compared to other resource alternatives.

Other renewable resources should be held to the same standard. Just because a particular developer's renewable resource may not be able to proceed because the costs of transmission for that site make it uneconomic does not mean that other renewable resources' projects sponsored by other developers at other locations will not be developed. For example, Idaho Power is in the final stages of contract negotiations with renewable resource developers proposing to site renewable resources in the Mountain Home area and in Eastern Oregon. It appears likely that these resources will *not* require major transmission investments to interconnect to the system.

In the final analysis, renewable resources are not unique. Like all resources, some renewable resources will have higher costs than others when the cost of transmission is included in the total cost. Ignoring transmission cost just because renewable resources are involved will almost certainly guarantee that inefficient siting decisions will be made and Idaho Power's customers will pay more for their energy than they should. Ignoring the total cost of a resources just because it is a renewable resource is not in the public interest.

9. **Requiring QFs to Fund Their Share of Required Transmission System Upgrades is not Discriminatory.**

In its Memorandum, Cassia argues that requiring QFs to fund their share of transmission system upgrades is discriminatory. Cassia argues that Idaho Power's plan for recovering the costs of transmission system upgrades required to integrate new generation resources from the developers of those new resources would discriminate against new generating facilities. Cassia argues that such discrimination is prohibited by the Idaho Supreme Court holding in *Building Contractors Assoc. of Southwest Idaho, Inc. v. Idaho Pub. Util. Comm'n*, 128 Id. 534, 916 P.2d 1259 (1996). Cassia's attempt to equate the fact situation presented to the Court in *Building Contractors* with the fact situation presented in this case is misdirected.

In the *Building Contractors* case, the Idaho Supreme Court addressed the disparate impact on new and old customers of an increase in the "hook-up fee" charged by Boise Water. The increased hook-up fee was intended to recover a portion of the incremental cost of new infrastructure required by new legal requirements and by overall system load growth.

In this case, Idaho Power is proposing to recover from all of the affected

developers the costs it will actually incur to install specifically identified transmission facilities and equipment needed to physically accept the energy the developers propose to inject into Idaho Power's system. Idaho Power's cost-recovery proposal is very similar to the cost-recovery program the Company operates under Commission-approved Rule H. Rule H requires developers to pay the work order costs of line extensions needed to safely deliver energy to a new residential subdivision. It is also akin to the Commission-approved cost-recovery program under which QF developers pay the actual costs of physically connecting their individual projects to Idaho Power's distribution system when no additional transmission system improvements are required. Those types of cost-recovery programs were not at issue in the *Building Contractors* case. In fact, the Court specifically noted in its opinion that the fees at issue in the *Building Contractors* case "are not those charged to offset the actual per customer cost of physically connecting to Boise Waters distribution system." *Building Contractors*, 128 Id. 534 at 535 fn. 1.

Idaho Power's proposal to recover from Cassia the actual costs it will incur to construct the necessary transmission upgrades needed to accommodate Cassia's generation are not similar to the more generalized impact fees that were at issue in the *Building Contractors* case. As Mr. Sikes notes in his Affidavit on page 7, the need to construct the system upgrades at issue is not driven by load growth in the Twin Falls area. The only reason Idaho Power would construct the transmission system upgrades at issue is to accommodate generation Cassia and others desire to construct in the Twin Falls area.

In this instance, the costs Idaho Power desires to recover are not related to load growth but to specific facilities required to physically integrate QF resources which are constructed regardless of load growth.

IV. ISSUES TO BE ADDRESSED IN PHASE 2.

As Idaho Power noted in its statement to the Commission at the Commission's decision meeting on September 25, 2006, Idaho Power believes that the Commission can comply with due process and create an adequate record during the first phase of this case so long as the Commission defers consideration of Cassia's factual allegations, until a later phase of this case. As Idaho Power suggested in the Commission's Decision Meeting on September 25, one way for the Commission to assure that the "paper record" process is fair would be for the Commission to follow the procedure the courts utilize in considering motions for summary judgment.

