

DONOVAN E. WALKER (ISB No. 5921)  
JASON B. WILLIAMS (ISB No. 8718)  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-5317  
Facsimile: (208) 388-6936  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)

Attorneys for Idaho Power Company

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IDAHO PUBLIC  
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

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Idaho Power Company ("Idaho Power" or "Company"), pursuant to the Idaho Public Utilities Commission's ("Idaho Commission" or "Commission") Notice of Petition and Notice of Comment Deadline, Order No. 32410, issued in the above-referenced case, hereby files the following Comments:

**I. INTRODUCTION**

On November 3, 2011, Idaho Power filed a Petition for Declaratory Order requesting that the Commission 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 proposed by Kootenai Electric Cooperative, Inc. ("Kootenai" or "Kootenai Electric" or "Project"). Specifically, Idaho Power asks the Commission to find that, under the facts of Kootenai's proposed PURPA

QF transaction, the Commission will 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.

On November 25, 2011, Kootenai Electric filed an Answer and Motion to Dismiss. Kootenai argues that the Commission has no jurisdiction to intervene in the proposed transaction and asks that the Petition therefore be dismissed. Additionally, on January 3, 2012, Kootenai served a Complaint upon Idaho Power with the Public Utility Commission of Oregon ("Oregon Commission") asking the Oregon Commission to require Idaho Power to enter into Oregon Tariff Schedule 85 power purchase agreements with Kootenai.

## **II. COMMENTS**

### **A. The Idaho Commission Has Jurisdiction Over This Matter.**

Kootenai's primary argument is that the Idaho Commission has no jurisdiction over this matter. Answer at pp. 2, 9-19. This argument is entirely dependent upon a factual determination regarding the point of delivery. Kootenai argues that because the designated point of change in **ownership** of the owned line segment (LoLo-Oxbow 230 kilovolt ("kV") line) jointly owned by Idaho Power and Avista Corp. ("Avista") on which the Project's energy will be transmitted occurs across the Idaho border in the state of Oregon that this defeats the Idaho Commission's jurisdiction in this matter. This is, however, the wrong inquiry. The correct inquiry is where the **point of delivery** of the Project's energy exists. Here the point of delivery occurs at the LoLo substation, in the state of Idaho. The entirety of Kootenai's argument assumes that the point of delivery occurs in the state of Oregon, which it does not. The fact that the point of delivery is in Idaho, that the QF is in Idaho, and that Idaho Power is regulated by the Idaho

Commission all support the Idaho Commission's exercise of its jurisdiction to implement PURPA for a proposed transaction with Idaho Power.

The Commission has established that it has federally derived jurisdiction pursuant to PURPA over any utility that it has ratemaking authority over. Order No. 25245, p. 5; Order No. 25174, pp. 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; *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); See Petition at p. 3.

Here it is without dispute that the Idaho Commission has ratemaking authority over Idaho Power, which provides retail electric service to customers in both Idaho and eastern Oregon. It is also without question that the Idaho Commission has in place a regulatory framework for the implementation of PURPA. See *supra*. 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 state's avoided cost rates and contract – will apply to the proposed QF transaction. Consequently, the question is not whether the Commission has jurisdiction or not, the question is whether the Idaho Commission will exercise, or defer, that jurisdiction. It is proper and in the public

interest that the Commission assert its jurisdiction over Kootenai Electric's proposed QF transaction with Idaho Power.

**B. The Point of Delivery Is in the State of Idaho.**

For the determination of whether to exercise or defer its jurisdiction the Commission looks in the first instance at where the point of interconnection is. The ***point of interconnection*** is the relevant consideration for a QF that is located on the same utility's transmission system that it is proposing to sell its electric output to pursuant to PURPA. When the QF resides off system, or has an interconnection to a different utility than that which it proposes to sell its electrical output to, then the relevant determination is where the ***point of delivery*** is located. See Case No. IPC-E-11-14, incorporated herein by this reference, for a more detailed discussion of the above-referenced cases; See also 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.<sup>1</sup>

Kootenai goes through great lengths in its Answer attempting to establish that the change in ownership of the LoLo-Oxbow 230 kV transmission line exists in the state of Oregon. However, the actual point of delivery for a transfer from Avista to Idaho Power at this location occurs, and is metered, at the LoLo substation, located entirely within the state of Idaho. 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

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<sup>1</sup> 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.

transactions/transfers. The point of delivery in is Idaho. Kootenai admits in its pleadings that pursuant to the *Island Power* case, the Commission has established that it will exercise primary jurisdiction over a QF sale when the point of delivery is within the state of Idaho. Answer pp. 17-18.

