

McDevitt & Miller LLP

Lawyers

(208) 343-7500
(208) 336-6912 (Fax)

420 W. Bannock Street
P.O. Box 2564-837009
Boise, Idaho 83702

RECEIVED

2009 FEB 20 PM 2: 22
IDAHO PUBLIC
UTILITIES COMMISSION

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

February 20, 2009

Via Hand Delivery

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

Re: *Black Canyon, LLC*
GNR-E-08-02 and GNR-09-01

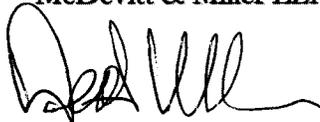
Dear Ms. Jewell:

Enclosed for filing in the above matter, please find an original and seven copies of Black Canyon LLC's Answer to Rocky Mountain Power's Motion to Continue Decision (GNE^A-E-08-02) and Letter Comments (GNR-09-01). ^R

Kindly return a file stamped copy to me.

Very Truly Yours,

McDevitt & Miller LLP



Dean J. Miller

DJM/hh
Enclosures

RECEIVED

2009 FEB 20 PM 2: 22

IDAHO PUBLIC UTILITIES COMMISSION

Dean J. Miller (ISB No. 1968)
McDEVITT & MILLER LLP
420 West Bannock Street
P.O. BOX 2564-83701
Boise, Idaho 83702
Tel: 208-343-7500
Fax: 208-336-6912
joe@mcdevitt-miller.com

Attorney for Black Canyon LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT
PETITION TO APPROVE
STIPULATION TO ADJUST
PUBLISHED AVOIDED COST RATES.

Case No. GNR-E-08-02

**ANSWER OF BLACK CANYON LLC
TO ROCKY MOUNTAIN POWER'S
MOTION TO CONTINUE DECISION
(GNE-E-08-02) AND LETTER
COMMENTS (GNR-09-01)**

IN THE MATTER OF THE FUEL COST
RELATED ADJUSTMENT TO
PUBLISHED IDAHO AVOIDED COST
RATES FOR IDAHO POWER
COMPANY, PACIFICORP DBA ROCKY
MOUNTAIN POWER, AND AVISTA
CORPORATION DBA AVISTA
UTILITIES.

Case No. GNR-E-09-01

COMES NOW Black Canyon LLC ("Black Canyon") and submits the following

Answer, to wit:

As recited in its Petition to Intervene dated February 10, 2009, Black Canyon is developing a wind generation project in Bonneville County, Idaho, and has made substantial progress toward completion of the project. Black Canyon has completed all

required interconnection studies, has executed an interconnection agreement and has paid all required fees to Rocky Mountain Power.

Although not a formal party to the Stipulation filed in Case No. GNR-E-08-02 on November 5, 2008, Black Canyon was informally represented by the undersigned who also represented other formal parties. Black Canyon concurred in the terms of the Stipulation.

The Stipulation has two main components. First, it sets forth an agreement for values of non-fuel generic variables used in the established method of avoided cost calculations. Second, it recommends that the Commission incorporate adjustments of the non-fuel generic variables at the same time it approves new fuel-related avoided cost components based on the Northwest Power and Conservation Council's ("Council") medium forecast of natural gas prices, in accordance with long-standing Commission practice. (Stipulation, Paragraph 7).

Rocky Mountain Power was fully represented in negotiations leading to the Stipulation and the Stipulation is executed on behalf of Rocky Mountain Power by its Senior Vice President and General Counsel.

In Case No. GNR-E-08-02, Rocky Mountain Power has now filed a Motion to Continue Decision Implementing Stipulation and in Case GNR-E-09-01, Rocky Mountain Power has filed Letter Comments dated February 19, 2009. Both the Motion and the Letter Comments seek the same relief—that Rocky Mountain Power be relieved of the Stipulation and that the Commission delay implementing the terms of the Stipulation.

Generally, to obtain relief from a Stipulation, the party seeking relief must show that the Stipulation was entered into through mistake or misunderstanding of fact. *See Gross v. Moulton*, 114 Idaho, 884 761 P.2d 1236 (Ct. App. 1988).

Rocky Mountain Power in its Motion and Letter Comments does not allege the existence of mistake or misunderstanding. Rather, it alleges only that it now disagrees with the Council's gas forecast and that the forecast produces rates that are, in its opinion, "too high." On their face, these allegations are insufficient grounds to relieve Rocky Mountain Power from the Stipulation it entered into, free from mistake or misunderstanding.

It is also appropriate to view the Motion and Letter Comments in the larger setting of the history of avoided cost rates in Idaho. Attached as Exhibit A, is the text of a memorandum prepared by the undersigned for the wind task force of the Idaho Energy Office. As demonstrated by the Exhibit, since the year 2002 there has been only a brief period of a few months when avoided cost rates in Idaho were not subject to some form of regulatory uncertainty. The long period of uncertainty has impeded the development of renewable energy in Idaho.

The Commission is now poised to end the uncertainty and establish avoided cost rates that can be relied upon by those considering project development. It would be a manifest injustice to those who have labored in good faith to end the regulatory uncertainty to again delay establishing predictable rates based on one party's opinion that the rates are too high.

