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IDAHO PUBLIC UTILITIES COMMISSION

DONOVAN E. WALKER
Lead Counsel
dwalker@idahopower.com

November 3, 2011

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, Idaho 83702

NEW CASE

Re: Case No. IPC-E-11-23
*IN THE MATTER OF IDAHO POWER COMPANY'S PETITION FOR
DECLARATORY ORDER REGARDING PURPA JURISDICTION*

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Petition for Declaratory Order in the above matter.

Very truly yours,


Donovan E. Walker

DEW:csb
Enclosures

DONOVAN E. WALKER (ISB No. 5921)
JASON B. WILLIAMS (ISB No. 8718)
Idaho Power Company
1221 West Idaho Street (83702)
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Attorneys for Idaho Power Company

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IDAHO PUBLIC UTILITIES COMMISSION

NEW CASE

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)
COMPANY'S PETITION FOR) CASE NO. IPC-E-11-23
DECLARATORY ORDER REGARDING)
PURPA JURISDICTION.) PETITION FOR DECLARATORY
) ORDER
)

Idaho Power Company ("Idaho Power" or "Company"), pursuant to RP 101, hereby petitions the Idaho Public Utilities Commission ("Commission") to issue an Order determining that the Commission will exercise its jurisdiction over the proposed Public Utility Regulatory Policies Act of 1978 ("PURPA") Qualifying Facility ("QF") transaction(s) proposed by Kootenai Electric Cooperative, Inc. ("Kootenai Electric").

In support of this request, Idaho Power states as follows:

I. BACKGROUND

Kootenai Electric has a proposed PURPA QF project called the Fighting Creek Landfill Gas to Energy Station located in Kootenai County near the city of Bellgrove, Idaho ("Project"). The Project is a 3.2 megawatt landfill gas generating facility. On October 19, 2011, Kootenai Electric, through counsel, delivered via e-mail to Idaho

Power a letter requesting a "Standard Oregon Power Purchase Agreement" with Idaho Power for the output from the Project. See October 19, 2011, letter to Donovan Walker and Randy Allphin from Gregory Adams attached hereto as Attachment No. 1 and incorporated herein by this reference.

Kootenai Electric also forwarded to Idaho Power a copy of its Federal Energy Regulatory Commission Form 556, which is the Self-Certification of QF Status for a Small Power Production or Cogeneration Facility. Kootenai Electric proposes that the Project will interconnect with its own electrical distribution system and then deliver the output to Avista Corporation ("Avista") under an amended interconnection agreement with Avista that is yet to be executed. Attachment No. 1, pp. 5-6. Kootenai Electric then proposes to wheel the generation across Avista's system for delivery to Idaho Power.

Id. at p. 6. Regarding delivery to Idaho Power, Kootenai Electric states:

From the point of delivery to Avista, Kootenai will wheel the output under a point to point transmission agreement with Avista to Idaho Power's electrical system. The point of delivery will be the point where the point of ownership of transmission facilities on the 230 kilovolt Lolo to Oxbow transmission line changes from Avista to Idaho Power near the Lolo substation but in the State of Oregon. We understand that Avista's point of scheduling will be at the Lolo substation, but the point of change of ownership of facilities occurs across the state line in Oregon. Kootenai has investigated availability of transmission on Avista's system for this arrangement and is confident firm transmission is currently available . . . and expects to have a firm transmission agreement with Avista in place within two months.

Attachment No. 1, p. 6.

Idaho Power responded to Kootenai Electric's request for a Standard Oregon Power Purchase Agreement with a November 3, 2011, letter stating that the request

was received but that Idaho Power was not required to offer a standard Oregon PURPA contract, and refers Kootenai Electric to this filing. See November 3, 2011, letter from Donovan E. Walker regarding the request for a Standard Oregon Power Purchase Agreement attached hereto as Attachment No. 2 and incorporated herein by this reference.

