Office of the Secretary
Service Date
October 5, 2012

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

XRG-DP-7, XRG-DP-8, XRG-DP-9, XRG-DP-10, LLCs,	)	**CASE NO. PAC-E-10-08**
COMPLAINANTS,	)	
vs.	)	
PACIFICORP DBA ROCKY MOUNTAIN POWER,	)	**ORDER NO. 32657**
RESPONDENT.	)	

On July 29, 2010, XRG filed a complaint with the Commission against PacifiCorp dba Rocky Mountain Power. XRG alleged that Rocky Mountain Power is in violation of the Public Utility Regulatory Policies Act (PURPA), Federal Energy Regulatory Commission (FERC) regulations and orders, and this Commission's Orders by failing to provide XRG with a power purchase agreement including pre-March 16, 2010, published avoided cost rates.[1] On August 23, 2010, Rocky Mountain Power filed its answer. Rocky Mountain Power maintained that XRG is not entitled to pre-March 16, 2010, published avoided cost rates because the parties had not executed any power purchase agreements (PPAs) at that point in time.

In final Order No. 32553 issued May 18, 2012, the Commission found that, based on the totality of the evidence and arguments presented, XRG is not entitled to pre-March 16, 2010, published avoided cost rates. As a result, the complaint filed by XRG against Rocky Mountain Power on July 29, 2010, was dismissed. On June 8, 2012, XRG filed a Petition for Reconsideration which the Commission granted. Order No. 32588. Limited discovery was granted and the parties were permitted to file briefs. Order No. 32600. By this Order, we affirm our initial decision in Order No. 32533 that XRG is not entitled to pre-March 16, 2010, published rates.

[1] XRG seeks published avoided cost rates contained in Order No. 30744— rates superseded on March 16, 2010, by the lower rates of Order No. 31025.

BACKGROUND

A. XRG's Complaint

In its complaint, XRG asserted that, prior to March 16, 2010, XRG requested four standard power purchase agreements (PPAs, Agreements) for four PURPA qualifying facilities (QFs) located near Malta, Idaho. Three of XRG's projects were expected to have a nameplate capacity of 20 MW. The fourth project was expected to have a nameplate capacity of 10 MW. None of the QFs would produce more than 10 average megawatts (aMW). Complaint at 1. XRG's projects would not directly interconnect to Rocky Mountain Power's system. XRG proposed to deliver the projects' output ("wheel") to Rocky Mountain Power at the utility's Brady substation. *Id.* at 3. XRG stated that it has had "extensive contact" with Rocky Mountain Power regarding obtaining PPAs for its four projects. In response to XRG's request for agreements, Rocky Mountain Power provided one draft PPA to XRG in May 2009. *Id.* at 4.

XRG maintained that, prior to the Commission's implementation of new published avoided cost rates on March 16, 2010, XRG provided Rocky Mountain Power with the "essential elements" of its four projects. XRG argued that it "obligated itself to enter into four draft PPAs for the projects" in such a way as to be entitled to pre-March 16, 2010 ("vintage"), published avoided cost rates. *Id.* XRG alleged that Rocky Mountain Power is in violation of PURPA, FERC regulations and orders, and Commission Orders by failing to provide XRG with agreements containing vintage published avoided cost rates. *Id.* at 5.

B. Rocky Mountain Power's Answer

In its Answer, Rocky Mountain Power admitted that XRG contacted the utility as early as 2007 regarding PPAs for proposed QFs in Idaho. Answer at 3. The Company maintained that it informed XRG several times in writing in 2009 that transmission capacity from XRG's proposed delivery point was insufficient to accept more than 23 MW of net output from XRG's proposed projects. *Id.* Rocky Mountain Power also admitted that it delivered one draft PPA to XRG in May 2009. The Company states that the draft PPA was intended to "be a template for the non-price terms and conditions of PPAs for the three remaining qualifying facilities proposed by XRG." *Id.*

Rocky Mountain Power argued that XRG is not entitled to vintage published avoided cost rates because XRG had not executed any PPAs nor had it created a legally enforceable obligation prior to March 16, 2010. *Id.* at 6. The Company further alleged that, because XRG

failed to take any timely action to challenge Rocky Mountain Power, the projects are barred by the doctrines of laches and estoppel from obtaining PPAs with vintage rates.

