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IDAHO PUBLIC  
UTILITIES COMMISSION

November 25, 2011

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 Answer and Motion to Dismiss Idaho Power's Petition for Declaratory Order**

Dear Ms. Jewell:

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

Sincerely,

Gregory M. Adams  
Richardson & O'Leary PLLC

encl.

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Attorneys for Kootenai Electric Cooperative, Inc.

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-23**

IN THE MATTER OF IDAHO POWER  
COMPANY'S PETITION FOR  
DECLARATORY ORDER REGARDING  
PURPA JURISDICTION. )  
 ) **KOOTENAI ELECTRIC**  
 ) **COOPERATIVE, INC.'S**  
 )  
 ) **ANSWER IN OPPOSITION AND**  
 ) **MOTION TO DISMISS IDAHO**  
 ) **POWER'S PETITION FOR**  
 ) **DECLARATORY ORDER**  
 )  
 )

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**INTRODUCTION**

Kootenai Electric Cooperative, Inc. ("Kootenai") hereby respectfully submits its Answer in Opposition to Idaho Power's Petition for Declaratory Order and its Motion to Dismiss Idaho Power's Petition for Declaratory Order. Because Idaho Power has refused to cooperate outside of the context of litigation, Kootenai reluctantly submits this filing in its attempt to end this legal dispute that Idaho Power initiated. Kootenai files the Answer pursuant to Idaho Public Utility Commission ("IPUC") Rule of Procedure 57(2), and files the Motion to Dismiss pursuant to IPUC Rule of Procedure 56. This dispute concerns

Kootenai's attempt to sell the electrical output of its Fighting Creek Landfill Gas to Energy Station to Idaho Power. Kootenai's electricity will not be made available for Idaho Power's use until after Kootenai pays Avista Corporation ("Avista") to transmit the electricity to Idaho Power's electrical system in the State of Oregon. As explained below, the IPUC has no jurisdiction to intervene in Kootenai's attempt to avail itself of rules implemented by the Federal Energy Regulatory Commission and the State of Oregon, which permit Kootenai's proposed transaction. Kootenai respectfully requests that the IPUC dismiss Idaho Power's Petition.

## **BACKGROUND**

### **1. The Fighting Creek Project**

This dispute involves Kootenai's attempt to sell the output of its 3.2 megawatt ("MW") Landfill Gas to Energy Station. The Fighting Creek project is located at the Kootenai County Solid Waste Facility, near Bellgrove, Idaho. The County will produce methane gas from decomposition of waste interned at the landfill, and sell that gas to Kootenai to generate renewable electricity through two 1.6 MW generators.

After initial discussions with Avista for sale of the output, Avista representatives informed Kootenai of the option to sell pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Kootenai subsequently self-certified the project as a qualifying facility ("QF"). *See* Federal Energy Regulatory Commission ("FERC") Docket No. QF11- 178. Kootenai has recently executed an interconnection agreement with Avista, which governs deliveries of the QF's output to Avista's system. Construction is progressing, and Kootenai expects the project to be operational by early 2012. Once operational, the Fighting Creek project and the related facilities owned by

the County will put methane emissions from the landfill to the beneficial use of producing clean, renewable electricity. In addition to the obvious environmental benefits, the project will generate revenue and expand the tax base for the County.

**2. Kootenai's attempt to utilize the IPUC's implementation of PURPA**

Kootenai attempted for several months to enter into a power purchase agreement ("PPA") with Avista for sale of the electrical output at a point of delivery in the State of Idaho using the IPUC's implementation of PURPA. As has been the trend in recent Idaho QF contracts, however, Avista would not agree to compensate Kootenai for the environmental attributes of its QF, or to disclaim ownership of such attributes. *See generally* IPUC Case No. IPC-E-11-15. Six months after Kootenai engaged in good faith negotiations, Kootenai and Avista ultimately reached agreement on all material terms other than the ownership of environmental attributes.<sup>1</sup>

Kootenai cannot sign Avista's contract clouding title to the environmental attributes because the Kootenai County Landfill from which Kootenai will purchase landfill gas owns half of the renewable energy credits and carbon offsets. As expressed in the attached letter, Kootenai would have happily accepted the PPA terms tendered by Avista, including the current IPUC avoided cost rates, if the PPA allowed Kootenai to retain clear title to the environmental attributes. *See* Kootenai Attachment No. 1 at pp. 2-