For the reasons set forth above, the Commission, in Case No. GNR-E-08-02, should enter its Order approving the agreed upon non-fuel generic variables and in Case

No. GNR-E-09-01, should enter its Order approving calculations based on the Council's medium gas forecast.

DATED this 20 day of February, 2009.

BLACK CANYON LLC

By: 

Dean J. Miller
Attorney for Black Canyon LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of February, 2009, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074
jjewell@puc.state.id.us

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Scott Woodbury
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, ID 83720-0074
scott.woodbury@puc.idaho.gov

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

David J. Meyer, Vice President
Clint Kalich
Michael Andrea
Avisita Utilities
P.O. Box 3727
1411 E. Mission Ave
Spokane, WA 99220-3727
clint.kalich@avistacorp.com
david.meyer@avistacorp.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Mark Moench
Daniel Solander
Rocky Mountain Power
One Utah Center
201 S. Main Street, Suite 2300
Salt Lake City, UT 84111
daniel.solander@pacificorp.com
mark.moench@pacificorp.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Peter J. Richardson, Esq.
Richardson & O'Leary PLLC
515 N. 27th Street (83702)
P.O. Box 7218
Boise, ID 83707-1218
peter@richardsonandoleary.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

Donovan E. Walker
Barton L. Kline
Randy Allphin
Idaho Power Company
P.O. Box 70
1221 W. Idaho Street (83702)
Boise, ID 83707-0070
dwalker@idahopower.com
bkline@idahopower.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

☐
☐
☐
☐

Idaho Wind Farms LLC
Glen Ikemoto
672 Blair Ave.
Piedmont, CA 94611
glenni@pacbell.net

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

☐
☐
☐
☐

John R. Hammond Jr., Esq.
Fisher Pusch & Alderman
US Bank Plaza, 5th Floor
101 South Capital Boulevard
P.O. Box 1308
Boise, ID 83701
jrh@fpa-law.com

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

☐
☐
☐
☐

Greg Duvall
Laren Hale
Ted Watson
PacifiCorp d/b/a Rocky Mountain Power
One Utah Center
201 S. Main Street, Suite 2300
Salt Lake City, UT 84111

Hand Delivered
U.S. Mail
Fax
Fed. Express
Email

☐

☐
☐
☐

BY: Heather Houl, legal
MCDEVITT & MILLER LLP

EXHIBIT A

A BRIEF HISTORY OF PURPA IMPLEMENTATION IN IDAHO

The modern era of PURPA implementation commenced in the year 2002. Prior to then, and since 1995, PURPA development had been moribund, following the Commission's decision to reduce eligibility for published avoided cost rates to projects of 1MW or less and to shorten contract length to five (5) years.¹

In February of 2002, at the request of the J.R. Simplot Company and others, the Commission opened a docket to assess the continued reasonableness of the restrictions established by Order No. 25884.² In its initial decision the Commission determined to increase the eligibility limitation to 5 MW and increased the contract length to 20 years.³

On Reconsideration, the Commission increased the eligibility limit to 10 MW and convened a hearing to examine the input values for avoided cost calculations. It also granted requests by the utilities to stay the effectiveness of any changes until reconsideration was completed.⁴

Following an evidentiary hearing on input values the Commission established new avoided cost rates.⁵ Subsequently, these rates were updated to reflect changes in natural gas prices pursuant to the methodology established by Order No. 29124.⁶ Commencing sometime in 2003, Idaho Power Company, in negotiations with developers, sought to include in its standard form Firm Energy Sales Agreement (FESA) a provision creating a performance band that would penalize energy deliveries above or below a project's projected production.

Two developers, Lewandowski and Schroeder, filed a Complaint at the Commission challenging IPCo's proposed performance band.⁷ This case was consolidated with another pending case raising a similar issue and a related issue for measurement of capacity and energy.⁸ Other utilities and several parties intervened or filed informal pleadings.

¹ *Application of Idaho Power Company for Approval of Prices for Electricity from Cogenerators and Small Power Producers*, Order No. 25884, Case No. IPC-E-93-28 (1995).

² *In the Matter of the Investigation of the Continued Reasonableness of Current Size Limitation for PURPA QF Published Rate Eligibility* Case No. GNR-E-02-01.

³ Order No. 29029 (2002).

⁴ Order No. 29069 (2002).

⁵ Order No. 29124 (2002).

⁶ *In the Matter of the Revision and Update of Avoided Cost Rates*, Case No. IPC-E-03-15, Order No. 29391 (2004); *In the Matter of the Revision and Update of Avoided Cost Rates*, Case No. IPC-E-04-25, Order No. 29646 (2004) See Also

In the Matter of the Revision and Updated Calculation of the Adjustable Portion of the Avoided Cost Rate for Existing PURPA Contracts, Case No. GNR-E-08-01, Order No. 30564 (2008).

⁷ *Lewandowski and Schroeder v. Idaho Power Company*, Case No. IPC-E-04-10.

