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IDAHO PUBLIC
UTILITIES COMMISSION

June 20, 2012

Re: IPC-E-11-23 — Kootenai Electric Cooperative, Inc's Factual Update Filing and Request to Stay Idaho Public Utilities Commission Determination

Enclosed please find Kootenai Electrical Cooperative, Inc's LLC's Factual Update Filing and Request to Stay Idaho Public Utilities Commission Determination, filed in the above-reference docket today.

Thank you for your assistance.

Sincerely,

Gregory M. Adams
Attorney for Kootenai Electric Cooperative

Enc.



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

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

June 20, 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 Factual Update Filing
and Request to Stay Idaho Public Utilities Commission Determination**

Dear Ms. Jewell:

I write on behalf of Kootenai Electric Cooperative, Inc. ("Kootenai"), and request acceptance of this letter filing in the above captioned docket. Although this case has been fully submitted under the Idaho Public Utilities Commission's ("IPUC") modified procedure rules, Kootenai makes this filing pursuant to IPUC Rule of Procedure 66. Kootenai also makes this filing out of its ongoing obligation to apprise the Commission of recent developments in related matters. As explained below, Kootenai submits that the Federal Energy Regulatory Commission ("FERC") will likely resolve the factual dispute in this matter over the Point of Delivery to Idaho Power on the Lolo-Oxbow 230 kilovolt line, and the IPUC should defer ruling on this matter until FERC has had the opportunity to address the issue.

Idaho Power commenced this action at the IPUC on November 3, 2011, requesting that the IPUC assert jurisdiction over Kootenai's proposed qualifying facility ("QF") sale to Idaho Power in the State of Oregon pursuant to available tariffs of the Public Utility Commission of Oregon ("OPUC"). Idaho Power has maintained before the IPUC that "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." *Idaho Power Comments*, IPUC Case No. IPC-E-11-23, p. 2 (January 4, 2012). In contrast, Kootenai directed the IPUC to filings where the utilities have represented to FERC that the portion of line from Avista's Lolo Substation to a point near Imnaha, Oregon is a part of Avista's Transmission System. Consequently, Kootenai maintains that it will deliver to Idaho Power in Oregon, and therefore may use the OPUC QF tariffs. This matter was submitted on comments by both Kootenai and Idaho Power dated January 4, 2012. Idaho Power filed a letter filing correcting a factual error in its pleadings on March 27, 2012, and Kootenai made an update filing on March 28, 2012. In Kootenai's March 28th letter,

Kootenai suggested that the IPUC should consider any relevant documents that may be provided after discovery in the proceeding at the OPUC.

Consistent with Kootenai's March 28th letter, Kootenai is now providing the IPUC with the following update from discovery materials and briefing at the OPUC, where the underlying facts have been further developed.¹ Idaho Power has thus far agreed to the following facts:

- The point in change of ownership in the Lolo-Oxbow line is at Imnaha, Oregon. *Idaho Power's Response to Kootenai's Motion for Summary Judgment* ("Idaho Power SJ Response") OPUC Docket No. UM 1572, p. 2 lns. 8-9 (May 18, 2012).²
- Transmission Capacity over the Lolo to Imnaha section of the line is posted on Avista's OASIS as a part of Avista's transmission system. *Id.* at p. 9 ln. 17 to p. 10 ln. 1.
- Avista maintains the Lolo to Imnaha section of the Lolo-Oxbow line. *Id.* at p. 11 lns. 3-4.
- Although the metering equipment is located at the Lolo Substation, line losses are imputed to Avista up to Imnaha, Oregon. *Id.* at p. 16 lns. 1-3.
- The Lolo-Imnaha section of the line is included in the rate base used by Avista to calculate transmission rates which Kootenai will pay Avista for transmission to Idaho Power's system. *Id.* at p. 8 lns. 3-5.
- A QF interconnecting to the line at any point between the Lolo Substation and Imnaha would do so pursuant to Avista's Open Access Transmission Tariff ("OATT"). *Id.* at p. 12 lns. 11-13.

Additionally, in discovery in the OPUC proceeding, Kootenai obtained the 1958 Interconnection Agreement between Idaho Power, Avista, and PacifiCorp, which governs the Lolo-Oxbow Interconnection and is still in effect.³ That Interconnection Agreement defines Points of Delivery as follows: "The Points of Delivery for energy supplied between the parties hereto, unless otherwise specified, shall be at the place and in the interconnecting circuit between the parties where ownership and control of the facilities changes." Idaho Power has continued to maintain, however, that Avista cannot deliver Kootenai's QF output to Idaho Power anywhere other than to Avista's Lolo Substation – which is 63 miles from the point where Avista's and Idaho Power's facilities are actually interconnected near Imnaha, Oregon.

¹ Kootenai can provide supporting documentation obtained in the OPUC proceeding if Idaho Power disputes these facts or if the IPUC requests such a filing.

² The filings cited herein are available online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=17250>

³ This 1958 Interconnection Agreement is available as part of a compliance filing made on September 12, 2003, in the FERC Docket Nos. ER03-953-001, ER03-954-001 and ER03-964-01, available online at http://elibrary.ferc.gov/idmws/docket_search.asp.

In an attempt to finally resolve the issue, on May, 3, 2012, Kootenai submitted a request with Avista under its OATT for a Long-Term Firm Point-to-Point Transmission Service Agreement ("LTF Point-to-Point Agreement") to the point of interconnection near Imnaha, Oregon. On May 31, 2012, Avista tendered an executable LTF Point-to-Point Agreement to Kootenai. The tendered LTF Point-to-Point Agreement described the Point of Delivery as follows:

The point on the Lolo-Oxbow 230 kV Transmission Line where the 230 kV facilities of Idaho Power Company and Avista are interconnected, and, for scheduling purposes, the LOLO point of delivery.

Avista stated that within 15 days Kootenai must sign the LTF Point-to-Point Agreement or ask that it be filed unexecuted with FERC pursuant to Section 15.3 of the OATT to resolve any remaining concerns.

After Kootenai provided Idaho Power with the LTF Point-to-Point Agreement tendered by Avista, Idaho Power continued to assert in a letter to Kootenai that Kootenai and Avista could not deliver past Avista's Lolo Substation. Idaho Power also wrote a letter to Avista stating it would intervene at FERC in the docket created by Avista's filing of the LTF Point-to-Point Agreement to argue to FERC that Lolo Substation is the required Point of Delivery. Consequently, on June 11, 2012, Kootenai responded to Avista to request that Avista file the unexecuted agreement with FERC pursuant to Section 15.3 of Avista's OATT. Kootenai requested that Avista do so in light of Idaho Power's response. Kootenai requested that the LTF Point-to-Point Agreement specifically include the term "near Imnaha, Oregon" in the definition of the Point of Delivery, and that Avista file the unexecuted agreement with FERC to address that additional request and Idaho Power's position that it can only accept deliveries at the Lolo Substation.

Kootenai then filed a Motion and Affidavit in the OPUC proceedings requesting that the OPUC stay its determination regarding the Point of Delivery until after FERC has addressed the issue. Kootenai has attached that Motion and Affidavit filed at the OPUC to this letter for further background for the IPUC. The Affidavit also contains the LTF Point-to-Point Agreement tendered by Avista.