After a period of protracted discovery, on February 7, 2011, Rocky Mountain Power filed a Motion for a Protective Order to Stay Discovery and a Motion for Summary Judgment with the Commission. Rocky Mountain Power requested a protective order partially staying discovery pending the resolution of the Company's Motion for Summary Judgment.

XRG alleged that PacifiCorp's Motion for Summary Judgment is not appropriate because Commission rules do not provide for motions for summary judgment. "The complex factual record before the Commission does not support a finding that it would be in the public interest to process this case without a hearing." Answer at 17. XRG also maintained that PacifiCorp's Motion fails the basic requirement that it include admissible evidence in support of all material facts.

C. Oral Argument

In response to Rocky Mountain Power's Motion for Summary Judgment and XRG's request for a hearing, the Commission issued a Notice of Hearing for Oral Argument on May 18, 2011. Order No. 32246. The Commission directed the parties to address whether there is a genuine issue as to any material fact regarding XRG's complaint. The Commission also invited the parties to address XRG's Motion to Complete Discovery. Oral arguments were presented on June 9, 2011.

Rocky Mountain Power argued that it "repeatedly and consistently told XRG that it would only accept 23 megawatts at the published avoided cost price." Tr. at 6. The Company provided XRG with one draft PPA in May 2009. In October 2009, the Company explained that it was only offering one PPA because the point of delivery proposed by XRG for all of its four projects had transmission constraints. Tr. at 7. Rocky Mountain Power explained that, if the Company had an obligation to accept additional output at the Borah and Brady substations, "PacifiCorp will expect [XRG] to pay for all resulting interconnection costs, including network upgrades." Tr. at 7.

Rocky Mountain Power maintained that, prior to March 16, 2010, XRG did not clearly manifest its intent to obligate itself to deliver power to the Company. The utility asserted that XRG expressed intent to negotiate, but the parties never agreed to any material terms for the

power purchase agreements because XRG had not returned the draft agreement provided by the Company in May 2009. Rocky Mountain Power explained that the parties

> didn't agree to the price, at least not with respect to the three projects PacifiCorp said it didn't have existing capacity to accept; they didn't agree on the point of delivery or the form of delivery to the point of delivery, that is, the off-system transmission that would bring the power to the point of delivery; they didn't agree on delay default security; they never even discussed curtailment rights or insurance; and they didn't agree on a commercial on-line date, and the record shows that more than one date was proposed.

Tr. at 10. Rocky Mountain Power argued that "each time [the Company] requested that XRG confirm the continuing validity of its January 2009 submittal – and it did so on October 2nd of 2009 and also April 13, 2010 – it received no response." *Id.* The utility further asserted that there were long periods of time where no communication occurred between the Company and XRG, i.e., May 12 to July 6, 2009; July 6 to September 18, 2009; November 9, 2009 to March 11, 2010. *Id.* Communication was re-established in March 2010 only after XRG was notified by Rocky Mountain Power of the Commission's intent to revise published avoided cost rates.

XRG maintained that there are still material facts in dispute and that it is entitled to additional discovery. Tr. at 17. Specifically, XRG argued that Rocky Mountain Power either knowingly, or through negligence or ineptitude, "acted so as to prevent the QF from obtaining a contract." Tr. at 31. "Rocky Mountain Power's refusal to negotiate at that point in time was a major contributing factor to XRG not being able to fund $80,000 for an additional interconnection study [required by BPA] for all four projects."[2] Tr. at 30. XRG alleges that Rocky Mountain Power's failure to negotiate "caused XRG to allow its interconnection requests to lapse in March of 2009." Tr. at 30.

