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IDAHO PUBLIC
UTILITIES COMMISSION

Mike Uda (*pro hoc vice* application pending)
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Attorneys for Complainant Thompson River Co-Gen, LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

THOMSPON RIVER CO-GEN, LLC, a)
Colorado Company)
)
Complainant,)
vs.)
)
AVISTA CORPORATION, dba, Avista Utilities,)
a Washington Corporation,)
)
Respondent)
_____)

CASE NO. AVU-E-05-07
COMPLAINT

COMES NOW, Complainant Thompson River Co-Gen, LLC, (hereinafter "TRC"), by and through their attorneys complains against Respondent Avista Corporation, dba Avista Utilities ("Avista" or the "Company") and alleges as follows:

PRELIMINARY MATTERS

Copies of all pleadings and other correspondence in this matter should be served upon counsel for TRC at the above noted addresses.

Mr. Uda's *pro hoc vice* application is pending.

This is a formal complaint filed pursuant to Rule 54 of the Rules of Procedure of the Idaho Public Utilities Commission ("Commission"), IDAPA 31.01.01.054.

COMPLAINT

1.

TRC is a cogeneration facility located in Thompson Falls, Montana.

2.

TRC is a self-certified Qualifying Facility ("QF") as defined by the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824, et seq. ("PURPA") and the implementing regulations adopted by the Federal Energy Regulatory Commission ("FERC").

3.

TRC is a new, base-load generation resource in the Pacific Northwest and does not currently maintain a long-term wholesale sales off-take agreement.

4.

Under normal or average design conditions the TRC facility will generate at no more than 10 aMW in any given month.

5.

As constructed, actual operating results of integrating the used components of the facility, attributes of the blended coal and waste-wood fuels, and the ordinary conditions normally associated with the co-generation process cause the facility to be boiler limited.

6.

Avista is an Idaho electric utility with service territory in Idaho.

7.

Avista is subject to the Commission's jurisdiction pursuant to Title 61, Idaho Code and 16 U.S.C. § 824a-3.

8.

The Commission has subject matter jurisdiction over this Complaint pursuant to Idaho Code § 61-612 and 16 U.S.C. § 824a-3(g)(2).

9.

On or before March 11, 2005, TRC officially notified Avista that it desired to provide service under the QF avoided cost standard offer rate in Avista's Idaho service territory.

10.

For several months, and culminating on August 22, 2005, TRC has attempted good faith negotiations to reach an agreement to sell the entire net output from the facility to Avista under Avista's non-levelized published standard offer rate for fueled projects that under normal or average design conditions will generate no more than 10 aMW in any given month.

11.

Despite meetings, an exchange of draft contracts, and numerous other efforts to reach agreement on rates, terms and conditions for a QF agreement, TRC and Avista have been unable to reach agreement.

12.

Avista wrongly asserts that TRC does not qualify for its standard offer rate.

13.

Avista wrongfully disregards information from TRC verifying that the actual net output has never exceeded 10 aMW in any month, since commercial operation began in late December 2004.

14.

Avista wrongfully disregards previous Commission orders, which state that even if TRC could provide net output greater than 10 aMW in a month, that Avista would be entitled to such energy at no cost, though TRC has repeatedly confirmed it has no intent to do so.

15.

Avista's refusal to offer the published non-levelized, fueled standard offer rate to TRC is a violation of PURPA's requirement that a utility purchase energy and capacity from QFs at the utility's administratively determined full avoided cost.

16.

Avista's refusal to offer the published non-levelized, fueled standard offer rate to TRC is a violation of the Commission's orders implementing PURPA, particularly but not limited to the Commission's decision in U.S. Geothermal v. Idaho Power Company, et al., IPC E-04-08 (November 22, 2004).

17.

TRC will, at normal or average design conditions, generate no more than 10 aMW in any given month.

18.

Actual generation from TRC, since it was deemed operational in late 2004, clearly demonstrates that the facility does not exceed 10 aMW.

19.

TRC is eligible for Avista's standard offer, non-levelized, fueled avoided cost rate.

20.

Contract negotiations have hit an impasse due to a disagreement over this fundamental issue of TRC's eligibility for Avista's published, non-levelized rate for fueled projects.

21.

Neither TRC nor Avista are willing to yield on this issue.

22.

Avista informed TRC the week of August 22, 2005, that further discussions regarding TRC's eligibility for Avista's standard non-levelized rate for fueled QF projects would not be fruitful.

23.

Avista informed TRC the week of August 22, 2005, that the only resolution of our dispute would be for this Commission to formally provide its guidance.

PRAYER FOR RELIEF

WHEREFORE TRC respectfully prays this Commission for an order requiring Avista to immediately complete the purchase of TRC's energy at the published non-levelized rate for fueled projects that under normal and average design conditions generate no more than 10 aMW monthly in a manner reflective of earlier Commission orders.

RICHARDSON & O'LEARY PLLC

By: 
Peter J. Richardson, ISB #3195
Attorneys for Thompson River Co-Gen,
LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August 2005, I caused to be served an original and seven true and correct copies of the foregoing Complaint by hand to the following:

Jean Jewell
Idaho Public Utilities Commission
472 West Washington Street
Boise, Idaho

A handwritten signature in black ink, appearing to read "Nina Curtis", is written over a horizontal line.

Nina Curtis
Legal Assistant