3. Rather than engage in protracted litigation over environmental attribute ownership with Avista, Kootenai decided to explore other options which will require the additional

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<sup>1</sup> To prove this point that Idaho Power appears to contest in its Petition, Kootenai has attached Avista's cover letter tendering the final contract for signature and Kootenai's response letter. These letters are attached as Attachment No. 1. Kootenai has also included, as Attachment No. 2, its more recent letter to Idaho Power explaining that the clause clouding title to environmental attributes was the sole issue of disagreement between Avista and Kootenai, along with some of the other documents provided to Idaho Power by Kootenai. Kootenai has omitted the lengthy PPAs exchanged with those letters.

expense of wheeling its output. *Id.*

### 3. Kootenai's attempt to utilize the OPUC's implementation of PURPA

Kootenai decided to attempt to sell instead to the nearest investor-owned utility in the State of Oregon because the Public Utility Commission of Oregon ("OPUC") requires its investor-owned utilities to disclaim ownership of environmental attributes. *See In Re Rulemaking to Adopt and Amend Rules Related to Ownership of the Non-energy Attributes of Renewable Energy (Green Tags), Energy Service Supplier Certification Requirements, and Use of Terms "Electric Utility" and "Electric Company,"* OPUC Docket No. AR 495, Order No. 05-1229, at pp. 8-9 (2005); *see also* Oregon Administrative Regulation 860-022-0075 (2011) (codifying the same).<sup>2</sup> Idaho Power is the nearest utility in another state to which Kootenai believes it can most easily wheel the output without operating at a substantial loss.

Idaho Power makes QF purchases in Oregon pursuant to the OPUC's extensive implementation of PURPA's mandatory purchase provisions. *See generally* Ore. Rev. Stat. 758.505 to 758.555; OPUC Docket No. UM 1129. The OPUC requires Idaho Power, through Idaho Power's Schedule 85, to publish avoided cost rates available for a contract term not to exceed 15 years for QFs sized 10 MW or less. *See generally In Re Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities,* OPUC Docket No. UM 1129, Order No. 05-584 (2005). The OPUC also requires Idaho Power to make publicly available a standard offer contract approved by the OPUC and to

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<sup>2</sup> Notably, the Montana Public Service Commission also requires its investor-owned utility to disclaim ownership of environmental attributes in QF contracts. *See In the Matter of the NorthWestern Energy's Application for Approval of Avoided Cost Tariff For New Qualifying Facilities*, Montana PSC Docket No. D2008.12.146, Order No. 6973d, p. 58 ¶ 136 (2010). Both Oregon and Montana require such a disclaimer unless the utility agrees to pay more than the estimated avoided costs of energy and capacity from an avoidable non-renewable energy source.

disclaim ownership of environmental attributes in that tariff contract.<sup>3</sup>

The OPUC's implementation of PURPA for Idaho Power is different from that of the IPUC's implementation for Idaho Power. But not all of the differences necessarily favor QFs selling to the Company in Oregon. For example, the IPUC allows for a 20-year contract term with fixed rates, but the OPUC only allows for a 15-year term. *See* OPUC Schedule 85, *supra* n. 3. Additionally, the OPUC only allows for use of published rates by projects of 10 MW or less, *id.*, and the IPUC allows for published rates for projects sized up to 10 average monthly MW (other than solar and wind QFs). Some provisions of the OPUC tariff undoubtedly favor small QFs, such as the OPUC-mandated clause requiring utilities to disclaim ownership of environmental attributes for which they do not pay. In this case, Kootenai prefers the OPUC's implementation because it will allow Kootenai to avoid litigation for its project which will soon be online.

#### **4. Kootenai's proposed transmission arrangements to Idaho Power in Oregon**

As discussed below, federal law requires Avista to wheel the output of Kootenai's Fighting Creek QF to another utility in exchange for a fee. Avista has cooperated with Kootenai in efforts to secure a transmission agreement under Avista's Open Access Transmission Tariff ("OATT") to Idaho Power's system in Oregon. Avista's Open Access Same Time Information System ("OASIS") website indicates that firm capacity is available to reach Idaho Power's system over the 230 kilovolt ("kv") transmission line between Avista's Lolo substation near Lewiston, Idaho and Idaho Power's Oxbow substation in Oxbow, Oregon. Although that line is commonly referred to as the 230 kv Lolo-Oxbow line, the utilities do not jointly own the line as common tenants on the entire

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<sup>3</sup> Idaho Power's OPUC Schedule 85 and tariff contracts are available online at <http://www.idahopower.com/AboutUs/RatesRegulatory/Tariffs/default.cfm?state=or>. The clause disclaiming ownership of environmental attributes is § 8.