XRG filed its complaint in July 2010 regarding the transmission access dispute with Rocky Mountain Power. On September 21, 2010, during the discovery phase of this complaint, Rocky Mountain Power notified XRG that network transmission capacity was now available for the output from all four projects and could be integrated without any upgrade costs. Tr. at 24. XRG questioned how Rocky Mountain Power did not know earlier that network transmission to

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[2] XRG's four projects were considered "off system." The projects would not directly interconnect to Rocky Mountain Power's system. Therefore, in order to deliver its energy to Rocky Mountain Power, XRG needed a third party transmission agreement, i.e., an agreement to wheel the energy to Rocky Mountain Power at the utility's Brady substation. XRG was attempting to secure a third party transmission agreement with BPA.

accommodate all four projects would be available by the projects' initial on-line date in January 2009. "XRG's theory of the case is that Rocky Mountain Power abused its role as PURPA negotiator and network transmission service provider to stall PURPA negotiations from March 2009 until September of 2010 by failing to acknowledge the availability of the Populus to Terminal upgrades for XRG's project." Tr. at 31-32.

D. The Commission's Final Order

In Order No. 32553 the Commission denied Rocky Mountain Power's Motion for Summary Judgment. The Commission determined that there were genuine issues of material fact related to the underlying complaint that did not permit a determination of this case through use of summary judgment. Order No. 32553 at 7. However, the record provided through pleadings and at oral argument presented ample evidence for the Commission to weigh the disputed facts and decide the underlying matters alleged in XRG's original complaint. Rule of Procedure 327, IDAPA 31.01.01.327.

XRG submitted its initial request for four power purchase agreements in January 2009. In March 2009, Rocky Mountain Power communicated to XRG that the utility could only accept 23 MW of energy at the published avoided cost rates because XRG's chosen point of interconnection to Rocky Mountain Power's system (the Brady substation) had transmission constraints. The Company explained that any additional purchases of energy from XRG by Rocky Mountain Power would have to be price-adjusted to reflect any resulting interconnection and network upgrade costs. Tr. at 7. Also in March of 2009, XRG allowed its interconnection (wheeling) requests with BPA to lapse. XRG claims that Rocky Mountain Power's failure to negotiate caused the projects' inability to fund $80,000 for an additional interconnection study required by BPA. Tr. at 30. However, at the time XRG allowed its interconnection requests to expire, Rocky Mountain Power had only recently asserted its inability to accept more than 23 MW at the Company's Brady substation. Moreover, we found that the record in this case reflects that regular communications between XRG and Rocky Mountain Power continued through May 2009 when Rocky Mountain Power provided XRG with a single PPA for its review. Order No. 32553 at 7. This Commission further found no evidence in the record that Rocky Mountain Power was refusing to negotiate in March 2009. *Id.* Based on the foregoing, we concluded that XRG's assertion that its interconnection requests with BPA lapsed because of Rocky Mountain Power's intransigent conduct was without merit. *Id.*

Thereafter, the Commission noted that significant periods of time elapsed with no communication between Rocky Mountain Power and XRG, i.e., May 12 to July 6, 2009 – July 6 to September 18, 2009 – November 9, 2009 to March 11, 2010. On July 6, 2009, XRG acknowledged the lapse in communications to the utility by stating, "Please accept our apologies on not getting back to you sooner." Motion for Summary Judgment, Exh. A at 201. XRG further stated that it would "provide a redline to this contract and the other 3 identical contracts proposed. . . ." *Id.* By September 2009, XRG had not yet returned the draft PPA provided by Rocky Mountain Power to the projects four months earlier. E-mail communications indicate that XRG and Rocky Mountain Power were poised to discuss the transmission constraints in early November 2009.