The dispute between Kootenai and Idaho Power has evolved into a dispute over the proper location of a Point of Delivery in a FERC-jurisdictional transmission agreement. The terms of Kootenai's transmission agreement with Avista are subject to FERC's jurisdiction, and FERC regularly resolves disputes over the proper terms in such agreements, including the proper Point of Delivery.⁴ FERC will likely address the issue in the near future. Although Kootenai maintains that the record overwhelmingly demonstrates that the Point of Delivery is the point of interconnection near Imnaha,

⁴ See 16 U.S.C. §§ 824(b), 824d and 824e; See *Wisconsin Power and Light Co.*, 84 FERC ¶ 61,300 (1998).

Idaho Public Utilities Commission

June 20, 2012

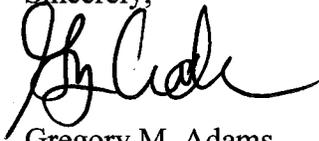
IPC-E-11-23

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Oregon, the IPUC should not address the matter until after FERC has had the opportunity to do so.

For the reasons stated above, Kootenai respectfully submits that the Idaho Public Utilities Commission should not rule on Idaho Power's Petition until FERC has had the opportunity to address the issue of the Point of Delivery.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Adams", written in a cursive style.

Gregory M. Adams

Richardson & O'Leary PLLC

Attorney for Kootenai Electric Cooperative, Inc.

cc: Service List in IPUC Docket No. IPC-E-11-23

IPC-E-11-23

**ATTACHMENT TO
KOOTENAI ELECTRIC COOPERATIVE, INC'S
FACTUAL UPDATE FILING JUNE 20, 2012 AND
REQUEST TO STAY IDAHO PUBLIC UTILITIES
COMMISSION DETERMINATION**

1 filed supporting affidavits and exhibits. The first disputed issue in this case is whether Avista
2 will deliver Kootenai's QF output to Avista's Lolo Substation or to the point of interconnection
3 on the 230 kilovolt Lolo-Oxbow line near Imnaha, Oregon. This is the factual issue
4 determinative of the applicability of the OPUC Schedule 85. *See Pub. Serv. Co. of N.H. v. N.H.*
5 *Elec. Coop., Inc.*, 83 FERC ¶ 61,224, ¶¶ 61,998 – 62,000 (1998) (determining QF may utilize
6 FERC's orders and tariffs governing open access to transmission to compel a purchase by any
7 utility to which it can transmit its output); *see also Kootenai's Motion for Summary Judgment at*
8 *11 ln. 19 to 13 ln. 4* (providing additional legal authority for this conclusion).

9 Idaho Power has itself repeatedly stated that the Point of Delivery to which Avista will
10 deliver Kootenai's output is the critical inquiry in this matter with regard to the applicability of
11 Schedule 85. *See, e.g., Amended Answer at* ¶ 2 ("This dispute involves whether Avista will
12 deliver Kootenai's energy to Idaho Power in Idaho or Oregon. Idaho Power maintains that the
13 point of delivery is in the state of Idaho and therefore Kootenai is categorically ineligible for a
14 Schedule 85 ESA."); *Idaho Power Motion for Summary Judgment at* 1 lns. 22-23 (declaring
15 "The crux of this dispute is the point of delivery ('Point of Delivery' or 'POD') for the energy
16 Kootenai proposes to sell to Idaho Power"); *id.* at 2 lns. 13-14 (asserting "As a matter of law, the
17 Point of Delivery is at the Lolo Substation"); *id.* at 7 lns. 9-11 (asserting "it is not possible for
18 Kootenai, or any other generator, to deliver energy to the change in physical ownership of the
19 Lolo-Oxbow line"); *id.* at 9 lns. 12-13 (asserting "under the terms of the ESA that Kootenai has
20 requested, Kootenai's Transmission Agreement with Avista is dispositive as to the location of
21 the Point of Delivery"); *id.* at 10 lns. 7-9 (stating, "when Avista wheels power to Idaho Power . .
22 . . . Avista delivers the power to the Lolo Substation and Idaho Power receives the power at the
23 Lolo Substation"); *id.* at 12 lns. 13-15 (stating, "The location of the Point of Delivery to Idaho

1 Power's system is the correct inquiry and threshold determination with regard to an off-system
2 QF requiring Idaho Power to contract pursuant to PURPA"); *id.* at 14 ln. 8 (asserting,
3 "Kootenai's Point of Delivery is Outside Idaho Power's Oregon Control Area"); *Idaho Power's*
4 *Summary Judgment Response* at 19 lns 11-12 (arguing the Dormant Commerce Clause is
5 inapplicable because "Kootenai is not proposing to deliver its output in Oregon").

6 To fully address Idaho Power's arguments, on May, 3, 2012, Kootenai submitted a
7 deposit and a request with Avista for a Long-Term Firm Point-to-Point Transmission Service
8 Agreement ("LTF Point-to-Point Agreement") to the point of interconnection near Imnaha,
9 Oregon. *See Kootenai's Summary Judgment Response* at 20-21. After completion of summary
10 judgment briefing, on May 31, 2012, Avista tendered an executable LTF Point-to-Point
11 Agreement to Kootenai. The tendered LTF Point-to-Point Agreement described the Point of
12 Delivery as follows:

13 The point on the Lolo-Oxbow 230 kV Transmission Line where the 230 kV
14 facilities of Idaho Power Company and Avista are interconnected, and, for
15 scheduling purposes, the LOLO point of delivery.

16
17 *Affidavit of Doug Elliott in Support of Partial Stay ("Elliot Partial Stay Affidavit")*
18 at ¶ 6 and Exhibit 1 at p. 7.

19
20 Avista stated that within 15 days Kootenai must sign the LTF Point-to-Point Agreement or ask
21 that it be filed unexecuted with FERC pursuant to Section 15.3 of the OATT to resolve any
22 remaining concerns. *Id.* at Exhibit 1 at p. 1.

23 Kootenai expected that Avista's description of the Point of Delivery would resolve Idaho
24 Power's concern that Kootenai would be unable to deliver to the point of interconnection near
25 Imnaha, Oregon. *Elliot Partial Stay Affidavit* at ¶ 8. Therefore, Kootenai sent the LTF Point-to-
26 Point Agreement to Idaho Power to determine whether this tendered agreement would resolve

1 Idaho Power's concern, and satisfy Idaho Power that Kootenai will deliver to a point in Oregon.
2 *Id.* at ¶¶ 9-10 and Exhibit 2. On June 8, 2012, Idaho Power responded that the LTF Point-to-
3 Point Agreement tendered by Avista had not changed Idaho Power's position. *Id.* at ¶¶ 11-13
4 and Exhibit 3. Idaho Power maintained that, despite the LTF Point-to-Point Agreement tendered
5 by Avista, "The only possible way for Avista to deliver Kootenai's output to Idaho Power across
6 the Lolo-Oxbow path is by delivering to the only existing, designated Point of Delivery between
7 Idaho Power and Avista on that path, which is the Lolo substation." *Id.* Idaho Power also
8 separately sent a letter to Avista Transmission. *Id.* at ¶¶ 14-17 and Exhibit 4. That letter stated
9 that "if the LTSA is executed as drafted and filed with the FERC, Idaho Power would need to
10 intervene to seek clarification as to confirm that the POD is indeed the Lolo substation." *Id.* It
11 also stated "Idaho Power will only accept energy from Avista at the POD designated as LOLO,
12 which is the Lolo substation." *Id.*