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. Then, based on those facts, the courts determine whether, as a matter of law, the motion for summary judgment should be granted. Idaho Power believes that if the Commission makes a similar assumption, i.e. that the facts Idaho Power alleges are correct, a reviewing court would understand the process used and a decision based solely on the paper record would withstand judicial review. For this reason, Idaho Power has included the Affidavit from Mr. Sikes that provides a summary response to the factual allegations contained in Cassia's Complaint. The factual allegations are as follows:

(a). Generation Shedding is an Alternative to Adequate Transmission Facilities.

On page 7 of its Memorandum in support of Complaint, Cassia argues that Idaho Power should be required to accept a generation shedding scheme or remedial action scheme ("RAS") in lieu of constructing transmission system improvements necessitated by the interconnection of QF generating resources. Idaho Power does not agree that deferring transmission system upgrades by the use of generation shedding schemes is a prudent, long-term approach to the problem of inadequate transmission capacity.

Idaho Power has summarized its position on this issue on pages 5-7 of Mr. Sikes Affidavit in Support of Comments.

(b). Borah-West Capacity Increase.

On page 12 of its Memorandum, Cassia quotes a portion of testimony Idaho Power Company filed in its currently pending FERC transmission rate case. Cassia selects one small portion of the testimony and draws an incorrect inference. Mr. Sikes in his Affidavit in support of these Comments briefly discusses how the Idaho Power's position on the Borah-West upgrade was included in the Company's 2004 IRP and the benefits it brings to the Company's system. He also explains how cost responsibility for the Borah-West upgrade is spread through the IRP process.

(c). Idaho Power's Thermal Overload Assumptions.

On page 2 of its Memorandum in Footnote 2 at the bottom of the page, Cassia alleges that Idaho Power is too conservative in its engineering and planning assumptions regarding the need to construct the system improvements to avoid thermal overloads. Cassia indicates that the Company should be willing to stress its system to a greater degree than the Company is willing to accept. In his Affidavit, Mr. Sikes

explains why Idaho Power is not comfortable with Cassia's approach.

(d). Other Factual Allegations.

Additional factual allegations are laid out in the Affidavit of Jerrod Grover. In his affidavit, Mr. Grover essentially states that if the Cassia Projects are required to fund any transmission system improvements, the Projects will become uneconomic. In the past, the Commission has determined that, it will not allow Idaho Power to undertake discovery to confirm the accuracy of statements made by QF developers regarding the economics of their projects. Without such discovery, there is no way for Idaho Power to refute Mr. Grover's allegations and, as a result, it is not be possible for Idaho Power to present any affidavit in this first phase to address Mr. Grover's claims. Idaho Power hopes that the Commission will take Idaho Power's inability to respond into consideration in making its policy determination.

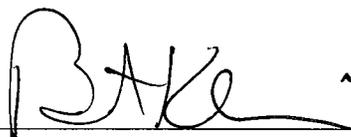
Idaho Power also respectfully requests that the Commission recall that in prior proceedings, QF developers have often stated that a particular Commission decision will make their QF projects unfinanceable and uneconomic. The most recent example of this type of testimony occurred in Case No. IPC-E-04-8, the *U.S. Geothermal* case. In that case, the QF developers unanimously asserted that adoption of the 90%/110% performance band would render all QF projects, particularly wind projects, unfinanceable. History has demonstrated that those dire predictions were unfounded. Since the issuance of the *U.S. Geothermal* decision, Idaho Power has signed contracts with QFs equal to a cumulative capacity of more than 200 MW.

V. Conclusion

Idaho Power respectfully requests that the Commission decline Cassia's invitation to transfer funding responsibility for system improvements from resource developers to Idaho Power.

As might be expected, multi-party discussions regarding Idaho Power's cost-recovery proposal essentially came to a standstill when Cassia filed its Complaint. If the Commission agrees with Idaho Power that resource developers, including QFs, should bear responsibility for initial funding of required system improvements, it is Idaho Power's intention to restart the discussions and work diligently to effectuate a resolution that protects customers and allows cost-effective QF projects to move forward.

Dated this 27th day of October 2006.



Barton L. Kline
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 27th day of October 2006, I served a true and correct copy of the within and foregoing document upon the following named parties by the method indicated below, and addressed to the following:

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