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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Exergy Development Group of Idaho LLC

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	
AVISTA CORPORATION FOR AN ORDER)	CASE NO. AVU-E-07-02
REVISING AVISTA CORPORATION'S)	
OBLIGATIONS TO ENTER INTO)	
CONTRACTS TO PURCHASE ENERGY)	EXERGY DEVELOPMENT GROUP
GENERATED BY WIND-POWERED SMALL)	OF IDAHO LLC'S ANSWER TO
POWER GENERATION FACILITIES)	MOTION TO APPROVE
)	SETTLEMENT STIPULATION
)	
)	MOTION TO ACCEPT ANSWER OUT
)	OF TIME

COMES NOW, Exergy Development Group of Idaho LLC ("Exergy") by and through its attorney of record, Peter J. Richardson, and lodges its Answer to the Motion to Approve Settlement Stipulation ("Settlement") by Renewable Northwest Project ("RNP") in the above captioned docket.

I

SUMMARY OF EXERGY'S POSITION

Exergy urges the Commission to reject the proposed Settlement as it is not supported by an adequate record and is contrary to the public interest.

Exergy Development Group of Idaho LLC's Answer to Motion for Approval of
Settlement Stipulation AVU-E-07-02

II LACK OF RECORD

Exergy's Comments filed on October 5, 2007 in this docket pointed out the need for an evidentiary hearing in order to create an adequate record upon which a Commission decision may be made. The Settlement provides no additional evidence remedying that defect. There simply is an inadequate record upon which this Commission may make its ruling on the need for and/or magnitude of a wind integration rate for Avista.

III LACK OF CERTAINTY FOR MAKING A DECISION

RNP concedes that the identification of wind integration costs is uncertain at best:

The Parties agree that the basic methodology Avista used to prepare the wind integration study is sound. However, as is always the case with computer modeling, the devil is in the assumptions. The science of wind integration cost modeling is in its infancy.

Motion at p. 6. Emphasis provided.

Staff's Comments¹ underscore the uncertainties surrounding any wind integration cost number this Commission may adopt:

Workshops held to review the results of the utilities' integration studies highlighted the broad range of possible outcomes that could be achieved by varying the assumptions for numerous variables used within the study.

Part of this imprecision and uncertainty is due to the difficulty of modeling the intermittent nature of the wind, the generation it produces and its effect on the rest of the electrical system. Another reason is the many assumptions that have to be made in the analysis.

Staff believes that reasonable arguments could be made to justify combinations of differences in assumptions that result in widely varying integration costs.

Staff Comments at p. 4. Emphasis provided.

¹ Staff Comments, October 5, 2007 ("Staff's Comments").
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Settlement Stipulation AVU-E-07-02

Staff concluded by conceding that “reasonable arguments could be made to justify combinations of differences in assumptions that result in widely varying integration costs.” *Id.* In a nutshell, this Commission is being asked to proceed in the face of “widely” varying integration costs that are based on a science in its “infancy” and using “assumptions for numerous variables” with “imprecision and uncertainty”. To do so would result in a wind integration rate that is, by definition, arbitrary.

IV LACK OF LEGAL FOUNDATION FOR SETTING RATES

It is black letter utility law that rates must be based on known and measurable costs. This issue often arises in determination of expected additions to rate base that have yet to be realized. The legal concept is the doctrine of “known and measurable changes”.

The “known and measurable changes” doctrine is a fundamental doctrine in utility law that is commonly at issue when adjusting test year data. The Idaho Supreme Court has repeatedly stated that test year data should be adjusted for known and measurable changes if the changes are shown to be reliable and certain. In *Citizens Utility Co. v. Idaho Public Utilities Commission*, 99 Idaho 164, 579 P.2d 110 (1978), the Court provided the test when post-test-year events should be considered:

The Court has stated before that test year data should be adjusted for anticipated and known changes where the changes are shown to be reliable and certain The Commission should include in the rate base all items which are proven with a reasonable certainty to be justifiably used in providing services. There are two good reasons for including these items in the rate base: First, to avoid a rate base which does not adequately demonstrate real revenue needs and second, to reduce the necessity of a future application to adjust the rate base to represent additional investments.

Idaho 164, 170-71, 579 P.2d at 116-17.

In *Utah Power & Light v. Idaho Public Utilities Commission*, 102 Idaho 282, 629 P.2d 678

(1981), the Court addressed the issue of what constituted a "known and measurable change":

Test year data should be adjusted for known and measurable changes where the changes are shown to be reliable and certain The Commission should include in the rate base all items which are proven with reasonable certainty to be justifiably used by the utility in providing services to its customers

Idaho at 284, 629 P.2d at 680.

The known and measurable doctrine is not only sound utility law; it is grounded in basic common sense. Setting rates, whether in determining anticipated rate base additions or determining future wind integration costs on unknown, unreliable and uncertain data is simply irresponsible. As the examples noted above illustrate, the Motion and Staff Comments are replete with admissions to the effect that this Commission is being asked to violate that most basic of utility doctrines, "known and measurable." In addition, the following laundry list of some of the many unknown and unmeasurable assumptions that must be made provide further evidence that it is ill-advised and impossible to set a wind integration rate at this time:

Part of this imprecision and uncertainty is due to the difficulty of [1] modeling the intermittent nature of the wind, [2] the generation it produces and its [3] effect on the rest of the electrical system. Another reason is the [4] many assumptions that have to be made in this analysis. For example, assumptions have to be made about the [5] magnitude, [6] locations and [7] timing of future wind generation development; [8] wind forecasting effectiveness, [9] geographic diversity of wind resources; [10] size, [11] height and [13] other characteristics of expected wind turbines; [14] reserve requirements; [15] future electric market structures and [16] pricing; [17] resources available to provide reserves; and [18] operating constraints of existing generating plants. Staff believes that reasonable arguments could be made to justify [19] combinations of differences in assumptions that result in widely varying integration costs.