On March 10, 2010, XRG received notice of the Commission's intent to revise its published avoided cost rates. On March 11, 2010, XRG contacted Rocky Mountain Power and notified the Company that the project would replicate the single PPA provided by the Company for XRG's three other projects and "present a redline of all four projects as originally requested back in January 2009 for your review and approval." *Id.* at 289. On March 16, 2010, the Commission issued Order No. 31025 revising, and lowering, the published avoided cost rates for PURPA projects. XRG maintained in its complaint that, prior to March 16, 2010, it provided Rocky Mountain Power with the "essential elements" of its four projects in order to be entitled to pre-March 16, 2010, published avoided cost rates. The Commission found no evidence that XRG ever returned the one draft PPA with modifications and/or edits – much less three additional PPAs that XRG asserted it would reproduce and submit for Rocky Mountain Power's review. Order No. 32553 at 9. Even in XRG's March 12, 2010, letter from counsel indicating XRG's intent to enter into contracts, no redlined PPAs were included. We determined that, while negotiations had begun, the parties clearly had differing views about the availability of transmission and the parties had not yet discussed terms of the four PPAs. *Id.* Consequently, the Commission found that XRG did not take sufficient action so as to obligate itself to deliver energy to Rocky Mountain Power for any of the four projects contemplated by the developer. *Id.* We further found that XRG's failure to return even a single draft PPA in time to be eligible for the existing (now vintage) published avoided cost rates cannot be attributed to a failure to negotiate by Rocky Mountain Power. *Id.*

We further found that, prior to the time the published rates changed in March 2010, Rocky Mountain Power reasonably held its position that transmission in the area of XRG's requested interconnection was constrained. *Id.* In early 2009, when XRG initially proposed its projects, Rocky Mountain Power reviewed the publicly available information regarding its available transmission (OASIS). The report showed that there was then between 20 and 25 MW of unsubscribed capacity available at the location requested by XRG. Tr. at 49. This information was relayed to XRG. Rocky Mountain Power suggested proceeding with a single PPA and investigating alternatives for the remainder of the projects. The utility did not refuse to accept any of XRG's projects – in fact, Rocky Mountain Power informed XRG that purchases of energy from XRG in excess of the available transmission capacity would have to be price-adjusted to reflect interconnection and network upgrade costs. Based on these facts, we found no evidence that Rocky Mountain Power was attempting to impede negotiations with XRG by failing to acknowledge future transmission upgrades on its system. Order No. 32553 at 10.

The Commission found that a legally enforceable obligation cannot exist until a QF takes sufficient steps to show that it has obligated itself to provide energy to the utility and that, but for the utility's conduct, the parties would have entered into a contract. We further found that an assertion that XRG intends to enter into a contract with Rocky Mountain Power, without actions in furtherance of its intent, was not sufficient to establish XRG's entitlement to pre-March 2010 published avoided cost rates. Consequently, we dismissed XRG's complaint.

RECONSIDERATION

A. XRG's Petition

On June 8, 2012, XRG filed a Petition for Reconsideration with the Commission. XRG requested that the Commission reconsider its previous Order and issue an Order (1) denying Rocky Mountain Power's Motion for Summary Judgment; (2) reinstating XRG's original claim for pre-March 16, 2010, published avoided cost rates; (3) granting XRG's request for leave to amend its complaint; (4) granting XRG's Motion to Complete Discovery; and (5) providing XRG an opportunity to file its own motion for summary judgment at the close of discovery on reconsideration.

XRG maintains that "FERC's regulations entitle QFs to long term contract rates set at the purchasing utility's full avoided costs at the time the QF commits itself to a legally enforceable obligation to deliver its project's output over a specified term" as long as the QF can

demonstrate that, but for the actions of the utility, the QF would have obtained a power purchase contract. XRG Brief at 3. XRG argues that Rocky Mountain Power "intentionally put blinders on and misled XRG as the true nature of the available transmission capacity." *Id.* at 4.

