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IDAHO PUBLIC UTILITIES COMMISSION

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February 21, 2014

VIA HAND DELIVERY

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

Re: Case No. IPC-E-13-22
Update to Wind Integration Rates and Charges – Idaho Power Company's
Answer to Motions to Dismiss, Joinders, and Comments

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of Idaho Power Company's Answer to Motions to Dismiss, Joinders, and Comments.

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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IDAHO PUBLIC UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)
COMPANY'S APPLICATION TO UPDATE) CASE NO. IPC-E-13-22
ITS WIND INTEGRATION RATES AND)
CHARGES.) IDAHO POWER COMPANY'S
) ANSWER TO MOTIONS TO
) DISMISS, JOINDERS, AND
) COMMENTS
)
_____)

In accordance with RP 56 and RP 256, Idaho Power Company ("Idaho Power" or "Company") hereby respectfully requests the Idaho Public Utilities Commission ("Commission") deny various parties' Motions to Dismiss Idaho Power's Application to update its wind integration rates and charges.

The intervening parties have asked the Commission to dismiss Idaho Power's Application in its entirety; strike designated portions from Idaho Power's Application; admonish Idaho Power for filing its Application; and to initiate workshops before filing another Application—all based around the argument that there has been some kind of improper or unlawful unilateral modification of an existing contract. Idaho Power did not

unilaterally modify any existing agreements. Idaho Power did not seek any specific method of allocation of the collection of wind integration costs in its Application. It would be improper to dismiss Idaho Power's Application in its entirety. It would be improper to strike selected portions of relevant evidence from Idaho Power's Application, and from the Commission's consideration in this proceeding. Workshops are not necessary and would only delay the inevitable consideration of the issues raised in Idaho Power's Application by the Commission.

I. PROCEDURAL BACKGROUND

Idaho Power filed its Application to update its wind integration rates and charges on November 29, 2013. On December 31, 2013, the Commission issued a Notice of Application and Notice of Intervention Deadline, with an intervention deadline of January 21, 2014. The following parties intervened in the case: Idaho Winds, LLC ("Idaho Winds"); Snake River Alliance ("SRA"); Cold Springs Windfarm, LLC ("Cold Springs"); Desert Meadow Windfarm, LLC ("Desert Meadow"); Hammett Hill Windfarm, LLC ("Hammett Hill"); Mainline Windfarm, LLC ("Mainline"); Ryegrass Windfarm, LLC ("Ryegrass"); Two Ponds Windfarm, LLC ("Two Ponds"); Cassia Windfarm LLC ("Cassia"); Hot Springs Windfarm, LLC ("Hot Springs"); Bennett Creek Windfarm, LLC ("Bennett Creek"); Cassia Gulch Wind Park, LLC ("Cassia Gulch"); Tuana Springs Energy, LLC ("Tuana"); High Mesa Energy, LLC ("High Mesa"); Renewable Northwest Project ("RNP"); American Wind Energy Association ("AWEA"); Idaho Wind Partners I, LLC ("Idaho Wind Partners"); Meadow Creek Project Company, LLC ("Meadow Creek"); and Rockland Wind Farm, LLC ("Rockland"). The Commission granted intervention for each of the above.

On January 31, 2014, Cold Springs, Desert Meadow, Hammett Hill, Mainline, Ryegrass, Two Ponds, Cassia, Hot Springs, Bennett Creek, Cassia Gulch, Tuana, and High Mesa (“Movants”) collectively filed a Motion to Dismiss based upon Idaho R. Civ. Pro. 12(c) (“Cold Springs Motion to Dismiss”). The Cold Springs Motion to Dismiss alleges that Idaho Power expressly asked the Commission to amend existing contracts when it proposed three alternative methods that the Commission may choose to implement to account for wind integration costs.

On February 7, 2014, AWEA and RNP filed Comments in support of the Cold Springs Motion to Dismiss, which advocate for a series of workshops to collaborate on the issues. SRA also filed Comments on the Cold Springs Motion to Dismiss. Meadow Creek, Rockland, and Idaho Wind Partners filed to join in the Cold Springs Motion to Dismiss with additional comments (“Meadow Creek Motion to Dismiss”). On February 7, 2014, Idaho Winds also filed a Motion to Dismiss (“Idaho Winds Motion to Dismiss”).