Staff Comments at p. 4. Numbering provided.

These nineteen assumptions can be combined to create an innumerable set of possible

outcomes. Those innumerable possible outcomes, however, are fatally flawed from the outset because the study's starting point is an assumed level of wind penetration that is nothing more than a fiction.

This Commission has historically taken its obligations under the known and measurable doctrine very seriously. For example, in an Idaho Power rate case, that company sought a ratemaking adjustment based on anticipated changes to its capital structure. The Commission responded by observing:

The proposed financings that Dr. Morrissey has included in Idaho Power Company's capital structure represent a substantial increase in the Company's total capitalization. Yet, at the same time, these projected financings are not even projected to occur for almost six months. Depending on the idiosyncrasies of the capital markets, it is highly possible that an issue now programmed for release in 1979 could be deferred or postponed indefinitely. Likewise, depending upon the prevailing financial climate, it is possible that the yields required in capital markets will vary substantially from that estimated by Dr. Morrissey in his projections. This Commission is reluctant to impose additional unnecessary costs on the ratepayers of Idaho Power Company where such costs cannot be measured without uncertainty and speculation.

Order No. 14495, Docket No. U-1006-140, Mach 1979, at p. 16. Emphasis provided.

Avista's assumptions about wind penetration are likewise dependent upon not just the "idiosyncrasies" of the capital markets², but also on the long list of seventeen uncertainties identified in Staff's Comments. In its Order in the Idaho Power rate case quoted above, the Commission refused to make a rate adjustment because the expected contingency was "not even projected to occur for almost six months"! Here the contingencies that are anticipated will occur, if at all, many years into the future and not six months.

In addition, in the situation of the rate case order quoted above, even if the Commission were to approve Idaho Power's proposed rates based on anticipated future capitalization, the

² Planned wind parks can be rendered uneconomic for innumerable reasons, such as changes in capital markets, tax policy, equipment costs, and commodity prices.
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Commission always has the ability of revisiting its decision to correct the rates in the future in the event the expected contingency did not come to fruition. In this instance the Commission does not have that tool. The Settlement requires that the Commission set wind integration costs and LOCK THEM IN FOR TWENTY YEARS with no safety valve in the event the rates were significantly in error. See Staff Comments at p. 5.

The Commission ought to set Avista's wind integration rate at zero, to reflect what it currently is. As Avista experiences, indeed if Avista experiences, wind integration costs in the future it should be required to demonstrate with certainty what those costs are and justify the basis for its calculations. New wind power purchase agreements should be required to have a clause allowing the imposition of a fair, just and reasonable wind integration rate that varies with actual integration costs. It should also be capped based on a reasonable, and justifiable, assumption relative to an anticipated maximum wind integration rate.

III LACK OF SUPPORT FOR THE STIPULATION

Of the five parties to this docket only two signed the stipulation. One of those two is the utility and one is not directly impacted by the proposed wind integration fee as it is not a developer or potential owner of wind projects. The existence of a settlement with a minority of the participants to the proceeding does not support a finding that it is necessarily in the public interest.

IV LACK OF FOUNDATION FOR SETTING RATE

RNP proposes to tie the wind integration rate to Avista's published avoided cost rates. That is a misguided and legally unsupportable proposition. It is legally unsupportable because Avista's avoided cost rates are based on this Commission's implementation of PURPA's

requirements that it offer to purchase QF power based on Congress' and FERC's definition of avoided costs. It is misguided because the avoided cost rate is independent of, and unrelated to, the costs Avista incurs to integrate wind. For example, if Avista's avoided resource were to be changed from a gas plant to a lower cost resource, its avoided cost rates, and hence its wind integration rate, would automatically be lowered – irrespective of its actual level of wind integration costs. Such an illogical result is strong evidence of the arbitrary nature of tying wind integration rates to the published avoided cost rates.

V CONCLUSION


Exergy's October 5, 2007, Comments urged this Commission to hold evidentiary hearings to determine whether Avista has wind integration costs and if so to establish the methodology for the company's recovery of those costs. RNP's Motion and Settlement Stipulation have not changed Exergy's position. For the reasons stated above and in its October 5, 2007, filing, Exergy respectfully urges this Commission to deny the Motion and set a schedule for all interested parties to provide evidence as to the correct calculation and level of Avista's wind integration costs.

MOTION TO ACCEPT ANSWER OUT OF TIME

Due to the press of other issues, including preparation for pre-filed testimony in the Idaho Power general rate case, counsel for Exergy needed additional time in which to prepare Exergy's Answer. It has obtained the concurrence of all those who executed the stipulation as well as the Commission Staff to file these comments two days out of time. No party will be prejudiced thereby and Exergy therefore respectfully moves that the Commission accept and consider its Answer.

Respectfully submitted this 19th day of October 2007.

RICHARDSON & O'LEARY PLLC

By 
Peter J. Richardson
Attorneys for Exergy Development Group
of Idaho, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, October 5, 2007, I caused a true and correct copy of the foregoing **EXERGY DEVELOPMENT GROUP OF IDAHO LLC COMMENTS AVU-E-07-02** to be served by the method indicated below, and addressed to the following:

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