13 Consequently, Kootenai decided not to sign the LTF Point-to-Point Agreement tendered
14 by Avista because even that agreement has apparently not resolved Idaho Power's concerns. *Id.*
15 at ¶ 18. On June 11, 2012, Kootenai responded to Avista to request that Avista file the
16 unexecuted agreement with FERC pursuant to Section 15.3 of Avista's OATT. *Id.* at ¶¶ 18-20
17 and Exhibit 5. Kootenai requested that Avista do so in light of Idaho Power's response. *Id.* at
18 Exhibit 5 a p. 3. Kootenai requested that the LTF Point-to-Point Agreement specifically include
19 the term "near Imnaha, Oregon" in the definition of the Point of Delivery, and that Avista file the
20 unexecuted agreement with FERC to address that additional request and Idaho Power's position
21 that it can only accept deliveries at the Lolo Substation. *Id.* at Exhibit 5 at pp. 2-3.

22 III. ARGUMENT

23 The dispute in this case over the Point of Delivery has evolved into a dispute over a

1 matter that is best determined by FERC – whether Avista will deliver under its OATT to Idaho
2 Power at the Lolo Substation or the point of interconnection near Imnaha, Oregon. Kootenai has
3 briefed the OPUC on why Idaho Power’s position is unreasonable and inconsistent with its 1958
4 Interconnection Agreement with Avista, as well as other filings and tariffs on file with FERC.
5 Kootenai did so to demonstrate it would be able to obtain a LTF Point-to-Point Agreement with
6 Avista to the point of interconnection near Imnaha, Oregon, which is in fact a requirement of the
7 Schedule 85 PPA. Avista has now tendered a transmission agreement that describes the Point of
8 Delivery as the point of interconnection on the Lolo-Oxbow line (not Lolo Substation). There is
9 little more Kootenai or the OPUC can do to resolve the issue. As Kootenai has argued
10 previously, the forum for Idaho Power to challenge Kootenai’s transmission agreement with
11 Avista is FERC. *See Kootenai’s Summary Judgment Reply* at 24 lns. 17-23.

12 The Federal Power Act (“FPA”) grants FERC authority to regulate the transmission of
13 electric energy in interstate commerce. *See* 16 U.S.C. §§ 824(b), 824d and 824e. FERC
14 promulgated a pro forma OATT that includes the minimum terms and conditions under which
15 transmission providers may offer service. *Promoting Wholesale Competition Through Open*
16 *Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs*
17 *by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, ¶¶
18 31,635-31,636 (1996), 61 Fed.Reg. 21,540 (“Order No. 888”), *on reh’g*, Order No. 888-A, FERC
19 Stats. & Regs. ¶ 31,048, 62 Fed.Reg. 12,274 (1997), *on reh’g*, Order No. 888-B, 81 FERC ¶
20 61,248 (1997), *on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

21 Kootenai has requested that Avista file the unexecuted LTF Point-to-Point Agreement
22 with FERC for final resolution the location of the Point of Delivery. Idaho Power will have the
23 opportunity to intervene in that FERC docket. FERC is better equipped to address that issue

1 because the 1958 Interconnection Agreement, Avista's OATT, and the unexecuted LTF Point-to-
2 Point Agreement all regard transmission in interstate commerce under the FPA. And all are (or
3 will be) agreements or tariffs kept on file with FERC – not the OPUC. FERC regularly resolves
4 disputes of this nature regarding the appropriate terms of transmission agreements.¹
5 Additionally, because FERC will likely resolve the Point of Delivery issue, factors of
6 administrative economy warrant a partial stay in the OPUC proceeding on that issue until FERC
7 has addressed the issue.

8 Kootenai requests a partial stay, but not a complete stay of the proceedings. The OPUC
9 should not stay proceedings on the remaining issue of whether Kootenai created a legally
10 enforceable obligation (“LEO”) to deliver to Idaho Power pursuant to the terms of the Schedule
11 85 PPA it executed on December 27, 2011. *See Kootenai's Motion for Summary Judgment at*
12 *19-20.* There is precedent for the OPUC to resolve a dispute over the date a QF created a LEO
13 prior to resolution of a dispute over the proper point of delivery. *See Water Power Co., Inc. v.*
14 *PacifiCorp*, 99 Or.App. 125, 128-29, 781 P.2d 860, 862-63 (1989). Resolution of the LEO issue
15 during the months it may take for FERC to provide final resolution of the Point of Delivery issue
16 is warranted here because Kootenai's QF is currently online and selling at below-market rates.
17 Waiting to resolve the LEO issue will result in further unwarranted delay in resolving the case.

18 IV. CONCLUSION

19
20 For the reasons stated herein, Kootenai respectfully requests that the OPUC stay its
21 determination regarding the Point of Delivery issue until FERC has addressed the matter. The
22 issue involves Avista's FERC-jurisdictional OATT and transmission contracts kept on file with

¹ This discrete issue is therefore different from a dispute over the terms of a power purchase agreement that are related to transmission. *See American Ref-Fuel Co. of Niagara, L.P. v. Niagara Mohawk Power Corp.*, 97 FERC ¶ 61,158, ¶¶ 61,701-61,702 (2001). FERC regularly determines the propriety of terms in transmission agreements, including the point of delivery. *See Wisconsin Power and Light Co.*, 84 FERC ¶ 61,300 (1998).

1 FERC. Kootenai submits that the OPUC should resolve the remaining issue of whether Kootenai
2 created a legally enforceable obligation pending resolution of the Point of Delivery issue by
3 FERC.

Respectfully submitted this 14th day of June 2012.

RICHARDSON AND O'LEARY, PLLC

/s/ Gregory M. Adams

Peter J. Richardson (OSB No. 06668)
Gregory M. Adams (OSB No. 101779)
Richardson & O'Leary, PLLC
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greg@richardsonandoleary.com

Attorneys for Kootenai Electric
Cooperative, Inc.

Agreement and Avista's cover letter as Exhibit 1 to this Affidavit.

6. The executable LTF Point-to-Point Agreement tendered by Avista described the Point of Delivery as follows:

The point on the Lolo-Oxbow 230 kV Transmission Line where the 230 kV facilities of Idaho Power Company and Avista are interconnected, and, for scheduling purposes, the LOLO point of delivery.

7. Avista Transmission's cover letter stated that within 15 days Kootenai must sign the LTF Point-to-Point Agreement or ask that it be filed unexecuted with FERC pursuant to Section 15.3 of the Open Access Transmission Tariff ("OATT") to resolve any remaining concerns.

8. I expected that Avista's description of the Point of Delivery would resolve Idaho Power's concern that Kootenai would be unable to deliver to the point of interconnection near Innaha, Oregon.

9. On June 1, 2012, Kootenai sent the LTF Point-to-Point Agreement to Idaho Power by letter from our counsel, Mr. Greg Adams, to determine whether the tendered agreement would resolve Idaho Power's concern, and satisfy Idaho Power that Kootenai will deliver to a point in Oregon.