XRG suggests that RMP could have made execution of a PPA contingent on the availability of transmission service rather than relying on the publicly available information through OASIS. (The Populus line upgrade became publicly available information on OASIS on July 15, 2010.) XRG argues that RMP's choice to not offer a contingent contract is evidence of RMP's intent to prevent XRG from obtaining a contract. *Id.* at 5. XRG maintains that RMP's actions are "contrary to established FERC practices" and "obviously done for the sole purpose of frustrating this QF developer from access to the market in favor of Rocky Mountain Power's own resources." *Id.* at 7.

B. Rocky Mountain Power's Answer

Rocky Mountain Power asserts that there is nothing in XRG's Motion for Reconsideration that changes the basic conclusions of the Commission's Order in dismissing XRG's complaint. Brief at 3. The Company recites the Commission's conclusion that the record lacked sufficient evidence to show that Rocky Mountain Power impeded negotiations by failing to acknowledge future transmission upgrades. With regard to making a "contingent" offer, the utility maintains that it does not have a legal duty to advise XRG on how to configure its projects – and XRG did not request a contingent contract. Moreover, QF resources must be network resources; therefore, firm transmission is required and a non-firm option would not be a viable alternative.

Rocky Mountain Power argues that the evidence in the record supports the Commission's decision to dismiss XRG's complaint. XRG failed to take action necessary to establish a legally enforceable obligation prior to March 16, 2010. The Company further asserts that XRG's Motion to Amend was procedurally deficient and should, therefore, be denied. The utility suggests that the Commission utilize the opportunity on reconsideration to clarify the facts and reasoning supporting its decision to dismiss XRG's underlying complaint.

C. Procedural Matters on Reconsideration

On July 6, 2012, the Commission issued Order No. 32588 granting reconsideration of final Order No. 32553. In granting reconsideration, the Commission also granted XRG's narrowed request to complete discovery in order to allow XRG answers to the issues that it

argued are necessary to support its complaint. Order No. 32600. *See also* XRG's Withdrawal of Production Requests filed June 9, 2011. Rocky Mountain Power is directed to respond to Production Request Nos. 24, 25, 26, 27, 31, 32(b), (d), (e), 33(a), 34, 35, 40, 45 and 47.

In its Petition, XRG also claimed that the Commission failed to rule on XRG's request to amend its complaint. XRG's original complaint was filed with the Commission on July 29, 2010. At the time XRG requested reconsideration; no amended complaint had been filed with the Commission.[3] The Commission explained that amendments are permissible pursuant to Rule 66 of the Commission's Rules of Procedure. Order No. 32600. However, the Commission observed that XRG's notation in a footnote in an Answer to Motion for Summary Judgment "is not sufficient to consitute a motion upon which the Commission can base a ruling. If XRG seeks to amend its complaint it must do so pursuant to the Commission's Rules of Procedure. *See* IPUC Rules 56 and 66." *Id.* at 1. Consequently, the Commission declined to recognize XRG's footnote as a request for amendment. *Id.*

Following the deadline for discovery responses, both parties were given a final opportunity on reconsideration to assert a position through legal briefs regarding the merits of the underlying XRG complaint, i.e., whether and to what extent XRG is entitled to pre-March 16, 2010, published avoided cost rates. Rocky Mountain Power and XRG each filed a legal brief on September 10, 2012.

FINDINGS AND CONCLUSIONS

The Idaho Public Utilities Commission has jurisdiction over this matter pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing regulations of FERC to set avoided costs, to establish standard published avoided cost rates, to order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs, and to implement FERC regulations.

Under FERC rules, utilities are required to purchase QF generation at a rate equal to the utility's avoided cost. 18 C.F.R. § 292.304(b)(2). "Avoided costs" are the incremental costs to the electric utility of power which, but for the purchase from the QF, such utility would

[3] On July 27, 2012, after XRG's Petition for Reconsideration had been filed and in response to the Commission's finding in Order No. 32600 that XRG had not yet requested the Commission to amend its complaint, a First Amended Formal Complaint was filed by XRG with the Commission.

generate itself or purchase from another source. 18 C.F.R. § 292.101(b)(6). Although FERC promulgated the general scheme and rules, it left the actual implementation of PURPA to the state regulatory authorities. *Rosebud Enterprises, Inc. v. Idaho Public Utilities Commission*, 128 Idaho 609, 614, 917 P.2d 766, 771 (1996). FERC regulations grant the states latitude in implementing the regulation of sales and purchases between QFs and electric utilities. *See Federal Energy Regulatory Commission v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982).