II. THE COMMISSION SHOULD ASSERT PRIMARY JURISDICTION OVER THE PROPOSED PURPA TRANSACTION

The Commission has addressed the issue of QF projects proposing to wheel power across state lines and has given clear direction as to which state's PURPA rules will apply to such transactions. *Earth Power Energy and Minerals, Inc. vs. Idaho Power Company*, Case No. IPC-E-92-29, Order Nos. 25174, 25249 (1993); *Island Power Company, Inc. vs. PacifiCorp, dba Utah Power & Light Company*, Case No. UPL-E-93-4, Order Nos. 25245 (1993), 25528 (1994); *Vaagen Bros. Lumber, Inc. vs. The Washington Water Power Company*, Case No. WWP-E-94-6, Order No. 25176 (1994). Please see Idaho Power's Petition for Declaratory Order, Case No. IPC-E-11-14, incorporated herein by this reference, for a more detailed discussion of the above-referenced cases. Please also see Rocky Mountain Power's Petition to Intervene and Comments, Case No. IPC-E-11-14, incorporated herein by this reference, for a more detailed discussion regarding multi-state PURPA jurisdictional issues and the federal PURPA obligations implicated thereby.¹

The Commission has established that it has federally derived jurisdiction pursuant to PURPA over any utility that it has ratemaking authority over. Order No.

¹ The points and authorities cited by Idaho Power and Rocky Mountain Power in Case No. IPC-E-11-14 are relevant to the Commission's requested determination in this matter. To avoid undue repetition, they are not fully duplicated or repeated here. However, those points and authorities are fully incorporated herein by reference and properly before the Commission in this matter.

25245, p. 5; Order No. 25174, p. 6-7. Additionally, the Commission has stated that this federally derived jurisdiction over a multi-state utility may exist concurrently with other state regulatory authorities that also have ratemaking authority over the utility. Order No. 25249, p. 2. Through the cases cited above, the Commission has discussed certain circumstances where it determines whether it will elect to exercise that jurisdiction or not. What necessarily follows the Commission's exercise, or deferral, of its jurisdiction is whether the Commission's PURPA rules, regulations, and procedures – including which states avoided cost rates and contract – will apply to the proposed QF transaction. It is proper and in the public interest that the Commission assert its jurisdiction over Kootenai Electric's proposed QF transaction with Idaho Power.

Although not identical, this case is similar to – and involves the same authorities as – Case No. IPC-E-11-14, the Western Desert Energy 1, LLC (“Western Desert”) and Tumbleweed Energy II, LLC (“Tumbleweed”) declaratory order case. In Western Desert and Tumbleweed, both PURPA wind QFs located in Idaho Power's Idaho service territory and interconnecting with Idaho Power's system in Idaho propose to compel Idaho Power to wheel their generation across its system into its Oregon service territory and then compel Idaho Power to contract with them pursuant to an Oregon standard QF contract containing Oregon avoided cost rates. Here, Kootenai Electric proposes a similar transaction, except it will interconnect with Avista and wheel its generation across Avista's system to reach Idaho Power. Kootenai Electric, similar to Western Desert and Tumbleweed, seeks to compel Idaho Power to contract with an Idaho QF under an Oregon standard QF contract using Oregon avoided cost rates. Even if the Commission determines that Idaho Power has an obligation to purchase Kootenai

Electric's QF output, Idaho Power asks that the Commission assert primary jurisdiction over the transaction and declare that the avoided cost and contracting process is that of the Idaho jurisdiction.

There are many factors that directly support the Commission's assertion of its jurisdiction over this transaction, both as a matter of law and as a matter of public policy. The proposed delivery from Avista to Idaho Power occurs where the two utilities' systems meet – at the jointly owned Oxbow-Lolo 230 kilovolt transmission line. Terminal facilities between Avista and Idaho Power are located at the Lolo substation, which is located entirely within the state of Idaho. Idaho Power has facilities located in the Lolo substation, which include the meter for such transactions/transfers. Kootenai Electric even states itself that it understands “that Avista's point of scheduling will be at the Lolo substation.” Attachment No. 1, p. 6. This all takes place in the state of Idaho. The transmission line crosses over into Oregon, and Idaho Power's Oxbow dam and related facilities span the Snake River that forms the border of the two states. It is but a mere technicality that the particular ownership point on the transmission line may occur at a point in Oregon along the transmission line that spans the border between the two states.

