

✓ Ann Ack sent 5/10/05 To Adv. ✓ To Comm. H

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION



BRIAN SCHWEITZER GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074 TELEFAX NUMBER (406) 444-2684

STATE OF MONTANA

WATER RESOURCES DIVISION (406) 444-6601 TELEFAX NUMBERS (406) 444-0533 / (406) 444-5918 http://www.dnrc.mt.gov

1424 9TH AVENUE PO BOX 201601 HELENA, MONTANA 59620-1601

May 6, 2005

Idaho Public Utilities Commission Attn: Commission Secretary 472 W. Washington Street Boise, ID 83707

Case No. IPC-E-05-13

RECEIVED FILED 2005 MAY -9 PM 3:19 IDAHO PUBLIC UTILITIES COMMISSION

The Idaho Public Utilities Commission (IPUC) solicited public comment on a contract between Idaho Power Co. and Dry Creek, L.L.C. for power purportedly from a "Montana hydro project" near Toston, Montana. The Montana Department of Natural Resources and Conservation (MDNRC), as owner and operator of the Broadwater Hydroelectric Project (the Facility) near Toston, Montana, is concerned about certain statements in the IPUC's notice and Idaho Power Co.'s application that do not comport with the MDNRC's ownership and control of the Facility. The MDNRC is filing these comments only to apprise the IPUC of facts about the Facility, which the MDNRC owns, operates, maintains and manages and not to otherwise participate in the decision making process or contest any approval by the IPUC of any transaction between Dry Creek, L.L.C. and Idaho Power Co. or Dry Creek and NorthWestern. The MDNRC is not party to and makes no representations and expresses no opinion, legal or factual, about the "Firm Energy Sales Agreement between Idaho Power and Dry Creek, L.L.C." or the "Delivery Agreement Between Dry Creek, L.L.C. and NorthWestern Energy". The MDNRC is not, by filing these comments, submitting itself, or the Facility, to the IPUC's jurisdiction. The comments are based upon the MDNRC's legal and factual interpretations of its own contractual relations only and are not to be applied to any other contracts or relied upon by any other parties.

The MDNRC hereby notifies the IPUC and all parties to the proceedings in Case No. IPC-E-05-13 as follows:

- 1. The MDNRC owns, operates, maintains, and manages the Facility.
2. The MDNRC has no contractual relationship with Dry Creek, L.L.C. and does not lease the Facility or sell electricity to Dry Creek, L.L.C.

3. The MDNRC sells electricity generated at the Facility to NorthWestern Corporation via a "Cogeneration and Small Power Production Long-Term Power Purchase Agreement between the State of Montana and the Montana Power Company"(PPA), and under rates approved by the Montana Public Service Commission. The MDNRC has no contractual obligations to NorthWestern Corporation outside the confines of the PPA.

4. The MDNRC delivers Facility power to NorthWestern at the point of interconnection as described in the PPA. At the point of interconnection title to the electricity passes to NorthWestern, and the MDNRC is not party to, nor obligated under, any transactions that NorthWestern may have entered to dispose of the power after the power is delivered to NorthWestern.

5. The PPA has not been assigned to Dry Creek, L.L.C.

Beyond the filing of the above comments, the MDNRC has no interest in further participating in this matter. The MDNRC is only providing information and has no, nor desires any, involvement with the agreement between Idaho Power Co. and Dry Creek L.L.C. that is subject of this inquiry, or any agreements between Dry Creek L.L.C. and NorthWestern Corporation.

The MDNRC thanks the IPUC for the opportunity to present these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Stults".

Jack Stults, Division Administrator  
Water Resources Division  
MDNRC

✓ Gen. Ack  
sent 5/10/05

✓ To A.V. ✓ To Commis  
; H

## Dry Creek LLC

5203 South 11<sup>th</sup> East  
Idaho Falls, Idaho  
83404

May 9, 2005

Idaho Public Utilities Commission  
Attn: Commission Secretary  
472 W. Washington Street  
Boise, ID 83707  
(208) 334-3762

Re: Case No. IPC-E-05-13 Firm Energy Sales Agreement between Idaho Power Company and Dry Creek LLC ("Dry Creek Agreement")

Dear Commission:

We appreciate the opportunity to further our standing relationship with Idaho Power through the Dry Creek Agreement. In light of the Idaho Public Utilities Commission (IPUC) summary notice, dated April 26, 2005, Dry Creek would appreciate the opportunity to clarify the ownership and operational responsibility for the Broadwater Hydroelectric Project.

The Broadwater Hydroelectric Project is owned, operated and licensed under FERC License #2853 by the State of Montana's Department of Natural Resources ("DNRC"). The DNRC will deliver all of the output to NorthWestern Energy through a long-term agreement and NorthWestern shall deliver all of the rights to the entire electrical energy output of the Facility to Dry Creek. NorthWestern will also provide for shaping and firm transmission integration services to Dry Creek, at Dry Creek's sole cost, which will allow for the specified firm energy schedule to be delivered to the Point of Delivery on the Idaho Power system. Please note that Dry Creek has no direct relationship with the DNRC.

Dry Creek concurs with the remainder of the IPUC notice and remains satisfied with the terms and conditions of the Dry Creek Agreement. Thank you for your assistance and ability to provide Idaho Power with firm energy.

Sincerely,



Ted S. Sorenson

Cc: Idaho Power