II. STANDARD OF REVIEW AND LEGAL AUTHORITIES

The Cold Springs Motion to Dismiss, as well as the Joinders and Comments, rely upon Idaho R. Civ. Pro. 12(c), which governs motions for judgment on the pleadings. A motion for judgment on the pleadings is similar to a motion for summary judgment; thus, the Idaho Supreme Court has held that standards of review applicable to a summary judgment motion are applicable to a motion made under Idaho R. Civ. Pro. 12(c). *Bagley v. Thomason*, 155 Idaho 193, 307 P.3d 1219, 1222 (2013) (citing *Trimble v. Engelking*, 130 Idaho 300, 302, 939 P.2d 1379, 1381 (1997)). Therefore, judgment under Rule 12(c) is appropriate “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material

fact and that the moving party is entitled to judgment as a matter of law.” *Id.* (citing I.R.C.P. 56(c); *G & M Farms v. Funk Irr. Co.*, 119 Idaho 514, 516-17, 808 P.2d 851, 853-54 (1991)). Additionally, “[all] doubts are to be resolved against the moving party, and the motion must be denied if the evidence is such that conflicting inferences may be drawn therefrom, and if reasonable people might reach different conclusions.” *Id.*

While the Movants, joinders, and commentors all rely upon R. Civ. Pro. 12 (c), judgment on the pleadings, their requested relief is structured as a motion to dismiss, and, alternatively, as an evidentiary motion to strike. Idaho Power does not necessarily agree that the Movants have properly cited to appropriate rule or statute for their requested relief as required by RP 56. While this distinction is relevant to the proper standard of review, Idaho Power’s response herein would nevertheless be the same.

Movants rely upon various claims of preemption, including field preemption, which applies when the federal government has regulated the entire field leaving no authority to the states in that area.

Absent explicit preemptive language, we have recognized at least two types of implied preemption: field preemption, where the scheme of federal regulation is “so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,” *Id.* at 153 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)), and conflict preemption, where “compliance with both federal and state regulations is a physical impossibility,” *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or where state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Felder v. Casey*, 487 U.S. 131, 138 (1988); *Perez v. Campbell*, 402 U.S. 637, 649 (1971).

Gade v. National Solid Wastes Management Association, 505 U.S. 88, 112 S.Ct. 2374, 120 L.Ed.2d 73, 60 USLW 4587 (1992). Public Utility Regulatory Policies Act of 1978

("PURPA") mandates and requires the joint exercise of federal and state authorities and provides for exclusive state implementation and authority on any as-applied claims. Consequently, any claim of field preemption fails.

Additionally, Movants rely upon *Sales Hydro Assoc. v. Maughan*, 985 F.2d 451, 454 (9th Cir.1993) and *Middle South Energy, Inc. v. Ark. Pub. Serv. Comm'n*, 772 F.2d 404 (8th Cir.1985) for the proposition that they "have a federal right to be free of the state administrative proceeding" because "the hardship is the process itself. Process costs money." Cold Springs Motion to Dismiss, p. 17. Movants' citation and reliance upon this authority is at best misstated, and does not accurately represent the decisions in those matters. In *Sales Hydro*, the reference to "The hardship is the process itself." Is in reference to a claim of ripeness from that case, and not to the claim of federal preemption as Movants represent. *Sales Hydro Assoc. v. Maughan*, 985 F.2d 451, 454 (9th Cir.1993)("Ripeness of an issue depends on two things, its current fitness for judicial decision and the hardship to the parties of withholding judicial consideration."). More importantly, *Middle South Energy* requires some actual application—and suffered injury from the application of regulatory requirements to the complainant before it is appropriate that they "be free of the state administrative proceeding," not just the fact that there may be administrative proceedings that they feel obligated to participate in.