Kootenai Electric's proposed transaction is a blatant manipulation of PURPA's rules and regulations by a QF developer in order to financially profit to the direct and substantial detriment of Idaho Power's customers. Kootenai states in its demand letter to Idaho Power that it has attempted to obtain an Idaho QF contract with Avista but has “reached an impasse which would require litigation to resolve.” Attachment 1, p. 2. Thus, Kootenai Electric seeks out any strained argument it can find to try to avoid

addressing the real problems associated with obtaining a QF contract in the jurisdiction where both its project is located and where it interconnects to the transmission grid. Kootenai Electric's proposed transaction stretches the bounds of legitimacy, and such manipulation has the possible practical effect of saddling Idaho customers with additional costs and higher power rates which exceed Idaho Power's avoided costs.

This Commission and the state of Idaho have a substantial interest in the proposed transaction because Idaho customers bear approximately 95 percent of the power supply costs associated with Idaho Power's QF purchases in Oregon. Traditionally, Oregon has allowed Idaho Power to set Oregon avoided cost rates consistent with, and very close to, its avoided costs as established in Idaho. However, recently, in Docket No. UE 241, the Public Utility Commission of Oregon denied Idaho Power's request to utilize the Northwest Power and Conservation Council's updated natural gas forecast to adjust Oregon published, or standard, avoided cost rates to be consistent with those set in Idaho. Thus, at present, Oregon's avoided cost rates for Idaho Power are much higher than the published avoided cost rates in Idaho. This inevitably results in manipulation and gamesmanship by QF developers, such as Kootenai Electric, looking to boost profits at the expense of Idaho Power customers, most of which are located in Idaho. The end result is that if transactions such as that proposed here by Kootenai Electric are permitted, Idaho Power's customers pay a price for QF energy that exceeds the utility's avoided cost and customers are not held indifferent to the utility's purchase from the QF as required by federal law.

Just as is the case with the Western Desert and Tumbleweed QF projects, this is a blatant attempt by Kootenai Electric to manipulate and avoid the Commission's rates,

rules, and regulations that are designed to implement PURPA and protect Idaho customers. This is another example, just as argued by Idaho Power and the other utilities in Case No. GNR-E-10-04 and Case No. GNR-E-11-01, of how QF projects will seek to manipulate and game the system, and go to creative and great lengths to do so, when there is a perceived economic incentive driving them. The Commission recognized this incentive to manipulate and game the system when it ordered the continued application of the 100 kilowatt (“kW”) published rate eligibility cap for wind and solar QFs:

Based upon the record in this case and after careful consideration of the positions presented, the Commission finds it appropriate to maintain the 100 kW eligibility cap for published avoided cost rate for wind and solar QFs. We find that any attempt to implement criteria in an effort to prevent disaggregation would be met by attempts to circumvent such criteria. The economic incentive for the projects is obvious. QF developers are working within the current structure provided by this Commission. However, we emphasize that PURPA and our published rate structure were never intended to promote large scale wind and solar development to the detriment of utility customers. Avoided cost rates are to be just and reasonable to the utility’s ratepayers. 18 C.F.R. § 292.304(a)(1). PURPA entitles QFs to a rate equivalent to the utility’s avoided cost, a rate that holds utility customers harmless – not a rate at which a project may be viable. 18 C.F.R. § 292.304(a)(2). If we allow the current trend to continue, customers may be forced to pay for resources at an inflated rate and, potentially, before the energy is actually needed by the utility to serve its customers. This is clearly not in the public interest.

Case No. GNR-E-11-01, Order No. 32262, p. 8. The Commission continues to recognize the need to accurately establish a proper avoided cost rate for QF generation in Idaho as evidenced by the continued investigation and litigation into avoided cost methodologies in Case No. GNR-E-11-03. The Commission in exercising its jurisdiction

in this matter will preserve and protect the public interest that its recent orders regarding published QF rates and avoided cost methodologies are aimed at upholding.