10. I have attached a true and correct copy of that June 1, 2012 letter from Mr. Adams to Idaho Power as Exhibit 2 to this Affidavit.

11. On June 8, 2012, Idaho Power responded by a letter to Kootenai from Idaho Power's counsel, Mr. Donovan Walker, which stated that the LTF Point-to-Point Agreement tendered by Avista had not changed Idaho Power's position.

12. I have attached that letter from Idaho Power's counsel as Exhibit 3 to this

Affidavit.

13. Idaho Power maintained that, "The only possible way for Avista to deliver Kootenai's output to Idaho across the Lolo-Oxbow path is by delivering to the only existing, designated Point of Delivery between Idaho Power and Avista on that path, which is the Lolo substation."

14. On June 8, 2012, Idaho Power also separately sent a letter from its Director of Load Serving Operations, Ms. Tessia Park, to Mr. Jeff Schlect, Manager of Avista Transmission Services.

15. I have attached a true and correct copy of that letter from Ms. Park to Avista as Exhibit 4 to this Affidavit.

16. That letter stated that "if the LTSA is executed as drafted and filed with the FERC, Idaho Power would need to intervene to seek clarification as to confirm that the POD is indeed the Lolo substation."

17. That letter also stated, "Idaho Power will only accept energy from Avista at the POD designated as LOLO, which is the Lolo substation."

18. Kootenai decided not to sign the LTF Point-to-Point Agreement tendered by Avista because it apparently has not resolved Idaho Power's concern.

19. Consequently, on June 11, 2012, Kootenai responded to Avista, by letter from our counsel, Mr. Greg Adams, to request that Avista file the unexecuted LTF Point-to-Point Agreement with FERC pursuant to Section 15.3 of Avista's OATT.

20. I have attached a true and correct copy of that letter from Mr. Adams to Avista as Exhibit 5 to this Affidavit.

21. That letter requested that the LTF Point-to-Point Agreement specifically include

the term "near Imnaha, Oregon" in the definition of the Point of Delivery, and that Avista file the unexecuted agreement with FERC to address that additional request and Idaho Power's position that it can only accept deliveries at the Lolo Substation.

22. From communications with Avista, we expect that Avista will make the filing of the unexecuted LTF Point-to-Point Agreement with FERC within 30 days.

I declare under penalty of perjury under the laws of the United States and under laws of the state of Idaho that the foregoing is true and correct.

Further your affiant sayeth naught.

DATED June 12, 2012.

Douglas A. Elliott
Doug Elliott

STATE OF IDAHO)
) ss.
COUNTY OF Kootenai)

On this 12th day of June 2012, before me, a Notary Public in and for the State of Idaho, personally appeared Doug Elliott, personally known to me to be the person who executed this instrument (or proved to me on the basis of satisfactory evidence) and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Terry E. Brown
NOTARY PUBLIC for the State of Idaho

Residing at Hayden, Idaho

My Commission expires 3-9-2017

OPUC DOCKET NO. UM 1572

ELLIOTT AFFIDAVIT IN SUPPORT OF STAY

EXHIBIT 1

Avista Corp.
1411 East Mission PO Box 3727
Spokane, Washington 99220-3727
Telephone 509-489-0500
Toll Free 800-727-9170



May 31, 2012

Shawn Dolan
Manager of Engineering
Kootenai Electric Cooperative, Inc.
2451 W. Dakota Ave.
Hayden, ID 83835

Dear Mr. Dolan:

This letter is in response to your application for 3 MW of Long-Term Firm Point-to-Point Transmission Service Request (TSR# 76877961) from AVA.SYS to LOLO requested on May 4, 2012. Avista Corporation ("Avista") received a deposit in the amount of \$6,000.00 on May 4, 2012, which is the correct deposit amount for a 3 MW request. Per Avista's Open Access Transmission Tariff, FERC Electric Tariff Volume No. 8 ("Tariff"), your application is complete.

Avista has determined your service request can be met starting September 1, 2012 for a 5 year term (terminating August 31, 2017). The enclosed Long-Term Firm Point-to-Point Transmission Service Agreement ("Agreement") is for service from AVA.SYS to LOLO. Please be advised of the timing requirements associated with execution of a Service Agreement under the Tariff. According to Section 19 of the Tariff, *"whenever the Transmission Provider determines that a System Impact Study is not required and that the service can be provided, it shall notify the Eligible Customer as soon as practicable . . . Failure of an Eligible Customer to execute and return the Service Agreement or request the filing of an unexecuted service agreement pursuant to Section 15.3, within fifteen (15) days after it is tendered by the Transmission Provider will be deemed a withdrawal and termination of the Application and any deposit submitted shall be refunded with interest."*

Please indicate your acceptance and agreement by signing two originals of the Long-Term Firm Point-to-Point Transmission Service Agreement where indicated. Once signed, please return one original to Avista at the address below. The remaining original is for your records.

Avista Corporation
Warren J. Clark MSC-16
Senior Transmission Contracts Engineer
1411 East Mission Avenue
Spokane, WA 99202-1902

UM 1572
Kootenai Electric Cooperative, Inc.
Elliott Stay Affidavit Exhibit 1
Page 1

Once Avista has received the fully-executed original, Avista will be changing your TSR status from STUDY to ACCEPTED. KEC will need to confirm this TSR since KEC had initially marked "Preconfirmed - No" on its TSR submittal. For a Yearly Firm product, this needs to be done within 15 days from when the Transmission Provider marks it as ACCEPTED (this is the Customer Confirmation time limit).

Per our prior discussions Avista understands that KEC may desire specific language to be included for the designated Point of Delivery under the Agreement and that if such language is not included KEC may request that Avista file an unexecuted agreement with the Commission. Avista is tendering this Agreement using our standard form of description and terminology for a point of delivery used in our transmission-related agreements. Please note that Avista is happy to either accept the executed Agreement or file an unexecuted agreement to obtain Commission direction on the matter, whichever approach you deem appropriate. We look forward to continuing our ongoing transmission service relationship with KEC. If you have any questions concerning this letter, please contact me at (509) 495-4186.

Sincerely,



Warren J. Clark
Senior Transmission Contracts Engineer
Avista Corporation

Enclosures

**LONG-TERM FIRM POINT-TO-POINT TRANSMISSION SERVICE
AGREEMENT**

**under
AVISTA CORPORATION'S
OPEN ACCESS TRANSMISSION TARIFF
FERC ELECTRIC TARIFF, VOLUME NO. 8**

This LONG-TERM FIRM POINT-TO-POINT TRANSMISSION SERVICE AGREEMENT made and entered into this ___ day of _____, 2012, by and between AVISTA CORPORATION ("Avista") and KOOTENAI ELECTRIC COOPERATIVE, INC. ("KEC"), which hereinafter may be referred to individually as "Party" or collectively as "Parties".