**C. The Proposed Delivery of Electricity Would Serve Idaho Load and Be Paid for by Idaho Customers.**

A delivery of electricity from Avista to Idaho Power at the LoLo substation is a delivery into Idaho, and not to an ownership point in Oregon. A QF's output must be a Designated Network Resource ("DNR") on Idaho Power's transmission system, which means in a basic sense that it is studied to serve load, must have available transmission capacity, and is designated to serve native loads on Idaho Power's system. As a DNR delivered from Avista to Idaho Power at the LoLo substation, the output from Kootenai's QF cannot be used to serve only Oregon load. It is used to serve Idaho system load, which is not specific to Oregon. It is a delivery into Idaho, and not to an ownership point in Oregon.

Additionally, the electric output delivered by Kootenai, an Idaho QF, to a point of delivery in the state of Idaho, LoLo substation, will be a DNR on Idaho Power's system, as are all PURPA QFs, that will primarily serve Idaho load, and be paid for primarily by Idaho customers. Kootenai states in its Answer that any difference in avoided cost rates between Idaho and Oregon is a red herring and is not relevant. Answer pp. 22-23. However, as stated in Idaho Power's Petition, the Idaho Commission and the state of Idaho has 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. Petition pp. 6-8. 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 or leverage some other perceived benefit 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 Idaho customers pay a price for QF energy that exceeds the utility's avoided cost as determined by the Idaho Commission and Idaho customers are not held indifferent to the utility's purchase from the QF as required by federal law.

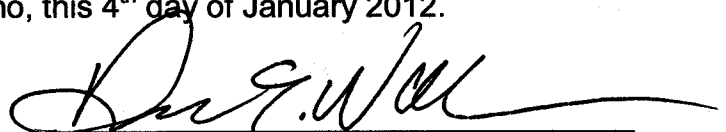
Kootenai states in its Answer that it is not concerned with the additional price that Oregon QFs receive over Idaho QFs, but that it is trying to force a transaction into the Oregon jurisdiction in order to gain title to the Renewable Energy Certificates/Credits ("RECs") from the project. Answer p. 3 ("Kootenai would have happily accepted the PPA terms tendered by Avista, including the current IPUC avoided cost rates, if the PPA allowed Kootenai to retain clear title to the environmental attributes"). There are two main problems with Kootenai's argument. First, Kootenai has not proposed a transaction that delivers its output into the state of Oregon. As discussed above, the point of delivery is in the state of Idaho, the output will be a DNR used to serve primarily Idaho load, and it will be paid for primarily by Idaho customers. Second, the fact that Kootenai has entered into a transaction purporting to grant ownership of the RECs for this QF project to another entity, without a power sales agreement and in a climate where the ownership of RECs from QF projects in the state of Idaho is an unsettled issue, is questionable at best – and was done at Kootenai's own risk. See Case No. IPC-E-11-15 (demonstrating uncertainty of ownership of RECs from QFs in the state of Idaho).

### **III. CONCLUSION**

The Idaho Commission clearly has jurisdiction over Idaho Power, and over the proposed PURPA QF transaction. Moreover, because the proposed transaction has a point of delivery in the state of Idaho, the Idaho Commission should exercise its jurisdiction over this matter. The QF is located in the state of Idaho. The point of delivery to Idaho Power occurs at a substation in the state of Idaho. The QF's output will be a Designated Network Resource to serve Idaho system loads. The QF's proposed output is delivered into Idaho, and not an ownership point in Oregon. Ninety-five percent of the cost paid to the QF for its proposed output will be paid for by Idaho customers. Factually, this simply is not a delivery to the Oregon jurisdiction. It is a delivery to the Idaho jurisdiction and, consequently, it is properly conducted pursuant to the Idaho Commission's rates, rules, and implementation of PURPA.

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 assert primary jurisdiction over the proposed sale to Idaho Power and declare that the applicable avoided cost for the Project's output is the Idaho avoided cost rate and the applicable contract terms and conditions are the Idaho contractual terms and conditions. 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 Idaho 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 4<sup>th</sup> day of January 2012.



DONOVAN E. WALKER  
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of January 2012 I served a true and correct copy of the within and foregoing COMMENTS OF IDAHO POWER COMPANY 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](mailto:Kris.Sasser@puc.idaho.gov)

**Kootenai Electric Cooperative, Inc.**

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

☐ Hand Delivered  
☒ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
[greg@richardsonandoleary.com](mailto: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](mailto:delliott@kec.com)



Donovan E. Walker