III. CONCLUSION

Idaho Power respectfully requests that the Commission issue a Declaratory Order finding that under the facts of Kootenai Electric's proposed PURPA QF transaction, the Commission will exercise its jurisdiction in implementing PURPA regulations and require that such transaction be conducted pursuant to Idaho's PURPA rules, rates, and regulations. Moreover, should the Commission find that Kootenai Electric has the right to interconnect, wheel, and deliver its project output as proposed, that the Commission assert primary jurisdiction over the sale to Idaho Power and declare that the applicable avoided cost for the Project's output is the Idaho avoided cost rate and contract terms. To allow Kootenai Electric's proposed transaction to take place would unduly inflate energy costs for Idaho customers and allow a gross manipulation and avoidance of the Commission's rules and regulations designed and implemented to protect the customers of Idaho Power and the public interest.

Respectfully submitted at Boise, Idaho, this 3rd day of November 2011.


DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2011 I served a true and correct copy of the within and foregoing PETITION FOR DECLARATORY ORDER upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff

Kristine A. Sasser
Deputy Attorney General
Idaho Public Utilities Commission
472 West Washington (83702)
P.O. Box 83720
Boise, Idaho 83720-0074

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email Kris.Sasser@puc.idaho.gov

Kootenai Electric Cooperative, Inc.

Peter J. Richardson
Gregory M. Adams
RICHARDSON & O'LEARY, PLLC
515 North 27th Street (83702)
P.O. Box 7218
Boise, Idaho 83707

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email peter@richardsonandoleary.com
greg@richardsonandoleary.com

Doug Elliott, General Manager
Kootenai Electric Cooperative, Inc.
P.O. Box 278
Hayden, Idaho 83835-0278

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email delliott@kec.com


Donovan E. Walker

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-11-23

IDAHO POWER COMPANY

ATTACHMENT NO. 1



RICHARDSON & O'LEARY

ATTORNEYS AT LAW

Tel: 208-938-7900 Fax: 208-938-7904

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

October 19, 2011

Via U.S. Mail and Electronic Mail

Donovan Walker
Randy Allphin
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707

**Re: Kootenai Electric Cooperative's Fighting Creek Landfill Gas to Energy Station
Request for Standard Oregon Power Purchase Agreement**

Mr. Walker and Mr. Allphin:

I write on behalf of my firm's client, Kootenai Electric Cooperative, Inc. (Kootenai), to formally request a standard power purchase agreement (PPA) for its Fighting Creek Landfill Gas to Energy Station, which is a self-certified qualifying facility (QF) under the Public Utilities Regulatory Policy Act of 1978 (PURPA). The facility will generate under 10 megawatts (MW) for delivery to Idaho Power's system in Oregon, and therefore requests the standard PPA for an off-system, non-intermittent QF, currently approved and on file with the Public Utility Commission of Oregon (Oregon Commission). Kootenai requests the published avoided cost rates currently on file in Schedule 85.

Kootenai is willing to agree to all of the standard provisions in the standard offer contract on file with the Oregon Commission. We have included all of the information required in Schedule 85 on page 4 (items (a) through (r)) in the enclosed information sheet to be inserted into the standard contract.

To summarize, the Fighting Creek Landfill Gas to Energy Station will have a nameplate capacity rating of 3.2 MW, consisting of two 1.6 MW generators, and will interconnect directly to Kootenai's own system. Kootenai has an existing interconnection agreement with Avista and is in the final stages of executing an amended interconnection agreement that will govern Avista's acceptance of the Fighting Creek output. From the point of delivery to Avista, Kootenai will wheel the output under a point to point transmission agreement with Avista to Idaho Power's electrical system. The point of delivery will be the point where the point of ownership of transmission facilities on the 230 kilovolt Lolo to Oxbow transmission line changes from Avista to Idaho Power

Mr. Donovan Walker
Mr. Randy Allphin
October 19, 2011
Page 2

near the Lolo substation but in the State of Oregon. We understand that Avista's point of scheduling will be at the Lolo substation, but the point of change of ownership of facilities occurs across the state line in Oregon. Kootenai has investigated availability of transmission on Avista's system for this arrangement and is confident firm transmission is currently available. Kootenai is initiating its transmission service request under Avista's Open Access Transmission Tariff contemporaneous with this PPA request, and expects to have a firm transmission agreement with Avista in place within two months. We have attached the OASIS Available Transmission Capacity Summary for this route to demonstrate transmission is available.