MSE alleges such injury in the form of loss through exhaustion of the very right—*the right to be free of the state administrative proceeding*—it seeks to protect. The Supreme Court recognized such a right on similar facts in *Public Utilities Commission v. United Fuel Gas Co.*, 317 U.S. 456, 63 S.Ct. 369, 87 L.Ed. 396 (1943), when an interstate gas supplier sought to enjoin the enforcement against it of a state agency order requiring it to prove the reasonableness of the rates it charged a customer utility within that state. Although the agency had done nothing to that point but

assert jurisdiction, *Id.* at 465, 63 S.Ct. at 374, ***the Court upheld the injunction on the ground that the supplier suffered injury from the enforcement of the order for proof itself and that the expense of complying with such orders was among the contingencies against which Congress sought to guard in creating exclusive federal jurisdiction.*** *Id.* at 469, 63 S.Ct. at 376; see also *Public Utilities Commission v. United States*, 355 U.S. 534, 540, 78 S.Ct. 446, 450, 2 L.Ed.2d 470 (1958) (“But where the only question is whether it is constitutional to fasten the administrative procedure onto the litigant, the administrative agency may be defied and judicial relief sought as the only effective way of protecting the asserted constitutional right.”); *Panhandle Eastern Pipe Line Co. v. Public Service Commission*, 332 U.S. 507, 512, 68 S.Ct. 190, 192, 92 L.Ed. 128 (1947)(state agency order requiring interstate gas supplier to file certain tariffs, rules, and regulations was not just a threat to apply the state regulatory plan ***but constituted actual application*** of the plan in its initial stages); cf. *Monahan v. Nebraska*, 645 F.2d 592, 597 (8th Cir.1981)(claim that state procedure itself conflicted with federal act could not be effectively addressed by exhausting state procedure).

Middle South Energy, Inc. v. Ark. Pub. Serv. Comm'n, 772 F.2d 404, 418 (8th Cir.1985)(emphasis added). In addition to the lack of actual application and harm shown by Movants, the court in *Middle South Energy* cites to authority that is different than the present case before the Commission in that the *Middle South Energy* authority refers to the gas industry where Congress created exclusive federal jurisdiction to guard against state administrative proceedings. This is not the case here. PURPA is to be implemented by the State. State administrative proceedings are expected and routine.

III. DISMISSAL OF THE APPLICATION, IN WHOLE OR IN PART, IS NOT APPROPRIATE

The Cold Springs Motion to Dismiss, joined by the intervenors, requests that the Commission dismiss Idaho Power’s Application and require the Company to re-file its Application; strike factual information from the Company’s Application; and admonish

the Company that its Application was inappropriate. Movants' Motion to Dismiss and requests for relief are based upon misstatements that Idaho Power "expressly asks the Commission to amend existing contractually legally enforceable obligations." Motion to Dismiss, p. 8. This misstates the Company's Application. The entire premise of the Motion to Dismiss is based upon the argument that there has been some kind of improper or unlawful unilateral modification of existing contracts. There has been no unilateral modification of any existing contract. While Idaho Power's Requested Relief does ask for recovery of the updated wind integration costs, it does not specifically ask for any particular type of cost allocation recovery. That is a determination to be made by the Commission—not by Idaho Power, not by the intervening parties, and not the existing PURPA Qualifying Facilities ("QF").

The Application presented the results of the Company's 2013 Wind Integration Study Report and requests that wind integration rates and charges be updated, as contemplated by the Commission's Order No. 30488, which initially approved wind integration charges. Idaho Power's Application set out alternative forms of allocation of the identified wind integration costs that the Commission may, or may not, take in order to update those rates, but did not advocate for, nor request implementation of, any specific type of recovery. Whether or not the Commission has authority to modify the existing contractual obligations of a utility that it regulates does not preclude the Commission's consideration of updated wind integration costs and a just and reasonable allocation of those costs that is consistent with the public interest of the people of the state of Idaho. It is not proper to dismiss Idaho Power's Application, nor to strike those portions of the Application and testimony referring to cost incurred by the

utility by inclusion of all wind on Idaho Power's system. This information is relevant evidence to be before the trier of fact regardless of whether that trier of fact has the requisite authority to allocate costs on that basis or not.

The specific Request for Relief in the Application states, "Idaho Power respectfully requests that the Commission issue an order approving new rates and charges for wind integration as indicated by the Updated 2013 Study presented herewith." Application p. 9. Idaho Power asked for the costs identified by the previous 2007 wind integration study be updated to those identified in the 2013 wind integration study. Additionally, Idaho Power asked for two specific changes to the way in which wind integration costs are collected: "Change One: abandon the use of percentage of avoided cost rate allocation and instead allocate a fixed amount based upon penetration level; Change Two: decouple the wind integration charge from the avoided cost rate contained in the power sales agreement and instead have wind integration costs assessed as a stand-alone tariff charge." Application pp. 5-6.