Lolo-Oxbow line. As demonstrated below, the point in change of ownership of the transmission facilities over which the electricity will be delivered to Idaho Power is unequivocally in the State of Oregon.

According to publicly available FERC filings, the 230 kv Lolo-Oxbow line had its genesis in a 1958 Interconnection Agreement between Idaho Power, Avista, and PacifiCorp. *See* Kootenai Attachment No. 3 at p. 1.<sup>4</sup> That Interconnection Agreement included a requirement that Idaho Power construct a 230 kv line from its substations at its Bownlee and Oxbow power plants to a “*terminal structure, owned by Avista,*” located on the bank of the Snake River northwest of Divide Creek in Idaho County, Idaho. *Id.* (emphasis added).<sup>5</sup> The Interconnection Agreement also required Avista to construct, operate and maintain the section of the 230 kv line extending from Divide Creek to Avista’s Lolo substation near Lewiston, Idaho. *Id.* Idaho Power initially included its portion of the line from Oxbow to Divide Creek in its Hells Canyon license (FERC Project No. 1971). *Id.* Avista initially included its section of the line from Divide Creek to Lolo in a separate license required for it to transmit power from the Hells Canyon complex (FERC Project No. 2261). *Id.* at pp. 1-2.

In 1958, Idaho Power and Avista also executed a Transmission Line Agreement regarding the 20.23 mile section of the Lolo-Oxbow line which spanned from Divide Creek to Idaho Power’s engineer station at Imnaha, Oregon. *Id.* at pp. 6, 8, 26-29, 32-34. That line segment begins at the Idaho-Oregon State border, and travels 20.23 miles into

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<sup>4</sup> For the convenience of the IPUC, Kootenai has attached the cited FERC filings and orders regarding the Lolo-Oxbow line as Attachment No. 3.

<sup>5</sup> This is of course inconsistent with Idaho Power’s assertion in its Petition that the “terminal facilities” for the jointly owned 230 kv line are located at Avista’s Lolo substation. *See Idaho Power’s Petition for Declaratory Order* at 5. It is not clear how Idaho Power would own terminal facilities at the Lolo substation well past the point where Avista’s terminal facilities exist at the end of the portion of the line Avista owns. Idaho Power has not supported its factual assertion with any evidence, or agreed to discuss the issue with Kootenai prior to filing its Petition.

the State of Oregon at Imnaha, Oregon. *Id.* The 1958 Line Agreement required Idaho Power to construct, operate, and maintain this 20.23-mile section of the line in the State of Oregon. *Id.* In exchange for Avista paying for construction and maintenance, Idaho Power agreed to transfer all power scheduled by Avista over the line. However, the utilities have construed the Interconnection Agreement to require capacity on the Divide Creek to Imnaha section to be posted on Avista's OASIS website, *id.* at 12, 14, and the Line Agreement gave Avista the option to purchase this 20.23-mile section of the 230 kv line. *Id.* at pp. 6, 8, 26-29, 32-34.

Most importantly for the analysis of Idaho Power's current Petition, Avista exercised its option to purchase the section of the line from Divide Creek to Imnaha in 2000, and FERC approved the sale to Avista. *Id.* at pp. 4-5, 8, 30-31, 38-39. Subsequently, Idaho Power amended its Hells Canyon license (Project No. 1971) to state that it no longer owns the Divide Creek to Imnaha line in Oregon, and Avista amended its license to declare its ownership and control of the line. *Id.* at 40-50. The utilities represented to FERC that capacity over the Divide Creek to Imnaha section would continue to be posted on Avista's OASIS site. *Id.* at 12, 14. Avista's responsibility for operation and maintenance of the line 20.23 miles into the State of Oregon is further evidenced by FERC's acceptance of Avista's filing of an Operation and Maintenance Plan for the Divide Creek to Imnaha section of the line in 2002. *Id.* at 51-91.<sup>6</sup> The maps in the FERC filings also very clearly demonstrate that Idaho Power does not own the line until well into the State of Oregon. *Id.* at pp. 33-34, 97.