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission granted reconsideration on this matter on July 6, 2012. Order No. 32588.

After reviewing the underlying record, our prior Order, and the parties' arguments on reconsideration, we continue to find that XRG is not entitled to pre-March 16, 2010, published avoided cost rates for several reasons: (1) XRG has failed to establish that its interconnection request with BPA (for wheeling the energy to Rocky Mountain Power's system) lapsed in March 2009 due to bad conduct on the part of the utility; (2) XRG has not proven that it took sufficient steps toward obligating itself to deliver energy to Rocky Mountain Power such that a legally enforceable obligation was created; and (3) XRG has failed to demonstrate that at the time published rates changed in March 2010, Rocky Mountain Power unreasonably held its position that transmission in the area of XRG's interconnection was constrained.

First, we find that XRG has failed to establish that its interconnection requests with BPA lapsed because of Rocky Mountain Power's intransigent conduct. When XRG requested four power purchase agreements in January 2009, Rocky Mountain Power responded in March 2009 by notifying XRG that only 23 MW of transmission capacity was available. Because of the transmission constraints, the utility informed XRG that any additional purchases of energy would have to be price-adjusted to reflect interconnection and network upgrade costs. Order No. 32553 at 7. XRG had initiated contact with Rocky Mountain Power but, in early 2009, negotiations had scarcely begun. We find no evidence that the utility was failing to negotiate or otherwise attempting to impede the negotiation process. On the contrary, in response to XRG's request for four PPAs, the utility assessed its available transmission capacity at the point of interconnection

requested by XRG and determined that only a limited amount (23 MW) of transmission capacity was available. The utility reported its findings to XRG in March 2009, and informed the projects that any purchases in excess of the available capacity would have to be price-adjusted to reflect any required interconnection and network upgrade costs. XRG made a choice at that time to allow its interconnection request with BPA to lapse because BPA was requesting $80,000 for an additional interconnection study. Tr. at 30. However, we find that XRG's decision to allow its interconnection request to lapse in March 2009 cannot be attributed to bad conduct or unnecessary delay on the part of Rocky Mountain Power. Order No. 32553 at 7.

Second, XRG is a sophisticated QF developer, as evidenced by the numerous and various cases in front of this Commission in which it has participated. *See* IPC-E-04-2, Order No. 29480; PAC-E-05-9, Order No. 29880; AVU-E-07-02, Order No. 30500; IPC-E-07-03, Order No. 30488; PAC-E-07-07, Order No. 30497; IPC-E-07-13, Order No. 30493; IPC-E-07-15, Order No. 30480; AVU-E-09-04, Order No. 30921; IPC-E-10-22, Order No. 32104; also *see generally* GNR-E-11-03. Despite the fact that XRG is well-versed in utility and regulatory issues as they pertain to QF development, XRG did not take sufficient action so as to obligate itself to deliver energy to Rocky Mountain Power prior to the rate change on March 16, 2010. Communications between XRG and Rocky Mountain Power waxed and waned during 2009, and early 2010. It was not until March 2010, when XRG received notice of the Commission's intent to revise its published avoided cost rates, that XRG attempted in earnest to establish its entitlement to contracts. However, due to only intermittent communications, the terms of XRG's four requested PPAs had not been negotiated. A solution to Rocky Mountain Power's stated transmission constraints had yet to be resolved. In short, we find XRG had not taken sufficient steps to establish a legally enforceable obligation at the time the rates changed in March 2010. As we stated in our previous Order, "an assertion that XRG intends to enter into a contract with Rocky Mountain Power, without actions in furtherance of its intent, is not sufficient to establish entitlement to pre-March 2010 published avoided cost rates." *Id.* at 10.