The Application discusses and quotes Commission Order No. 30488, which first authorized a wind integration charge for Idaho Power, including the language from the Settlement Stipulation that "The integration charge . . . will remain fixed throughout the term of the contract" Application pp. 3-4.

In Case No. IPC-E-07-03, the Commission issued Order No. 30488 in February 2008 approving a joint settlement stipulation and establishing a tiered integration cost structure that increased as nameplate wind generation increased. The stipulation also established a cap of \$6.50/MWh with the understanding that each of the utilities would update their integration studies in the future as more wind generation was added. Order No. 30488 states:

Idaho Power's published avoided-cost rates for Wind QFs will be adjusted to recognize an assumed cost of integrating the energy generated by Wind QFs as a part of the Company's generating resource portfolio. The rate adjustment will be applied in three tiers, increasing as the total amount of wind integrated onto Idaho Power's system grows. The integration charge for each Wind QF project will be calculated at the time a Wind QF project achieves its Operation Date as that term is defined in the Firm Energy Sales Agreement (FESA) between the Company and the wind QF. The integration charge will be calculated as a percentage (7%, 8% or 9%) of the current 20-year, levelized, avoided-cost rate, subject to a cap of \$6.50/MWh. The integration charge as calculated on the Operation Date will remain fixed throughout the term of the contract and will be applied as a decrement to the applicable published rate according to the table below:

[table omitted]

Order No. 30488, quoting Settlement Stipulation which was approved by Commission.

Application pp. 3-4.

Additionally, in Order No. 30488, the Commission discussed the expectation that there would be continual updates to the wind integration study, costs, and if necessary adjustment of the wind integration costs included in rates. Order No. 30488, pp. 12-14.

The Commission finds that the costs of wind integration are real, not illusory The Commission has continuing oversight and we expect Idaho Power to provide wind integration analysis and results to the Commission separate from its biennial IRP filing As with variables in the underlying avoided cost methodology, ***parties can petition the Commission at any time to open a docket to review and update wind integration costs if those costs are believed to be outdated or inaccurate.***

Id., pp. 12-13 (emphasis added). Counsel for Movants has stood before the Commission on several occasions demanding and asking when Idaho Power would be updating its initial wind integration study. As stated in the Application, Idaho Power considers the cost of integrating wind generation in its integrated resource planning process when evaluating the costs of utility and third-party generation sources. Application p. 2. All parties to the case in which the wind integration charge was initially approved understood, and minimally were on notice, that wind integration would be continually examined and updated as needed by bringing the matter back to the Commission for a determination—just as Idaho Power has done with the Application in the present matter.

Movants strenuously argue against the Commission's ability to alter existing contracts; however, no matter what the Commission may or may not decide with respect to its authority regarding existing obligations, dismissal of the Application and/or exclusion of relevant evidence regarding all wind and its contribution to wind integration costs is not appropriate. Whether or not the Commission has authority to modify the existing contractual obligations of a utility that it regulates does not preclude the Commission's consideration of updated wind integration costs and a just and reasonable allocation of those costs that is consistent with the public interest of the people of the state of Idaho. The factual information of the costs caused by all megawatts of wind that exist on Idaho Power's system, whether that be from existing, new, or future development, is relevant information that would be inappropriate to exclude from the Commission's consideration and examination of wind integration costs. In fact, it would be inappropriate, if not impossible, to rationally look at wind

integration costs without consideration and inclusion of all existing megawatts of wind in operation on the system—regardless of how it is eventually determined that those costs are allocated for collection and payment.

