



**RICHARDSON & O'LEARY, PLLC**  
ATTORNEYS AT LAW

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Peter Richardson

IDAHO PUBLIC  
UTILITIES COMMISSION

Tel: 208-938-7901 Fax: 208-938-7904

peter@richardsonandoleary.com

P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

November 8, 2010

Ms. Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington  
Boise, ID 83702

CASE NO. IPUE-10-31

Dear Ms. Jewell:

We are enclosing an Original and seven (7) copies of the FORMAL COMPLAINT OF FALL RIVER RURAL ELECTRIC COOPERATIVE vs IDAHO POWER COMPANY.

Please let us know if you have any questions. Thank you.

Sincerely,

Nina M. Curtis  
Administrative Assistant to Peter Richardson  
Richardson & O'Leary PLLC

Peter J. Richardson (ISB # 3195)  
Gregory M. Adams (ISB # 7454)  
Richardson & O'Leary, PLLC  
515 N. 27<sup>th</sup> Street  
P.O. Box 7218  
Boise, Idaho 83702  
Telephone: (208) 938-7901  
Fax: (208) 938-7904  
[peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
[greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

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Attorneys for Complainant

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

Fall River Rural Electric Cooperative, Inc.  
Complainant,

vs.

IDAHO POWER COMPANY,  
Defendant.

Case No. IPC-E-10-31

FORMAL COMPLAINT

**INTRODUCTION**

1  
2 This is a formal complaint filed by Fall River Rural Electric Cooperative, Inc. ("Fall  
3 River REC") with the Idaho Public Utilities Commission (the "Commission") pursuant to Idaho  
4 Administrative Rules 31.01.01.054. Fall River REC requested that Idaho Power Company  
5 ("Idaho Power") execute a standard Public Utility Regulatory Policies Act of 1978 ("PURPA")  
6 power purchase agreement ("PPA") for qualifying facilities ("QFs") under 10 average monthly  
7 mega-watts ("aMW") for Fall River REC's small power QF. Because Idaho Power has not  
8 negotiated in good faith in response to Fall River REC's attempt to obligate itself to the terms of  
9 a standard PPA at the published avoided cost rates, Fall River REC respectfully requests that the  
10 Commission issue a declaratory judgment that Fall River REC is entitled to such a PPA and

1 further requests that the Commission order Idaho Power to enter into a PPA at the rates in effect  
2 on the date of this filing (errata to Order No. 31025).

3 **PRELIMINARY MATTERS**

4 Copies of all pleadings and other correspondence in this matter should be served upon  
5 counsel for Fall River REC at:

6 Peter J. Richardson  
7 Gregory M. Adams  
8 Richardson & O’Leary, PLLC  
9 515 N. 27<sup>th</sup> Street  
10 P.O. Box 7218  
11 Boise, Idaho 83702  
12 Telephone: (208) 938-7901  
13 Fax: (208) 938-7904  
[peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
[greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

14  
15  
16 **In support of this Complaint, Fall River REC alleges as follows:**

17 **IDENTITY OF PARTIES**

18 1. Idaho Power is an Idaho Corporation with its principal place of business at 1221  
19 West Idaho Street, Boise, Idaho 83702. Idaho Power Company is an electric company and a  
20 public utility subject to the jurisdiction and regulation of the Idaho Public Utilities Commission  
21 pursuant to I.C. § 61-129. Idaho Power is subject to the jurisdiction of the Commission, the  
22 Public Utility Commission of Oregon, and the Federal Energy Regulatory Commission  
23 (“FERC”).

24 2. Fall River Rural Electric Cooperative, Inc. is a electric cooperative organized as a  
25 corporation duly authorized to conduct business in the State of Idaho, and has the rights to  
26 develop and dispose of the output of the Chester Diversion Hydroelectric Project, which is a  
27 qualifying facility under the Public Utility Regulatory Policies Act of 1978.

1 **JURISDICTION**

2 3. This case involves PURPA’s avoided cost provisions and FERC implementing  
3 regulations thereto, which PURPA directs states to implement. *See* 16 U.S.C. § 824a-3 (a)-(g);  
4 *FERC v. Mississippi*, 456 U.S. 742, 751 (1982). In Idaho, the Commission possesses jurisdiction  
5 over complaints regarding rates of public utilities, including PURPA rates. I.C. §§ 61-129, -501.  
6 -502, -503, -612; *see also Afton Energy Inc. v. Idaho Power Co.*, 111 Idaho 925, 929, 729 P. 2d  
7 400, 404 (1986). The Commission has jurisdiction to issue declaratory judgments regarding  
8 utility contracts pursuant Idaho’s Declaratory Judgment Act, I.C. § 10-1203. *See Utah Power*  
9 *and Light v. Idaho Pub. Utilities Commission*, 112 Idaho 10, 12, 730 P.2d 930, 932 (1986).

