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IDAHO PUBLIC
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DONOVAN E. WALKER
Lead Counsel
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September 19, 2012

VIA HAND DELIVERY

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

Re: Case No. IPC-E-11-23
Idaho Power Company's Response to Kootenai Electric Cooperative, Inc.'s
Motion to Supplement the Record

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and Seven (7) copies of Idaho Power Company's Response to Kootenai Electric Cooperative, Inc.'s Motion to Supplement the Record.

Very truly yours,

Donovan E. Walker

DEW:evp
Enclosures

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	CASE NO. IPC-E-11-23
IDAHO POWER COMPANY FOR A)	
DECLARATORY ORDER REGARDING)	IDAHO POWER COMPANY'S
PURPA JURISDICTION)	RESPONSE TO KOOTENAI
)	ELECTRIC COOPERATIVE, INC.'S
)	MOTION TO SUPPLEMENT THE
)	RECORD

Pursuant to Rule 57 Idaho Power Company ("Idaho Power" or "Company") submits to the Idaho Public Utility Commission ("Commission") this Response to Kootenai Electric Cooperative, Inc.'s Motion to Supplement the Record ("Motion"). The Company does not object to the Commission taking official notice of the Federal Energy Regulatory Commission's ("FERC") recent ruling ("FERC Avista Order") on the transmission agreement between Avista Corporation and Kootenai Electric Cooperative, Inc.'s ("Kootenai").¹ Rather, this filing is intended to respond to the substantive arguments made in the Motion regarding the legal import of the FERC Avista Order.

¹ *Re Avista Corp.*, 140 F.E.R.C. ¶ 61,165 (Aug. 31, 2012).

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"). Idaho Power asked 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, arguing that the Commission has no jurisdiction to intervene in the proposed transaction. 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. ARGUMENT

The FERC Avista Order is not dispositive of the issue presented in this case—whether the Idaho Commission has primary jurisdiction over a QF located in Idaho proposing to wheel power across state lines. The Commission's authority to implement PURPA does not require reliance on the FERC Avista Order.

Moreover, even if the FERC Avista Order did control the outcome of this case, it would not support Kootenai's claim to an Oregon Schedule 85 Energy Sales

Agreement. FERC concluded only that the POD described in the Avista transmission agreement with Kootenai conformed to the applicable standards.² In making this finding, FERC observed that Points of Receipt (“PORs”) and Points of Delivery (“PODs”) may “represent multiple facilities . . . not just a single control area interface.”³ As such, FERC did *not* conclude that the POD in this case is *not* the control area interface (*i.e.*, the Lolo Substation). Rather, FERC concluded that the POD in the transmission agreement describes two facilities—the Lolo Substation as the control area interface and the “entirety of Avista’s transmission assets on the Lolo-Oxbow line.”⁴ Indeed, FERC specifically rejected Kootenai’s argument that the point in change in ownership is the “only location to which Avista will deliver the QF output for Idaho Power’s purchase and use . . .”⁵

FERC’s finding that the POD includes the control area interface is important because service under Idaho Power’s Oregon Schedule 85 “is available for power delivered to the Company’s control area within the State of Oregon.”⁶ Thus, to the extent that the FERC Avista Order concludes that the POD describes two facilities, the facility that is relevant for purposes of Schedule 85 is the control area interface, which is the Lolo Substation. It is at that point that the Qualifying Facilities’ (“QF”) output will enter Idaho Power’s control area and thereafter be subject to Idaho Power’s control. Because this occurs in Idaho, the Commission correctly has primary jurisdiction in this case. Therefore, the FERC Avista Order supports the Company’s position that the POD is the control area interface, which is at the Lolo Substation in the state of Idaho.

III. CONCLUSION

The Commission should grant Idaho Power’s original Petition for a Declaratory Order and assert primary jurisdiction over the transaction because Kootenai is located

² FERC Avista Order ¶ 21.

³ FERC Avista Order ¶ 21.

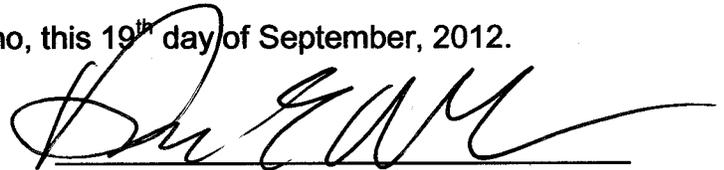
⁴ FERC Avista Order ¶ 21. See *also* Motion at 2 (describing Avista’s proposed POD).

⁵ FERC Avista Order ¶ 21.

⁶ Schedule 85 at 1.

in the state of Idaho and Kootenai's output will be delivered to Idaho Power's control area in the state of Idaho. The Commission should assert jurisdiction over the transaction and declare that the applicable avoided cost rate and contract terms and conditions are the Idaho contractual terms and conditions.

Respectfully submitted at Boise, Idaho, this 19th day of September, 2012.

A handwritten signature in black ink, appearing to read "D. Walker", written over a horizontal line.

DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September 2012 I served a true and correct copy of the within and foregoing IDAHO POWER COMPANY'S RESPONSE TO KOOTENAI ELECTRIC COOPERATIVE, INC.'S MOTION TO SUPPLEMENT THE RECORD upon the following named parties by the method indicated below, and addressed to the following:

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