⁸ *U.S. Geothermal v. Idaho Power Company*, Case No. IPC-E-04-08

In the end, the Commission adopted its own version of a performance band, which became known as the “90-110 performance band”.⁹ The Commission also established a monthly 10 aMW test, rather than name plate capacity, as the criteria for standard form contract eligibility. The Commission rejected IPCO’s requested “regulatory out” contract language.

Although PURPA developers disliked the “90-110 performance band”, a number of contracts were signed containing some variant of the concept.¹⁰

Six months after the final order in *Lewandouski/U.S. Geothermal*, Idaho Power Company filed a new Petition asserting that the rates established in Case No. IPC-E-04-24 had over-stimulated wind-powered QF development.¹¹ The Petition sought a moratorium on QF purchases to allow time for study of wind integration costs. After a contested hearing, the Commission reduced the project size eligible for published avoided costs to 100 kW, in effect creating a moratorium on PURPA development.¹² The Commission also established criteria by which projects already under development could seek an exemption from the new eligibility cap, or be “grandfathered.”

Originally predicted to last about nine (9) months the *de facto* moratorium stretched into 2008. During that period IPCo conducted four (4) workshops relating to quantification of wind integration costs.

Eventually, most parties entered into a settlement agreement in which integration costs were agreed upon and which included additional features, including elimination of the “90-110 performance band” to be replaced by a mechanical availability guarantee. The settlement agreement was approved by the Commission in February 2008.¹³

PacifiCorp had previously proposed use of a mechanical availability guarantee as a substitute for the “90-110 performance band”, but the Commission rejected it.¹⁴ In response, PacifiCorp proposed a “Modified 90-110” performance band, which the Commission accepted.¹⁵ The *Schwindeman* agreement also introduced liquidated damages for failure to achieve contract milestones. Liquidated damages have now, apparently, become a standard contract feature.¹⁶

⁹ Order No. 29632, Order No. 29682 on Reconsideration (2005).

¹⁰ See e.g. *Application of Idaho Power Company for Approval of a Firm Energy Sales Agreement with Fossil Gulch WindPark LLC*, Case No. IPC-E-04-19, Order No. 29630.

¹¹ *Petition of Idaho Power Company for an Order Temporarily Suspending Idaho Power’s PURPA Obligation*, Case No. IPC-E-05-22.

¹² Order No. 29839, Reconsideration Order No. 29872.

¹³ *Petition of Idaho Power to Increase Published Rate Eligibility Cap for Wind Powered Small Power Production Facilities* Case No. IPC-E-07-03, Order No. 30488 (2008).

¹⁴ *Application of PacifiCorp for Approval of a Power Purchase Agreement Between PacifiCorp and Schwindeman Wind LLC*, Case No. PAC-05-09, Order No. 29880 (2005).

¹⁵ Order No. 30000 (2006).

¹⁶ *Application of Idaho Power Company for Approval of a Firm Energy Sales Agreement with Bennett Creek WindFarm LLC* Case No. IPC-E-06-35, Order No. 30453 (2007).

During the moratorium period a few projects were able to meet the “grandfathering” criteria.¹⁷ Several projects sponsored by a single developer also obtained “grandfathered status.”¹⁸ Only the Cassia and Bennett projects are under construction, however.

Also during the moratorium period the Commission addressed a problem of transmission constraint in the Twin Falls area. In 2006, Cassia Wind filed a Complaint, arguing that responsibility for upgrades should be borne by IPCo’s ratepayers.¹⁹ After a hearing the Commission informally indicated it believed PURPA projects should bear some responsibility and the Commission encouraged settlement discussions. After extended discussions, a settlement establishing a cost sharing formula and defining protocols for management of the interconnection queue was reached. The Commission approved the settlement in 2007.²⁰

In September of 2007, Idaho Power filed a new case, calling into question the methodology by which natural gas prices are escalated in the avoided cost computation.²¹ Several parties objected, contending it was inappropriate to examine just a single element of avoided costs. Those arguments were rejected and the Commission adopted a middle ground approach recommended by Staff, Avista and PacifiCorp.²² Order No. 30480 contains Idaho’s current avoided cost rates. However, in that Order the Commission encouraged workshops to examine other variables. Those workshops have been completed and parties have reached agreement on the non-fuel variables. A Stipulation is pending before the Commission for consideration.

¹⁷ *Petition of Cassia Wind to Determine Exemption Status*, Case No. IPC-E-05-35, Order No. 29954 (2006); *Petition of Magic Wind to Determine Exemption Status*, Case No. IPC-E-05-34 (2006); *Bennett Creek*, *supra*.

¹⁸ See e.g. *Application of Idaho Power Company for Approval of a Firm Energy Sales Agreement with Milner Dam WindPark LLC*, Case No. IPC-E-05-30, Order No. 29948 (2006).

¹⁹ *Cassia Gulch Wind Park LLC and Cassia Windfarm LLC v. Idaho Power Company*, Case No. IPC-E-06-21.

²⁰ Order No. 30414.

²¹ *Petition to Modify Methodology for Determining Fuel Costs Used to Establish Published Rates for PURPA Qualifying Facilities*, Case No. IPC-E-07-15.

²² Order No. 30480; Reconsideration Order No 30503.