The project is currently under construction and will be online in the very near future. Kootenai has been engaged in discussions with Avista regarding interconnection and sale of the output of this project to Avista under the Idaho Public Utilities Commission's PURPA tariffs. Unfortunately, the parties have reached an impasse which would require litigation to resolve. I inform you of this only so that Idaho Power knows Kootenai is now committed to a PPA with Idaho Power should Idaho Power furnish one, regardless of what Idaho Power may have heard regarding negotiations with Avista.

Kootenai expects to begin start up testing in March 2011, and requests a full commercial online date of May 1, 2012 with the term ending fifteen years later. Because the project will be online soon, Kootenai requests that Idaho Power complete the standard PPA as soon as possible, but in any event no later than the timelines for response set forth in Schedule 85 so that the project is not sitting idle awaiting a PPA. Along those lines, Kootenai also requests that Idaho Power initiate the process of investigating Idaho Power's ability to designate this project as a network resource with Idaho Power's transmission personnel at this time, and that you please advise us of the results as soon as possible.

Please contact me regarding this request, at 208-938-2236, at your earliest convenience. We look forward to hearing back from you soon and progressing towards an executed agreement.

Very truly yours,



Gregory Adams
RICHARDSON AND O'LEARY, PLLC
Attorneys for Kootenai Electric Cooperative, Inc.

cc: Doug Elliott, Kootenai Electric Cooperative, Inc.

Enclosures: Schedule 85 Fighting Creek Project Specifics
Avista OASIS Transmission Tables
FERC Form 556 and Docket Print-out for Docket QF11-178

**Idaho Power Company – Oregon Schedule 85
PURPA Information Request List**

a) Date of Request

October 19, 2011

b) Company/Organization that will be contracting party

Kootenai Electric Cooperative, Inc.

c) Contract notification information including name, address and telephone number

Doug Elliott
General Manager
Kootenai Electric Cooperative, Inc.
P.O. Box 278
Hayden, Idaho 83835-0278
delliott@kec.com
(208) 292-3227 (phone)
(208) 209-0427 (fax)

Alternate:

Shawn Dolan
Kootenai Electric Cooperative, Inc.
P.O. Box 278
Hayden, Idaho 83835-0278
sdolan@kec.com
(208) 292-3276 (phone)

d) Verification that the Qualifying Facility meets the “Eligibility for Standard Rates and Contract” criteria

Kootenai’s Fighting Creek Project meets the Eligibility criteria contained in Oregon Commission orders and Idaho Power’s standard PPA Appendix D because the nameplate capacity is under 10 MW and Kootenai does not own any other qualifying facilities.

e) Copy of the Qualifying Facility’s QF certificate

See attached Form 556, and FERC Docket No. QF11-178 print out.

f) Copy of FERC license (applicable to hydro projects only)

l) Desired term of the Energy Sales Agreement

The Scheduled Operation Date of May 1, 2012, and a 15 year term.

m) Annual net energy amount

For the first contract year, Kootenai estimates that the “Annual Net Energy Amount,” as defined in § 1.1 of the standard Schedule 85 PPA, will be 11,654,860 kwh. This estimate takes into account estimates during the first contract year for station use, fuel availability, capacity factor of the facility, and distribution and transmission line losses. Kootenai reserves the right to update this estimate prior to commercial operation pursuant to § 6.2.2.1 of the standard PPA, and after the commercial online date pursuant to § 6.2.2.2.

n) Maximum capacity of the Qualifying Facility

Appendix B of the standard PPA defines Maximum net output as the maximum amount that could be delivered to Idaho Power’s system.