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<sup>6</sup> Subsequently, FERC has granted Avista's request to allow its Project No. 2261 license to expire because Avista does not operate the line solely as a means for delivery of power from the Hells Canyon complex. *See id.* at pp. 92-106. This only further demonstrates the separation and distinction between Avista's and Idaho Power's systems.

Today, Avista owns and operates the first 63 miles of the 230 kv Lolo-Oxbow line from Avista's Lolo substation to Idaho Power's engineer station at Imnaha, Oregon. *Id.* at pp. 38-39, 44-50, 51-106. Electricity travels from the Lolo substation for approximately 43 miles in the State of Idaho, and then travel across the Snake River and the state line into the State of Oregon on the Avista owned and operated line. Once in the State of Oregon, electricity travels 20.23 miles further on the line owned and operated by Avista prior to the point where Idaho Power takes over ownership and operation of the line, as well as the electricity it carries, at Idaho Power's engineer station in Imnaha, Oregon.

Avista's transmission personnel have recently confirmed for Kootenai that Avista still owns the portion of the transmission line from the Lolo substation in the State of Idaho to a point well after the line crosses the border into the State of Oregon at Idaho Power's engineer station in Imnaha, Oregon. *See* Kootenai Attachment No. 1 at p. 7.

**5. Kootenai's request to Idaho Power for an OPUC PURPA contract**

On October 19, 2011, counsel for Kootenai sent Idaho Power a request for a PPA for Kootenai's QF. Kootenai's October 19<sup>th</sup> letter and enclosures included all of the information required by OPUC Schedule 85 to obtain a PPA, and requested that Idaho Power commence the process of investigating its ability to accept the delivery from the QF as a Network Resource at the Point of Delivery. Kootenai has entered into an umbrella agreement to become an Avista transmission customer allowed to secure a long-term, point-to-point transmission agreement to Idaho Power's system. Kootenai is now merely waiting for Idaho Power to confirm it will sign the OPUC Schedule 85 PPA, and have the physical ability to accept Kootenai's output, prior to Kootenai obligating itself to

a transmission agreement with Avista.<sup>7</sup>

In response to Kootenai's request, Idaho Power immediately filed the instant Petition for Declaratory Order requesting the IPUC to assert jurisdiction over this QF sale. Idaho Power did so minutes after emailing its responsive letter to counsel for Kootenai. Idaho Power did not attempt to discuss its concerns with Kootenai or its counsel prior to filing the Petition. Idaho Power has ignored subsequent efforts by counsel for Kootenai to initiate contact regarding this project. Kootenai has nevertheless attempted to proceed through the well-defined OPUC process for obtaining a QF contract with Idaho Power, by filling in the blanks on the OPUC Schedule 85 contract with its QF's project specifics. With Kootenai's submittal of the completed PPA to Idaho Power, Kootenai again requested that Idaho Power initiate the process of investigating its ability to designate Kootenai's QF as a Network Resource under Part III of Idaho Power's OATT. Kootenai has no way to initiate that request or adequately investigate Idaho Power's transmission capacity from the point of delivery in Imnaha, Oregon, to Idaho Power's loads, and Idaho Power has refused to even process that aspect of Kootenai's request.

## ARGUMENT

**1. Because Kootenai's sale to Idaho Power will occur in the State of Oregon, the IPUC has no jurisdiction over Idaho Power's Petition.**

**a. Kootenai's proposed point of delivery is in the State of Oregon.**

Kootenai's proposed PURPA sale will take place in the State of Oregon. The OPUC-approved PPA defines the point of delivery as "the location . . . where the

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<sup>7</sup> Idaho Power's OPUC Schedule 85 contract requires the QF to execute a transmission agreement prior to delivering its output, not prior to executing the PPA. *See* OPUC Off-System Schedule 85 PPA, *supra* n. 3, at § 4.1.5. Signing the long-term transmission agreement with Avista would obligate Kootenai to pay the transmission fees for the term of the agreement regardless of whether Idaho Power ever agrees to accept and pay for the delivered output. Thus, Kootenai must wait for Idaho Power's acceptance prior to signing a transmission agreement.