Finally, XRG has failed to demonstrate that at the time published rates changed in March 2010, Rocky Mountain Power unreasonably held its position that transmission in the area of XRG's interconnection was constrained. *Id.* at 9. As it does with all requests made for QF interconnection, the utility reviewed the publicly available information regarding available transmission at the point of interconnection requested by XRG. The report reflected limited

transmission availability. Rocky Mountain Power proceeded based on the results of its transmission report. The fact that additional transmission became available in July 2010 does not change or impugn the representations made by the utility in March 2009 based on publicly available information. We find that, at the time published rates changed in March 2010, Rocky Mountain Power reasonably held its position that transmission at the point of interconnection requested by XRG was constrained.

We next turn to the issue of XRG's amended complaint. XRG's original complaint was filed with the Commission on July 29, 2010. XRG argued in its original complaint that it was entitled to pre-March 16, 2010, published rates. In its Answer to Rocky Mountain's Motion for Summary Judgment filed February 22, 2011, XRG requested in a footnote "leave to amend its complaint." Answer to Summary Judgment at 18, n.9. Later in its Petition for Reconsideration filed on June 8, 2012, XRG claimed that the Commission had not ruled on the request to amend the complaint. However, the Commission observed in the Reconsideration Scheduling Order No. 32600 that "No amended complaint has ever been received by the Commission." Order No. 32600 at 1 (July 26, 2012). The Commission continued that if "XRG seeks to amend its complaint it must do so pursuant to the Commission's Rules of Procedure. *See* IPUC Rules 56 and 66." *Id.*

In response to this admonishment, XRG filed a "Motion to Amend Complaint" on July 27, 2012. Its Motion was filed nearly two years after the original filing – claiming, in the alternative, that XRG is entitled to the rates in effect **after** March 16, 2010. We find it reasonable to deny XRG's Motion to Amend its original complaint.

A "decision to grant or to deny a motion to amend a pleading is reviewed by [the Idaho Supreme] Court under an abuse of discretion standard. '[The trier of fact] does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason.'" *Fragnella v. Petrovich*, 153 Idaho 266, 281 P.3d 103, 114 (2012) (internal citations omitted), citing *West Wood Invs. Inc. v. Acord*, 141 Idaho 75, 82, 106 P.3d 401, 408 (2005). Pursuant to Rule 66 of our Rules of Procedure, the Commission "*may* allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and *defects that do not affect substantial rights of the parties* will be disregarded." IDAPA 31.01.01.066 (emphases added).

We find XRG's claim of entitlement to post-March 16, 2010, published avoided cost rates was not a matter fully and fairly litigated by the parties nor previously considered by this Commission. We further find it is wholly inappropriate and patently unfair for XRG to request an amendment 12 months after its original complaint was filed and more than four months after a final Order has been issued on its complaint – during the reconsideration of the Commission's initial decision. We also find that allowing the complaint to be amended at this late date will cause unnecessary delay and be prejudicial to Rocky Mountain Power. *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 612, 114 P.3d 974, 982 (2005). Therefore, we dismiss without prejudice XRG's Motion to Amend its original complaint.

ORDER

IT IS HEREBY ORDERED that, for the reasons set out in greater detail in the body of this Order, we affirm our prior final Order No. 32553, and dismiss XRG's complaint filed on July 29, 2010. XRG has not established entitlement to pre-March 16, 2010, published avoided cost rates.

IT IS FURTHER ORDERED that the Motion to Amend the original complaint filed by XRG on July 27, 2012, is dismissed without prejudice.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory order previously issued in this Case No. PAC-E-10-08 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 5th day of October 2012.

PAUL KJELLANDER, PRESIDENT

MACK A. REDFORD, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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