WITNESSETH

WHEREAS, Avista provides Firm Point-to-Point Transmission Service over its Transmission System under Avista's Open Access Transmission Tariff; and

WHEREAS, KEC desires to receive Long-Term Firm Point-to-Point Transmission Service under Avista's Open Access Transmission Tariff, and

NOW THEREFORE, the Parties agree as follows:

Section 1 - Definitions

Unless otherwise defined herein, all capitalized terms shall have their respective meanings as set forth in Avista's Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 8 ("Tariff"). KEC shall be the Transmission Customer as such term is used in the Tariff and Avista shall be the Transmission Provider as such term is used in the Tariff.

Section 2 - Standard Provisions

- 2.1 **Terms and Conditions:** The terms and conditions under which Long-Term Firm Transmission Service is offered and accepted are pursuant to this Service Agreement and to the Tariff. The Tariff is hereby incorporated by this reference and made a part of this Service Agreement. Avista may change the terms and conditions of the Tariff upon, and only upon, approval by the Commission pursuant to a filing by Avista.
- 2.2 **Completed Application:** Avista has determined that KEC is deemed to have a Completed Application for Firm Point-to-Point Transmission Service under the Tariff.

- 2.3 Application Deposit: KEC has provided to Avista an Application deposit in accordance with the provisions of Section 17.3 of the Tariff.
- 2.4 System Impact and Facilities Studies: Study Agreements for a System Impact Study and/or a Facilities Study are not required for the Application dated May 4, 2012.

Section 3 - Term and Regulatory Filing

- 3.1 Effective Date and Filing: This Service Agreement shall be effective on the Service Commencement Date of September 1, 2012 or such other date as may be designated by the Commission when accepted for filing ("Effective Date"). Avista shall file this Service Agreement with the Commission as a Service Agreement under the Tariff.
- 3.2 Termination of Agreement: This Service Agreement shall remain in effect through August 31, 2017.

Section 4 - Long-Term Firm Point-to-Point Transmission Service

Commencing on the Effective Date Avista shall provide, and KEC shall take and pay for, Long-Term Firm Point-to-Point Transmission Service pursuant to the Tariff. Exhibit 1 to this Service Agreement lists the Points of Receipt and Points of Delivery, the amounts of Reserved Capacity at the Points of Receipt and Points of Delivery and applicable charges for Long-Term Firm Point-to-Point Transmission Service.

Section 5 - Other Services

Commencing on the Effective Date Avista shall provide, and KEC shall take and pay for all applicable Ancillary Services. The amounts of such services, specific terms and conditions associated with such services and the charges for such services are listed in Exhibit 2 to this Service Agreement.

Section 6 - Construction of Facilities

Construction of Direct Assignment Facilities or Network Upgrades are not required for Firm Transmission Service to be provided pursuant to this Service Agreement.

Section 7 - Billing and Payment

Billing and payment for all services provided under this Service Agreement shall be pursuant to Section 7 of the Tariff. Bills sent to KEC shall be sent to:

Attention: Accounts Payable
Kootenai Electric Cooperative, Inc.
2451 W. Dakota Ave.
Hayden, ID 83835

All payments to Avista shall be wire transferred to the account specified on each billing invoice.

Section 8 - Miscellaneous Provisions

- 8.1 Waivers: Any waiver at any time by either Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Service Agreement shall not be considered a waiver with respect to any other default of the same or any other matter.
- 8.2 Effect of Section Headings: Section headings appearing in this Service Agreement are inserted for convenience of reference only and shall not be construed to be interpretations of the text of this Service Agreement.
- 8.3 Notices: Any written notice or request made to Avista under this Service Agreement shall be directed to:

Attention: Manager, Transmission Services
Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202-1902
or
P. O. Box 3727
Spokane, Washington 99220-3727

Any written notice or request made to KEC under this Service Agreement shall be directed to:

Attention: Manager of Engineering
Kootenai Electric Cooperative, Inc.
2451 W. Dakota Ave.
Hayden, ID 83835

EXHIBIT 1
SPECIFICATIONS AND CHARGES FOR
LONG-TERM FIRM POINT-TO-POINT TRANSMISSION SERVICE

Point of Receipt

Location: The point on the Post Falls-Dower 115 kV Transmission Line where the facilities of KEC and Avista are interconnected and, for scheduling purposes, the AVA.SYS point of receipt.

Reserved Capacity: 3 MW

Delivering Party: Kootenai Electric Cooperative, Inc.

Point of Delivery

Location: The point on the Lolo-Oxbow 230 kV Transmission Line where the 230 kV facilities of Idaho Power Company and Avista are interconnected and, for scheduling purposes, the LOLO point of delivery.

Reserved Capacity: 3 MW

Receiving Party: Idaho Power Company

Reserved Capacity

Maximum Amount of Capacity and Energy to be Transmitted:
Three megawatts (3 MW)

Monthly Transmission Charge

(Pursuant to Schedule 7 of the Tariff)

One twelfth of the Annual Transmission Charge, multiplied by the monthly Reserved Capacity. The Annual Transmission Charge shall be the then-current yearly rate for Long-Term Firm Point-to-Point Transmission Service. As of the Effective Date, the yearly rate is \$24.00/kW-year, or \$2.00/kW-month.

Losses

(Pursuant to Section 15.7 of the Tariff)

Loss Factor is three percent (3%) applied to actual energy transmitted, to be delivered to Avista at either the Point of Receipt or the Point of Delivery or such other point as may be mutually agreed upon by the Parties from time to time. Avista shall specify and KEC shall return its applicable loss return obligation amounts, in whole megawatt increments.

for delivery one-hundred and sixty-eight (168) hours following the transmission of such energy, unless otherwise reasonably specified by Avista.

System Impact and/or Facilities Study Charges

(Pursuant to Section 19 of the Tariff)

None Required

Direct Assignment Facilities Charges

None Required

Designation of Party Subject to Reciprocal Service Obligation

(Pursuant to Section 6 of the Tariff)

Kootenai Electric Cooperative, Inc.

**EXHIBIT 2
SPECIFICATIONS AND CHARGES FOR ANCILLARY SERVICES**

Scheduling, System Control and Dispatch Service

(Pursuant to Schedule 1 of the Tariff)

As of the date of execution there is no charge for this service.

In the event, pursuant to a filing by Avista that is accepted by the Commission, Avista establishes a separate ancillary service rate schedule covering Scheduling, System Control and Dispatch Service requirements, upon its effective date such ancillary service shall apply.

Reactive Supply and Voltage Control from Generation and Other Sources Service

(Pursuant to Schedule 2 of the Tariff)

As of the date of execution there is no charge for this service.

In the event, pursuant to a filing by Avista that is accepted by the Commission, Avista establishes a separate ancillary service rate schedule covering Reactive Supply and Voltage Control from Generation and Other Sources Service requirements, upon its effective date such ancillary service shall apply.

Regulation and Frequency Response Service

(Pursuant to Schedule 3 of the Tariff)

Generator Regulation and Frequency Response Service

(Pursuant to Schedule 3-A of the Tariff, pending before the Commission)

The monthly Generator Regulation and Frequency Response Service Charge shall be at the then-current Tariff rate. As of the Effective Date, the monthly Generator Regulation and Frequency Response Service obligation shall be 2.0% of KEC's Reserved Capacity and the monthly rate for Generator Regulation and Frequency Response Service is \$8.94/kW.