Nameplate capacity = 3,200 kW
Facility Service Power = 140 kW
Maximum Capacity = 3,060 kW

o) Estimated first energy date

March 1, 2012.

p) Estimated operation date

For Scheduled Operation Date for Appendix B, Kootenai requests May 1, 2012.

q) Point of Delivery

The point where Avista interconnects to Idaho Power’s system in Oregon, near the Lolo substation.

r) Status of Generation Interconnection Process

The 3.2 MW Fighting Creek Landfill Gas to Energy Station will interconnect at the electrical point of attachment to Kootenai Electric Cooperative’s 24.9 kV distribution facilities terminated on the project busbar. Kootenai will use its own distribution system to deliver the output of the project to Avista’s distribution and transmission system. The only interconnection requirements are with Avista, which is the balancing authority in the area of the project. Kootenai has an existing interconnection agreement with Avista and is in the final stages of executing an amended interconnection agreement that will govern Avista’s acceptance of the Fighting Creek output at the point where Avista’s Dower – Post Falls 115kV Tap Transmission Line and Kootenai’s Dower – Post Falls 115kV Tap

Transmission Line are connected. The agreement will call for alternate points of delivery at the point where Avista's Dower – Post Falls 115kV Tap Transmission Line served via Avista's Post Falls – Ramsey 115kV Transmission Line and Kootenai's Dower – Post Falls 115kV Tap Transmission Line are connected, and the point where Avista's Rockford Tap 115 kV Transmission Line is connected to Kootenai's Setters Substation 115 kV Tap.

The Point of metering will be in Seller's Facility, on the 24.9 kV side of the generator step-up transformer over which electric power and energy flows.

From the point of delivery to Avista, Kootenai will wheel the output under a point to point transmission agreement with Avista to Idaho Power's electrical system. The point of delivery will be the point where the point of ownership of transmission facilities on the 230 kilovolt Lolo to Oxbow transmission line changes from Avista to Idaho Power near the Lolo substation but in the State of Oregon. We understand that Avista's point of scheduling will be at the Lolo substation, but the point of change of ownership of facilities occurs across the state line in Oregon. Kootenai has investigated availability of transmission on Avista's system for this arrangement and is confident firm transmission is currently available. Kootenai is initiating its transmission service request under Avista's Open Access Transmission Tariff contemporaneous with this PPA request, and expects to have a firm transmission agreement with Avista in place within two months.

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-11-23

IDAHO POWER COMPANY

ATTACHMENT NO. 2

DONOVAN E. WALKER
Lead Counsel
dwalker@idahopower.com

November 3, 2011

VIA ELECTRONIC AND U.S. MAIL

Gregory M. Adams
RICHARDSON & O'LEARY, PLLC
515 North 27th Street
P.O. Box 7218
Boise, Idaho 83707

Re: Invalid Request – Your October 19, 2011, Oregon Standard Qualifying Facility (“QF”) Contract Request on Behalf of Kootenai Electric Cooperative, Inc.

Mr. Adams:

This letter is in response to your request on behalf of Kootenai Electric Cooperative, Inc. (“Kootenai”) for an energy sales agreement pursuant to Idaho Power Company’s (“Idaho Power”) Oregon Tariff Schedule 85, Cogeneration and Small Power Production Standard Contract Rates (March 1, 2010). Because the proposed QF project is located in the state of Idaho, with an interconnection to a public utility in the state of Idaho, as well as other additional factors, if Kootenai wishes for its project to obtain a power sales agreement pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”) with Idaho Power, Kootenai must do so according to the Idaho Public Utilities Commission’s PURPA rates, rules, and regulations – not those of Oregon.

Idaho Power has filed a case today with the Idaho Public Utilities Commission seeking a declaratory order on this matter. Idaho Power will forward a copy of said filing to you under separate cover.

Sincerely,



Donovan E. Walker

DEW:csb
cc: Randy Allphin (via e-mail)