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IDAHO PUBLIC
UTILITIES COMMISSION

January 4, 2012

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

**RE: IPC-E-11-23 – Kootenai Electric Cooperative, Inc.'s Comments in
Opposition to Idaho Power's Petition for Declaratory Order**

Dear Ms. Jewell:

Enclosed please find **Kootenai Electric Cooperative, Inc.'s Comments in Opposition to Idaho Power's Petition for Declaratory Order** submitted for filing in the above-referenced docket. We have enclosed seven (7) copies, as well as an additional copy for you to stamp for our records.

Sincerely,

Gregory M. Adams
Richardson & O'Leary PLLC

encl.

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Attorneys for Kootenai Electric Cooperative, Inc.

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-11-23

IN THE MATTER OF IDAHO POWER
COMPANY'S PETITION FOR
DECLARATORY ORDER REGARDING
PURPA JURISDICTION.

) **KOOTENAI ELECTRIC**
) **COOPERATIVE, INC.'S**
)
) **COMMENTS IN OPPOSITION TO**
) **IDAHO POWER'S PETITION FOR**
) **DECLARATORY ORDER**
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)

I

INTRODUCTION

Kootenai Electric Cooperative, Inc. ("Kootenai") hereby respectfully submits its Comments in Opposition to Idaho Power's Petition for Declaratory Order in response to Idaho Public Utility Commission's ("IPUC") Order No. 32410. As set forth in detail in Kootenai's Answer and Motion to Dismiss filed on November 25, 2011, Kootenai's electricity will not be made available for Idaho Power's use until after Kootenai pays Avista Corporation ("Avista") to transmit the electricity to Idaho Power's electrical

system in the State of Oregon. Therefore, the IPUC has no jurisdiction to intervene in Kootenai's attempt to avail itself of rules implemented by the Federal Energy Regulatory Commission and Public Utility Commission of Oregon ("OPUC"), which permit Kootenai's proposed transaction, and Kootenai respectfully requests that the IPUC dismiss Idaho Power's Petition. Kootenai stands by the factual and legal assertions in its Answer and Motion to Dismiss, and incorporates that pleading herein by reference. The purpose of these Comments is to provide the IPUC with additional factual developments since the date Kootenai filed its Answer and Motion to Dismiss.

COMMENTS

Since the filing of Kootenai's Answer and Motion to Dismiss, Kootenai has diligently continued its efforts to bring its qualifying facility ("QF") online on schedule and to enter into all necessary agreements, including a long-term PPA with Idaho Power under its OPUC Schedule 85. On December 5, 2011, Kootenai and Avista executed a Letter Agreement regarding construction of the interconnection facilities that set a goal of completing construction by December 30, 2011. Construction of the generation and interconnection facilities has progressed, and Kootenai expects the QF to be ready for start-up testing and operations in January 2012. By early December 2011, Kootenai had still received no communications from Idaho Power other than its initial response letter and Petition for Declaratory Order, sent within minutes of each other on November 4, 2011.

Kootenai again contacted Idaho Power, through counsel, with a letter dated December 6, 2011. Kootenai's December 6, 2011 letter stated that Kootenai assumed Idaho Power had no comments on the draft PPA sent November 17, 2011, other than

Idaho Power's objection to use of the OPUC Schedule 85 PPA. Kootenai's December 6, 2011 letter included the same Schedule 85 PPA previously sent for the Fighting Creek QF on November 17, 2011, with the addition of the signature page executed by Kootenai. Kootenai's signature on the PPA sent December 6, 2011 was made contingent upon the availability of transmission service under Part III of Idaho Power's Open Access Transmission Tariff ("OATT").

Kootenai's December 6, 2011 letter explained that Kootenai intended to obligate itself so long as Idaho Power could accept deliveries at the proposed point of delivery without the need for transmission upgrades to Idaho Power's system that may be assigned to the QF. Kootenai had requested that Idaho Power investigate Network Transmission availability in its letters dated October 19, 2011, and November 17, 2011. As of December 6, 2011, however, Idaho Power had not yet communicated to Kootenai regarding whether Idaho Power Transmission could integrate deliveries at Kootenai's proposed point of delivery.

Kootenai's December 6, 2011 letter included the executed Interconnection Agreement with Avista and included a Short Term Firm Point to Point Transmission Service Agreement Kootenai executed with Avista. The Short Term Firm Point to Point Transmission Service Agreement will allow Kootenai to make short term transmission deliveries to Idaho Power over the 230 kilovolt ("kv") Lolo-Oxbow line discussed in detail in Kootenai's Answer and Motion to Dismiss. Kootenai's December 6, 2011 letter stated that Kootenai would execute a Long Term Firm Transmission Service Agreement with Avista once Idaho Power confirms it will accept and pay for deliveries under the OPUC Schedule 85 PPA.