The intervenors in this proceeding are unabashedly concerned with only two things: (1) promoting the unlimited development of additional wind generation and (2) maximizing the potential revenue to their own individual projects—regardless of the effects upon the rest of the bulk system or the many other customers of the utility. Idaho Power and the Commission have additional interests in meeting the public interest—in providing reliable electric service to all those who demand it within the Company’s service territory, whenever they require it, on a least-cost basis. As stated in the Application:

Due to the variable and intermittent nature of wind generation, Idaho Power must modify its system operations to successfully integrate wind projects without impacting system reliability. Idaho Power, or any electrical system operator, must provide operating reserves from resources that are capable of increasing or decreasing dispatchable generation on short notice to offset changes in non-dispatchable wind generation. The effect of having to hold operating reserves on dispatchable resources is that the use of those resources is restricted and they cannot be economically dispatched to their fullest capability. This results in higher power supply costs that are subsequently passed on to customers.

Idaho Power, similar to much of the Pacific Northwest, has experienced rapid growth in wind generation over past several years. Idaho Power currently has 577 megawatts (“MW”) of wind generation capacity from Public Utility Regulatory Policies Act of 1978 (“PURPA”) projects and an additional 101 MW of wind generation capacity from the Elkhorn Valley Wind Farm, for a total of 678 MW of wind generation capacity currently operating on its system. In addition, 505 MW of this wind generation capacity has been added to Idaho Power’s system during 2010, 2011, and

2012. This rapid growth has led to the recognition that Idaho Power's finite capability for integrating wind generation is nearing its limit. Even at the current level of wind generation capacity penetration, dispatchable thermal and hydro generators are not always capable of providing the balancing reserves necessary to integrate wind generation. This situation is expected to worsen as wind penetration levels increase, particularly during periods of low customer demand.

Idaho Power considers the cost of integrating wind generation in its integrated resource planning when evaluating the costs of utility and third-party generation resources. The costs associated with wind integration are specific and unique for each individual electrical system based on the amount of wind being integrated and the other types of resources that are used to provide the necessary operating reserves. In general terms, the cost of integrating wind generation increases as the amount of nameplate wind generation on the electrical system increases. ***Failure to calculate and properly allocate wind integration costs to wind generators when calculating avoided cost rates impermissibly pushes those costs onto customers, making them no longer indifferent to whether the generation was provided by a PURPA Qualifying Facility ("QF") or otherwise generated or acquired by the Company.***

Application, pp. 1-3 (emphasis added).

IV. CONCLUSION

Idaho Power respectfully requests that the Commission deny the above Motions to Dismiss, Joinders, and Comments filed by the intervening parties. The intervening parties have asked the Commission to dismiss Idaho Power's Application in its entirety; strike designated portions from Idaho Power's Application; admonish Idaho Power for filing its Application; and to initiate workshops before filing another Application—all based around the argument that there has been some kind of improper or unlawful unilateral modification of an existing contract. Idaho Power did not unilaterally modify

any existing agreements. Idaho Power did not seek any specific method of allocation of the collection of wind integration costs in its Application. It would be improper to dismiss Idaho Power's Application in its entirety. It would be improper to strike selected portions of relevant evidence from Idaho Power's Application, and from the Commission's consideration in this proceeding. Workshops are not necessary and would only delay the inevitable consideration of the issues raised in Idaho Power's Application by the Commission.

All parties to the case in which the wind integration charge was initially approved understood, and minimally were on notice, that wind integration would be continually examined and updated as needed by bringing the matter back to the Commission for a determination—just as Idaho Power has done with the Application in the present matter. Order No. 30488 states, "As with variables in the underlying avoided cost methodology, parties can petition the Commission at any time to open a docket to review and update wind integration costs if those costs are believed to be outdated or inaccurate." Order No. 30488, pp. 12-13.

Failure to calculate and properly allocate wind integration costs to wind generators when calculating avoided cost rates impermissibly pushes those costs onto customers, making them no longer indifferent to whether the generation was provided by a PURPA QF or otherwise generated or acquired by the Company. Idaho Power has completed an updated wind integration study. That study identifies a need to update the wind integration charge implemented by the Commission in 2008. Idaho Power has initiated a docket with the Commission for it to examine the wind integration costs and charges, and asked the Commission to update the same in accordance with the

updated study. Idaho Power respectfully requests that the Commission deny the above Motions to Dismiss, Joinders, and Comments filed by the intervening parties, and set a procedural schedule whereby it can fully consider the issues associated with a determination of wind integration costs and recovery.

DATED at Boise, Idaho, this 21st day of February 2014.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of February 2014 I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO MOTIONS TO DISMISS, JOINDERS, AND COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

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