Transmitting Entity delivers the Facility's Net Energy to the Idaho Power electrical system." See OPUC Off-System Schedule 85 PPA, *supra* n. 3 at § 1.19. Additionally, Part I, section 1.37 of Avista's OATT defines the "Point of Delivery" as the "Point(s) on the Transmission Provider's Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Part II of the Tariff."<sup>8</sup> Idaho Power's Petition implies that it jointly owns the entire, 108-mile-long Lolo-Oxbow line, and is jointly responsible for electricity at all points between Avista's Lolo substation and Idaho Power's Oxbow substation. See *Idaho Power's Petition for Declaratory Order* at 5. But the utilities' FERC filings contained in Attachment No. 3 to this filing indisputably demonstrate that is not the case.

Change in ownership and a point of delivery must occur at some discrete location, and in this case that location is 20.23 miles within the State of Oregon. The electricity will not be made available to Idaho Power or delivered to its electrical system until the point on the Lolo-Oxbow line in Imnaha, Oregon, where Idaho Power first owns the line. As explained below, no law authorizes the IPUC to erect a wall at the Idaho border or to reach into the State of Oregon to stop Kootenai's proposed transaction under the OPUC tariffs.

**b. The IPUC's jurisdiction over PURPA matters is limited to that conferred to it by PURPA and FERC.**

The IPUC is a body of limited jurisdiction. State law grants the IPUC authority over retail electric service, public utilities' provision of such retail service, and complaints brought against public utilities within the State of Idaho. See, e.g., I.C. §§ 61-129, 61-501, 61-503, 61-612. But multiple Idaho Supreme Court opinions have

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<sup>8</sup> Avista's current OATT is available online at [http://www.oatioasis.com/AVAT/AVATdocs/OATT\\_effective\\_10-1-2011\\_11-17-2011.pdf](http://www.oatioasis.com/AVAT/AVATdocs/OATT_effective_10-1-2011_11-17-2011.pdf).

established that the IPUC's authority is limited to those powers expressly granted to it. *See Alpert v. Boise Water Corp.*, 118 Idaho 136, 140-41, 795 P.2d 298, 302-03 (1990); *Matter of Strand*, 111 Idaho 341, 342-43, 723 P.2d 885, 886-87 (1986); *Idaho Power Co. v. Idaho Pub. Util. Commn.*, 102 Idaho 744, 750-51, 639 P.2d 442, 448-49 (1981); *Wash. Water Power Co. v. Kootenai Env. Alliance*, 99 Idaho 875, 882, 591 P.2d 122, 129 (1979); *United States v. Utah Power and Light Co.*, 98 Idaho 665, 667-68, 570 P.2d 1353, 1355-56 (1977); *Lemhi Telephone Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 696-700, 571 P.2d 753, 753-757 (1977). Notably, as a non-profit cooperative, Kootenai is not a public utility over which the IPUC has authority. *See* I.C. § 61-104; *Clearwater Power Co. v. Wash. Water Power Co.*, 78 Idaho 150, 53-55, 299 P.2d 484 (1956). Thus, Idaho Code provides the IPUC with no authority to adjudicate a dispute initiated by Idaho Power against Kootenai.

The Idaho Supreme Court has held that the IPUC has the authority to order Idaho Power to enter into a PURPA contract in response to a *complaint filed by a QF*. *See Afton Energy, Inc. v. Idaho Power Co.*, 107 Idaho 781, 784-86, 693 P.2d 427, 430-32 (1984). In *Afton Energy, Inc.*, the Court noted that no Idaho Code sections mention PURPA, and indeed even today, no Idaho Code sections grant the IPUC authority to implement PURPA. But the Court held "the federal government is permitting the Commission to further certain federal policies through the performance of those functions the Commission is authorized to perform under Idaho statutes." *Id.* at 784, 693 P.2d at 430 (relying upon 16 U.S.C § 824a-3(f)). The Court further held "PURPA was intended to confer upon state regulatory commissions responsibilities not conferred under state law." *Id.* at 785, 693 P.2d at 431. Thus, Idaho Code and case law limits the IPUC's

PURPA jurisdiction to those matters expressly delegated to the IPUC by FERC's PURPA rules.