On December 22, 2011, Idaho Power sent counsel for Kootenai a letter in response to Kootenai's letters dated November 17, 2011, and December 6, 2011. Idaho Power's December 22, 2011 letter again stated Idaho Power's position that Kootenai's "project is subject to the Idaho Public Utilities Commission's ('Idaho PUC') Public Utility Regulatory Policies Act of 1978 ('PURPA') rates, rules, and regulations – not those of Oregon." Idaho Power's December 22, 2011 letter stated that Idaho Power Transmission had confirmed that transmission capacity is available for Network Resource designation of the QF.

Kootenai again contacted Idaho Power, through counsel, with a letter dated December 27, 2011. Kootenai's December 27, 2011 letter stated: "[Y]ou have provided us with no evidence that Idaho Power owns the Lolo substation or takes title to electrical deliveries at any point along the applicable interconnection to Avista prior to the electricity reaching Idaho Power's engineer station at Imnaha, Oregon. Kootenai respectfully disagrees that the Idaho QF tariffs would apply for this delivery to Idaho Power's electrical system in the State of Oregon."

Kootenai's December 27, 2011 letter included the same Schedule 85 PPA previously sent for the Fighting Creek QF, with the addition of the signature page executed by Kootenai not made contingent upon transmission availability. Kootenai's December 27, 2011 letter stated "Kootenai is fully committed to commence deliveries under this contract once Idaho Power agrees to accept and pay for such deliveries according to the rates and terms in the Schedule 85 contract."

Kootenai's December 27, 2011 letter informed Idaho Power that Kootenai may need to secure a substitute power sale contract with Avista terminable on short notice to

allow for start-up testing in early 2012, should Idaho Power continue to reject Kootenai's attempts to enter into an OPUC Schedule 85 PPA. Kootenai's December 27, 2011 letter also stated that Kootenai would need to initiate a complaint at the OPUC the following week to protect Kootenai's rights to the OPUC Schedule 85 PPA if Idaho Power did not agree to the enclosed OPUC Schedule 85 PPA.

Idaho Power responded by letter to counsel for Kootenai dated December 29, 2011, again asserting its position that OPUC Schedule 85 does not apply to Kootenai's proposed QF sale. However, Idaho Power's December 29, 2011 letter provided no further information rebutting Kootenai's position that Idaho Power will not take title to the electricity delivered by Avista until it reaches Imnaha, Oregon. Indeed, to date, Idaho Power has not provided information supporting a claim that Idaho Power takes title to electricity delivered to its electrical system over the 230 kv Lolo-Oxbow line prior to the point of change in ownership at Imnaha, Oregon. Idaho Power's position still appears to be that any QF located in Idaho with an initial point of interconnection within Idaho and selling to Idaho Power must use the IPUC's PURPA rules. For the reasons set forth in Kootenai's Answer and Motion to Dismiss, Kootenai maintains that its QF may use the transmission system of a third party to deliver its output to Idaho Power in the State of Oregon. On January 3, 2012, Kootenai filed a complaint against Idaho Power at the OPUC, requesting that the OPUC compel Idaho Power to enter into the OPUC Schedule 85 PPA for Kootenai's QF deliveries to Idaho Power's electrical system in Oregon.

As noted above, Kootenai's project will be online in the very near future.

Delayed construction would result in paying the construction company for time it planned to be on site but cannot complete construction because an off-taker for the output is

unavailable. To mitigate the impact of Idaho Power's refusal to accept and pay for Kootenai's output under the Oregon Schedule 85 PPA, Kootenai has decided to secure a separate power sale contract that will allow for start-up testing without delaying construction. Kootenai has secured a contract to sell the QF's electrical output "as available" to Avista at points of delivery in Idaho during start-up testing and the period until Idaho Power will agree to accept deliveries. *See* 18 C.F.R. 292.304(d)(1). Kootenai executed this "as available" PPA on January 3, 2012, and expects Avista to file it for approval of the IPUC soon. This "as available" PPA with Avista requires Avista to pay the lesser of Avista's avoided cost rates or 85% of a market index price. This "as available" PPA with Avista allows for Kootenai to terminate its obligation to sell under the "as available" PPA with a 30-day notice to Avista. Kootenai intends to terminate the "as available" PPA with Avista as soon as Idaho Power agrees, or the OPUC compels Idaho Power, to accept deliveries under the OPUC Schedule 85 PPA.

CONCLUSION

Kootenai remains committed to a PPA with Idaho Power under its OPUC Schedule 85 for Kootenai's QF deliveries over Avista's transmission system to Idaho Power's electrical system in Oregon. For the reasons set forth in detail in Kootenai's Answer and Motion to Dismiss, Kootenai again respectfully requests that the IPUC dismiss Idaho Power's petition for lack of jurisdiction.

Respectfully submitted this 4th day of January 2011.

RICHARDSON AND O'LEARY, PLLC



Gregory M. Adams (ISB No. 7454)
Attorney for Kootenai Electric
Cooperative, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2012, a true and correct copy of the within and foregoing **COMMENTS IN OPPOSITION TO PETITION FOR DECLARATORY ORDER BY KOOTENAI ELECTRIC COOPERATIVE, INC.** was served by ELECTRONIC MAIL and HAND DELIVERY, to:

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Gregory M. Adams