Monthly Charge = $0.02 \times (3000\text{kW}) \times (\$8.94/\text{kW-month}) = \536.40

Energy Imbalance Service

(Pursuant to Schedule 4 of the Tariff)

Operating Reserve - Spinning Reserve Service

(Pursuant to Schedule 5 of the Tariff)

The monthly Operating Reserve – Spinning Reserve Service Charge shall be at the then-current Tariff rate. As of the Effective Date, the monthly Operating Reserve – Spinning Reserve Service obligation shall be 3.5% of KEC's thermal generation located within Avista's Control Area and the monthly rate for Spinning Reserve Service is \$8.94/kW.

$$\text{Monthly Charge} = 0.035 \times (3000\text{kW}) \times (\$8.94/\text{kW-month}) = \$938.70$$

Operating Reserve - Supplemental Reserve Service

(Pursuant to Schedule 6 of the Tariff)

The monthly Operating Reserve – Supplemental Reserve Service Charge shall be at the then-current Tariff rate. As of the Effective Date, the monthly Operating Reserve – Supplemental Reserve Service obligation shall be 3.5% of KEC's thermal generation located within Avista's Control Area and the monthly rate for Spinning Reserve Service is \$8.94/kW.

$$\text{Monthly Charge} = 0.035 \times (3000\text{kW}) \times (\$8.94/\text{kW-month}) = \$938.70$$

Generator Imbalance Service

(Pursuant to Schedule 9 of the Tariff)

KEC may elect to settle generator imbalance deviations within Deviation Band 1 either by the return of energy or by settling financially. KEC may change such election no more often than once per any one-year period and such change shall only become effective upon the first day of a specified month. KEC shall provide at least ninety (90) days' notice prior to any such change in election.

KEC elects to initially settle generator imbalance deviations within Deviation Band 1 financially.

Hourly imbalance deviations within Deviation Band 1 settled financially shall be settled pursuant to Schedule 9 and the then-current Hourly Pricing Proxy.

OPUC DOCKET NO. UM 1572

ELLIOTT AFFIDAVIT IN SUPPORT OF STAY

EXHIBIT 2



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

June 1, 2012

Via Electronic Mail

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

Re: Kootenai Electric Cooperative, Inc.'s qualifying facility

Mr. Walker,

As you know, Kootenai Electric Cooperative, Inc. and Idaho Power have been unable to agree on the location of the point of delivery to which Kootenai would be able to deliver its qualifying facility output to Idaho Power over the 230 kilovolt Lolo-Oxbow line. Specifically, we have been unable to agree whether that point is in Idaho or in Oregon. Kootenai has requested a Long-Term Firm Point-to-Point Transmission Service Agreement that it believes would meet the requirements of the executed Schedule 85 power purchase agreement provided to Idaho Power on December 27, 2011. Avista has tendered an executable transmission agreement to Kootenai, which I have attached. Kootenai will need to decide whether to sign the agreement within 15 days. Could you please respond as to whether this tendered agreement resolves Idaho Power's concern, and satisfies Idaho Power that Kootenai will deliver to a point in Oregon?

Thank you in advance for your prompt response.

Very truly yours,

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

cc: Jason Williams, Idaho Power Attorney
Lisa Rackner, Idaho Power Attorney
Adam Lowney, Idaho Power Attorney
Doug Elliott, Kootenai Electric Cooperative, Inc.

**LONG-TERM FIRM POINT-TO-POINT TRANSMISSION SERVICE
AGREEMENT**
under
**AVISTA CORPORATION'S
OPEN ACCESS TRANSMISSION TARIFF
FERC ELECTRIC TARIFF, VOLUME NO. 8**

This LONG-TERM FIRM POINT-TO-POINT TRANSMISSION SERVICE AGREEMENT made and entered into this ___ day of _____, 2012, by and between AVISTA CORPORATION ("Avista") and KOOTENAI ELECTRIC COOPERATIVE, INC. ("KEC"), which hereinafter may be referred to individually as "Party" or collectively as "Parties".

WITNESSETH

~~WHEREAS~~ WHEREAS, Avista provides Firm Point-to-Point Transmission Service over its Transmission System under Avista's Open Access Transmission Tariff; and

WHEREAS, KEC desires to receive Long-Term Firm Point-to-Point Transmission Service under Avista's Open Access Transmission Tariff; and

NOW THEREFORE, the Parties agree as follows:

Section 1 – Definitions

Unless otherwise defined herein, all capitalized terms shall have their respective meanings as set forth in Avista's Open Access Transmission Tariff, FERC Electric Tariff, Volume No. 8 ("Tariff"). KEC shall be the Transmission Customer as such term is used in the Tariff and Avista shall be the Transmission Provider as such term is used in the Tariff.

Section 2 - Standard Provisions

- 2.1 Terms and Conditions: The terms and conditions under which Long-Term Firm Transmission Service is offered and accepted are pursuant to this Service Agreement and to the Tariff. The Tariff is hereby incorporated by this reference and made a part of this Service Agreement. Avista may change the terms and conditions of the Tariff upon, and only upon, approval by the Commission pursuant to a filing by Avista.
- 2.2 Completed Application: Avista has determined that KEC is deemed to have a Completed Application for Firm Point-to-Point Transmission Service under the Tariff.

- 2.3 Application Deposit: KEC has provided to Avista an Application deposit in accordance with the provisions of Section 17.3 of the Tariff.
- 2.4 System Impact and Facilities Studies: Study Agreements for a System Impact Study and/or a Facilities Study are not required for the Application dated May 4, 2012.

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- 3.1 Effective Date and Filing: This Service Agreement shall be effective on the Service Commencement Date of September 1, 2012 or such other date as may be designated by the Commission when accepted for filing ("Effective Date"). Avista shall file this Service Agreement with the Commission as a Service Agreement under the Tariff.
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Commencing on the Effective Date Avista shall provide, and KEC shall take and pay for, Long-Term Firm Point-to-Point Transmission Service pursuant to the Tariff. Exhibit 1 to this Service Agreement lists the Points of Receipt and Points of Delivery, the amounts of Reserved Capacity at the Points of Receipt and Points of Delivery and applicable charges for Long-Term Firm Point-to-Point Transmission Service.

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2451 W. Dakota Ave.
Hayden, ID 83835

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2451 W. Dakota Ave.
Hayden, ID 83835

EXHIBIT 1
SPECIFICATIONS AND CHARGES FOR
LONG-TERM FIRM POINT-TO-POINT TRANSMISSION SERVICE

Point of Receipt

Location: The point on the Post Falls-Dower 115 kV Transmission Line where the facilities of KEC and Avista are interconnected and, for scheduling purposes, the AVA.SYS point of receipt.
Reserved Capacity: 3 MW
Delivering Party: Kootenai Electric Cooperative, Inc.

Point of Delivery

Location: The point on the Lolo-Oxbow 230 kV Transmission Line where the 230 kV facilities of Idaho Power Company and Avista are interconnected and, for scheduling purposes, the LOLO point of delivery.
Reserved Capacity: 3 MW
Receiving Party: Idaho Power Company

Reserved Capacity

Maximum Amount of Capacity and Energy to be Transmitted:
Three megawatts (3 MW)

Monthly Transmission Charge

(Pursuant to Schedule 7 of the Tariff)

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(Pursuant to Section 15.7 of the Tariff)

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for delivery one-hundred and sixty-eight (168) hours following the transmission of such energy, unless otherwise reasonably specified by Avista.