10 **APPLICABLE LAWS AND REGULATIONS**

11 4. Section 210 of PURPA requires electric utilities to purchase power produced by  
12 small power producers that obtain QF status under section 201. 16 U.S.C. § 824a-3(a)(2). FERC  
13 rules provide QFs with the option of selling electricity and capacity to a utility based on the  
14 utility’s “avoided costs” at the time the QF incurs a legally enforceable obligation to deliver  
15 energy or capacity over a specified term. *See* 18 C.F.R. § 292.304(d)(2)(ii). Thus, “a QF, by  
16 committing itself to sell to an electric utility, also commits the electric utility to buy from the QF;  
17 these commitments result either in contracts or in non-contractual, but binding, legally  
18 enforceable obligations.” *JD Wind 1, LLC*, “Notice of Intent Not to Act and Declaratory Order,”  
19 129 FERC ¶ 61,148, at p. 10-11 (November 19, 2009).

20 **FACTUAL BACKGROUND**

21 5. Fall River REC, and its predecessors, have been actively engaged in the  
22 development of the 3.6 MW Chester Diversion Hydroelectric Project (“Chester Diversion Project”)

1 near Ashton, Idaho. The project has a nameplate capacity rating of 3.6 MW, and will therefore  
2 generate no more than 10 average monthly mega-watts.

3 6. Fall River REC, and its predecessors, have made substantial efforts in  
4 development of the project, and the project is mature and entitled to obligate itself to a long-term  
5 PPA for a PURPA QF under 10 aMW entitled to the published rates. Fall River REC currently  
6 possesses a license to operate the Chester Diversion Project under the Federal Power Act, as well as  
7 the necessary state law water rights, and county zoning and construction permits. The project is  
8 scheduled to be complete and online in the summer of 2011.

9 7. Fall River REC contacted with Idaho Power regarding the project and its specifics  
10 in an attempt to secure a 4-year PURPA PPA at the non-levelized published rates. Fall River  
11 REC proposed to interconnect the Chester Diversion Project with its own system and wheel the  
12 output through Bonneville Power Administration (“BPA”) for delivery of the output to Idaho  
13 Power’s system at the Goshen substation.

14 8. Fall River REC intended to obligate itself to enter into the standard PURPA PPA  
15 at a time when the rates in Order No. 31025 were applicable to its project, by providing Idaho  
16 Power with the specifics of the hydro-project, its interconnection, its transmission, and sale of its  
17 output to Idaho Power under a standard PURPA PPA containing all of the terms and conditions  
18 approved by the Commission. Fall River REC hereby reiterates its intent to obligate itself to the  
19 requested PPA.

20 9. Despite Fall River REC’s efforts, Idaho Power has acted in bad faith.

21 10. Specifically, after the close of business on Friday, November 5, 2010, Fall River  
22 REC learned of Idaho Power’s joint petition and motion, with Rocky Mountain Power and  
23 Avista Corporation, filed in Commission Case No. GNR-E-10-04, requesting the Commission

1 immediately lower the eligibility cap for published rates from 10 aMW to 100 kilowatts of  
2 nameplate capacity. Idaho Power acted in bad faith by failing to notify Fall River REC that it  
3 would file this Joint Motion to lower the eligibility cap for published avoided cost rates prior to  
4 executing the PPA to which Fall River REC has attempted to obligate itself.

5 11. Indeed, Idaho Power provided Fall River REC with no advance notice of its intent  
6 to request that the Commission make the PPA sought by Fall River REC unavailable, and filed  
7 that Joint Motion prior to even responding to Fall River REC's request for a PPA. It is therefore  
8 obvious that Idaho Power does not intend to enter into the requested PPA, despite its legal  
9 obligation to do so.

## 10 LEGAL CLAIM

### 11 Complainant's Claim for Relief

12 **Idaho Power is in violation of PURPA, FERC's regulations and orders, and the**  
13 **Commission's orders by failing to provide Fall River REC with a power purchase**  
14 **agreement with published avoided cost rates in Order No. 31025.**

15 12. Fall River REC re-alleges and incorporates all preceding paragraphs.

16 13. Fall River REC has attempted in good faith to engage in negotiations to obtain a  
17 fully executed power purchase agreement to deliver energy and capacity to Idaho Power from the  
18 Chester Diversion Project.

19 14. Fall River REC committed itself to sell energy and capacity from its QF to Idaho  
20 Power at a time when the rates in Order No. 31025 were applicable to its QF, and, consequently,  
21 Fall River REC committed Idaho Power to buy from the QF at those rates.

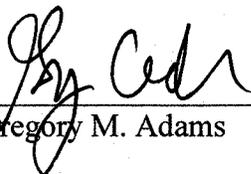
22 15. These commitments result in non-contractual, but binding, legally enforceable  
23 obligations. 18 C.F.R. § 292.304(d)(2)(ii); *JD Wind 1, LLC*, 129 FERC ¶ 61,148, at pp. 10-11.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of November, 2010, a true and correct copy of the within and foregoing **FORMAL COMPLAINT BY FALL RIVER RURAL ELECTRIC COOPERATIVE, INC.** was served by HAND DELIVERY, to:

Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, Idaho 83702  
[Jean.jewell@puc.idaho.gov](mailto:Jean.jewell@puc.idaho.gov)

  
\_\_\_\_\_  
Gregory M. Adams