System Impact and/or Facilities Study Charges

(Pursuant to Section 19 of the Tariff)

None Required

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None Required

Designation of Party Subject to Reciprocal Service Obligation

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Kootenai Electric Cooperative, Inc.

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Operating Reserve - Spinning Reserve Service

(Pursuant to Schedule 5 of the Tariff)

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$$\text{Monthly Charge} = 0.035 \times (3000\text{kW}) \times (\$8.94/\text{kW-month}) = \$938.70$$

Operating Reserve - Supplemental Reserve Service

(Pursuant to Schedule 6 of the Tariff)

The monthly Operating Reserve – Supplemental Reserve Service Charge shall be at the then-current Tariff rate. As of the Effective Date, the monthly Operating Reserve – Supplemental Reserve Service obligation shall be 3.5% of KEC's thermal generation located within Avista's Control Area and the monthly rate for Spinning Reserve Service is \$8.94/kW.

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KEC elects to initially settle generator imbalance deviations within Deviation Band 1 financially.

Hourly imbalance deviations within Deviation Band 1 settled financially shall be settled pursuant to Schedule 9 and the then-current Hourly Pricing Proxy.

OPUC DOCKET NO. UM 1572

ELLIOTT AFFIDAVIT IN SUPPORT OF STAY

EXHIBIT 3



DONOVAN E. WALKER
Lead Counsel
dwalker@idahopower.com

June 8, 2012

VIA ELECTRONIC & U.S. MAIL
greg@richardsonandoleary.com

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

Re: Response to June 1, 2012, Letter Regarding Kootenai Electric Cooperative, Inc. ("Kootenai")

Mr. Adams:

In response to your letter of June 1, 2012, the Long-Term Firm Point-to-Point Transmission Service Agreement tendered by Avista Corporation ("Avista") that you referenced and attached to your letter does not change Idaho Power Company's ("Idaho Power") position, as previously communicated to you starting on November 3, 2011, and set forth in the subsequent pleadings filed with the Idaho Public Utilities Commission and the Public Utility Commission of Oregon. The only possible way for Avista to deliver Kootenai's output to Idaho Power across the Lolo-Oxbow path is by delivering to the only existing, designated Point of Delivery between Idaho Power and Avista on that path, which is the Lolo substation. The additional language that you have insisted that Avista include in the description of the point of delivery in the proposed Long-Term Firm Point-to-Point Transmission Service Agreement does nothing to change this fact, and does nothing to change the fact that Kootenai's output is delivered to Idaho Power's Control Area, and Balancing Area Authority at the Lolo substation, in the state of Idaho. Past the Lolo substation, Idaho Power has complete control and responsibility for this energy; Avista does not.

With regard to your insinuation that Idaho Power is somehow responsible for your decision about whether to execute the Long-Term Firm Point-to-Point Transmission Service Agreement tendered by Avista within the required fifteen (15) days, please let me reiterate from my December 29, 2011, letter that, "Any such actions that Kootenai decides to take with regard to its generation project is done of its own

UM 1572 1221 W. Idaho St. (83702)
P.O. Box 70
Kootenai Electric Cooperative, Inc.
Boise, ID 83707
Elliott Stay Affidavit Exhibit 3
Page 1

Gregory M. Adams
June 8, 2012
Page 2 of 2

volition and at its own risk. . . . Idaho Power is not responsible for the consequences of Kootenai's decisions regarding how it pursues the development of its generation project."

Sincerely,



Donovan E. Walker

DEW:csb

cc: Randy Allphin (via e-mail)
Jason Williams (via e-mail)
Tess Park (via e-mail)
Lisa Rackner (via e-mail)
Adam Lowney (via e-mail)

OPUC DOCKET NO. UM 1572

ELLIOTT AFFIDAVIT IN SUPPORT OF STAY

EXHIBIT 4



June 8, 2012

VIA ELECTRONIC & U.S. MAIL

Jeff Schlect
Manager, Transmission Services
Avista Corporation
1411 East Mission Avenue
P.O. Box 3727
Spokane, Washington 99220-3727

Re: Kootenai Electric Cooperative, Inc.'s Long-Term Firm Point-to Point Transmission Service Agreement

Dear Mr. Schlect:

On June 1, 2012, Idaho Power Company ("Idaho Power") received notification from Kootenai Electric Cooperative, Inc.'s ("Kootenai") attorney that Avista Corporation ("Avista") has provided Kootenai an executable Long-Term Firm Point-to-Point Service Agreement ("LTSA"). Kootenai provided Idaho Power a copy of the LTSA. In the LTSA, Avista provides for a Point of Delivery ("POD") defined as "The point on the Lolo-OXBOW 230 kV Transmission Line where the 230kV facilities of Idaho Power Company and Avista are interconnected and, for scheduling purposes, the LOLO point of delivery."

As you know, Idaho Power is required to post applicable PODs and Points of Receipt ("PORs") on its OASIS and register those PODs/PORs in the TSIN directory with NERC. Idaho Power wants to confirm with Avista that the POD between Idaho Power's and Avista's transmission systems is in fact the Lolo substation, which is designated as LOLO on Idaho Power's OASIS, and that the energy Avista will be delivering to Idaho Power pursuant to the LTSA will indeed be delivered to the Lolo substation, as the Lolo substation is Idaho Power's Control Area boundary (designated as LOLO on Idaho Power's OASIS) and the location at which Idaho Power assumes all responsibility for scheduling and balancing energy on its transmission system pursuant to FERC, NERC, WECC, and other applicable regulations.

Because the language in the LTSA defines the POD as something other than what is designated on Idaho Power's OASIS, Idaho Power has concerns that either Avista and/or Kootenai may be requesting that energy is delivered to Idaho Power at someplace other than the POD of LOLO designated on Idaho Power's OASIS. Accordingly, if the LTSA is executed as drafted and filed with the FERC, Idaho Power would need to intervene to seek clarification as to confirm that the POD is indeed the Lolo substation.

While Idaho Power's OATT does allow Network Customers to request new PORs/PODs, it does not allow Point-to-Point transmission customers to request new PORs/PODs. Neither Avista nor

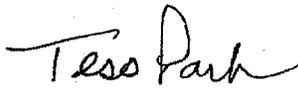
Jeff Schlect
June 8, 2012
Page 2 of 2

Kootenai is an Idaho Power Network Customer. Accordingly, Idaho Power's OATT does not allow either Avista or Kootenai to deliver energy to Idaho Power's transmission system at any place other than the PODs designated on Idaho Power's OASIS, consistent with FERC's non-discriminatory open access requirements. Thus, Idaho Power will only accept energy from Avista at the POD designated as LOLO, which is the Lolo substation.

Lastly, as you may know, Idaho Power is currently engaged in litigation with Kootenai at the Public Utility Commission of Oregon regarding Kootenai's Fighting Creek Landfill qualifying facility generating project ("Kootenai Project"). The LTSA is the mechanism by which the Kootenai Project is proposing to deliver energy to Idaho Power. At issue in that case is the location at which Kootenai will deliver energy to Idaho Power. While the issues in that case do not involve Avista, the relationship between Idaho Power and Avista as adjacent transmission providers and Balancing Areas is implicated by the LTSA. As a transmission provider, Idaho Power has an obligation to ensure it is providing non-discriminatory and open access to all requesting generators as well as operate and maintain its transmission system in accordance with FERC, NERC, and WECC regulations.

Accordingly, please confirm in writing within ten (10) calendar days that the LTSA is not requesting a POD for the delivery of energy from Avista to Idaho Power other than the OASIS designated POD of LOLO, which is the Lolo substation.

Very truly yours,



Tessia Park
Director Load Serving Operations

cc: Michael Andrea, Avista (via e-mail)
Donovan Walker, Idaho Power (via e-mail)
Jason Williams, Idaho Power (via e-mail)
Greg Adams, Richardson & O'Leary, Counsel for Kootenai (via e-mail)

OPUC DOCKET NO. UM 1572

ELLIOTT AFFIDAVIT IN SUPPORT OF STAY

EXHIBIT 5



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

June 11, 2012

Via U.S. Mail and Electronic Mail

Michael G. Andrea
Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99202
michael.andrea@avistacorp.com

**Re: Kootenai Electric Cooperative's LTF Point-to-Point Transmission Request;
Request for Filing of Unexecuted Agreement under § 15.3 (TSR # 76877961)**

Mr. Andrea:

I write on behalf of Kootenai Electric Cooperative, Inc. in response to Avista's tender of an executable Long-Term Firm Point-to-Point Transmission Service Agreement ("LTF Point-to-Point Agreement"). Kootenai appreciates Avista's efforts to meet Kootenai's needs with regard to this request under Avista's Open Access Transmission Tariff ("OATT").

As you know, Kootenai seeks to transmit the output from its Fighting Creek qualifying facility ("QF") all the way across Avista's Transmission System to the point of interconnection with Idaho Power on the 230 kilovolt Lolo-Oxbow line near Imnaha, Oregon. Because the Lolo-Oxbow line crosses the Idaho-Oregon border, Kootenai desires the LTF Point-to-Point Agreement include a description of the precise location of the Point of Delivery in Oregon. For Kootenai's QF sale to Idaho Power, the state wherein the Point of Delivery is located will inform several issues, including which state's QF tariffs apply, which state's tax laws apply, which state's business organization laws apply, and other similar matters.

Kootenai has requested that the LTF Point-to-Point Agreement contain more specificity in describing the Point of Delivery than merely the non-specific posted path used on Avista's Open Access Same Time Information System ("OASIS") website – which is "AVA.SYS to LOLO." The circumstances here warrant greater specificity because (1) the posted path to LOLO includes all facilities connecting Idaho Power's and Avista's systems,¹ and (2) in this case Idaho Power's and Avista's systems are connected by a 108-mile long 230 kilovolt line running from Avista's Lolo Substation in Idaho to Idaho Power's Oxbow Substation in Oregon. The name used for the posted path on OASIS therefore presents some ambiguity as to the precise location of the Point

¹ 18 C.F.R. § 37.6(b)(1)(iv).

of Delivery.

Kootenai understands the precise Point of Delivery to be the point specified as Idaho's Engineer Station 1600 plus 97.3 (on the section line between Sections 16 and 21, Township 1 North, Range 48 East, W M) near Innaha, Oregon. Kootenai bases this understanding on several facts obtained from Federal Energy Regulatory Commission ("FERC") filings and communication with Idaho Power, which include:

- The point in change of ownership on the Lolo-Oxbow line is the point near Innaha, Oregon.
- The Point of Delivery specified in the 1958 Interconnection Agreement between Idaho Power and Avista on file with FERC is defined as the point in change in ownership – here, the point near Innaha, Oregon.
- The 1958 Interconnection Agreement calls for line losses to be imputed to the Point of Delivery – again, the point near Innaha, Oregon.
- Although the metering equipment is located at the Lolo Substation, the utilities currently impute line losses to Avista up to the point near Innaha, Oregon.
- The Lolo-Innaha section of the line is included in the rate base used by Avista to calculate transmission rates and line losses which Kootenai will pay Avista for Point-to-Point transmission service to Idaho Power's system.
- In FERC filings regarding the line, Avista and Idaho Power have stated that transmission capacity over the Lolo to Innaha section of the line has been and will be posted on Avista's OASIS as a part of Avista's Transmission System. FERC Docket No. EC01-32.
- A generator interconnecting to the line at any point between the Lolo Substation and Innaha would do so with Avista pursuant to Avista's OATT.

In response to Kootenai's LTF Point-to-Point Agreement specifying the point of interconnection near Innaha, Oregon, Avista tendered an executable LTF Point-to-Point Agreement, which described the Point of Delivery as follows:

The point on the Lolo-Oxbow 230 kV Transmission Line where the 230 kV facilities of Idaho Power Company and Avista are interconnected, and, for scheduling purposes, the LOLO point of delivery.

Kootenai appreciates Avista's attempt to accommodate Kootenai's request. However, as you know, Idaho Power appears to remain unconvinced Kootenai may use Avista's Transmission System for Point-to-Point Service up to the point of interconnection near Innaha, Oregon, and instead believes Kootenai may not deliver past Avista's Lolo Substation. Kootenai is therefore forced to request that Avista insert the term "near Innaha, Oregon" into the definition of Point of Delivery, such that it reads:

The point on the Lolo-Oxbow 230 kV Transmission Line where the 230 kV facilities of Idaho Power Company and Avista are interconnected **near Innaha, Oregon**, and, for scheduling purposes, the LOLO point of delivery.

Mr. Michael Andrea
June 11, 2012
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We are aware of instances where we believe Avista has provided this level of detail in describing a Point of Delivery in a LTF Point-to-Point Agreement in the recent past. Two such agreements utilizing far more description than the names used for the OASIS posted path are on file with Seattle City Light and Tacoma Power in FERC Docket No. ER-08-625.

In light of Kootenai's request to include the term "near Imnaha, Oregon" in the definition of the Point of Delivery and Idaho Power's position regarding its receipt of the delivery, Kootenai formally requests that Avista file the unexecuted agreement with FERC pursuant to Section 15.3 of Avista's OATT. That would enable all interested parties to seek clarity from FERC.

Kootenai would appreciate any efforts Avista may be able to make to file the unexecuted agreement prior to expiration of the 30-day time limit specified in the OATT. Please let me know if you have any questions.

Very truly yours,



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

cc (email only): Doug Elliott, Kootenai Electric Cooperative, Inc.
 Jeff Schlect, Avista Transmission
 Warren Clark, Avista Transmission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of June, 2012, a true and correct copy of the within and foregoing **KOOTENAI'S FACTUAL UPDATE FILING AND REQUEST TO STAY IDAHO PUBLIC UTILITIES COMMISSION DETERMINATION** was served as shown to:

Jean Jewell
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

Kris Sasser
Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702

Hand Delivery
 U.S. Mail, postage pre-paid
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Donovan Walker
Jason Williams
Idaho Power Company
1221 West Idaho Street
Boise, ID 83702

Hand Delivery
 U.S. Mail, postage pre-paid
 Facsimile
 Electronic Mail

By:



Gregory M. Adams