Likewise, federal law also so limits the IPUC's jurisdiction. FERC itself has explained that PURPA is the one exception to the Federal Power Act's grant of exclusive jurisdiction to FERC to regulate the rates, terms and conditions of sales for resale of electric energy in interstate commerce. *See Calif. Pub. Util. Commn.*, 132 FERC ¶ 61,047, ¶ 64 (2010) (citing 16 U.S.C. §§ 824, 824d, 824e). "While Congress has authorized a role for States in setting wholesale rates under PURPA, Congress has not authorized other opportunities for States to set rates for wholesale sales in interstate commerce by public utilities[.]" *Id.*

PURPA required FERC to implement the mandatory purchase provisions through a rulemaking, and stated "each State regulatory authority shall, after notice and opportunity for public hearing, implement such rule (or revised rule) for each electric utility for which it has ratemaking authority." 16 U.S.C. § 824a-3(f)(1). "As a result, a state may take action under PURPA only to the extent that that action is in accordance with the [FERC's] rules." *Cedar Creek Wind LLC*, 137 FERC ¶ 61,006, ¶ 27 (2011); *see also Indep. Energy Producers Assoc. v. Calif. Pub. Util. Commn.*, 36 F.3d 848, 856-57 (9th Cir. 1994). The critical inquiry therefore is whether PURPA and FERC's regulations grant the IPUC jurisdiction over Idaho Power's objection to Kootenai's proposed PURPA sale in a neighboring state.

- c. **PURPA and FERC's rules do not grant the IPUC jurisdiction to adjudicate a utility complaint that a neighboring state has improperly implemented PURPA.**

PURPA does not provide the IPUC as a forum for Idaho Power to complain about

neighboring States' implementation of PURPA. PURPA and FERC's rules grant the IPUC authority to set avoided costs and order electric utilities to enter into fixed price contracts. 16 U.S.C. § 824a-3(a), (f); 18 C.F.R. §§ 292.303, 292.304. But Kootenai seeks a contract for a sale in the State of Oregon with provisions fixed by the OPUC. FERC's rules grant the IPUC jurisdiction over state-jurisdictional PURPA interconnections and to order a utility to wheel a QF's output. *See* 18 C.F.R. § 292.303(c), (d), § 292.306. But Kootenai's interconnection and wheeling arrangement for sale to Idaho Power is a FERC-jurisdictional because the interconnecting utility (Avista) will wheel the output to the purchasing utility (Idaho Power) in interstate commerce. *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, ¶ 813 (2003). Nowhere do FERC's rules grant States the authority to ensure that neighboring States are properly implementing PURPA, or to otherwise intervene in an out-of-state PURPA transaction at the insistence of the utility.

Most notably, FERC's rules specifically allow for Kootenai to compel Avista to wheel Kootenai's output and to compel Idaho Power to purchase the output at the point of delivery. 18 C.F.R. § 292.303(d). FERC has explained the purpose of this provision as follows:

If the qualifying facility wants an electric utility with which it is not interconnected to purchase its electric power, it may request the utility with which it is interconnected to transmit the power. If that utility agrees, the targeted utility is obligated to purchase the power. . . . If, on the other hand, the local electric utility wants to transmit the power to another electric utility, and the second utility does not offer as attractive a rate, the qualifying facility has the option of denying approval of the transmission. The Commission explained the rule as *intended to provide qualifying facilities some flexibility in determining which utility receives its power so that it may receive the highest rate.*

*Florida Power & Light Co. et al.*, 29 F.E.R.C. ¶ 61,140, 61,293-61,294 (1984) (emphasis added).

FERC provided QFs the right in 18 C.F.R. § 292.303(d) to wheel to a utility with the highest avoided costs at a time when utilities were not otherwise required to wheel a generator's output to a purchaser. Subsequently, FERC has required virtually all jurisdictional utilities to provide open access transmission services to anyone, not just QFs, pursuant to Order No. 888. *Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, 75 FERC 61,080 (1996).

Subsequent to Order No. 888, FERC has directly rejected the notion that a QF may not use open access transmission to reach a utility of its choosing. *See Pub. Serv. Co. of N.H. v. N.H. Elec. Coop., Inc.*, 83 FERC ¶ 61,224, p. 10 (1998). In *Pub. Serv. Co. of N.H.*, a QF sought to use the OATT of Public Service Company of New Hampshire ("PSNH") and a utility with which it merged, Northeast Utilities ("NU"), to wheel the QF output for sale to the New Hampshire Electric Cooperative, Inc. ("NHEC"). PSNH objected. Among its complaints, PSNH argued open access to transmission "could be employed to permit QFs to shop for the utility with the highest administratively determined avoided cost to which they can economically transmit power, and limit that utility's access to lower priced power by forcing it to purchase QF power." *Id.* at p. 3. FERC soundly rejected this complaint. FERC ruled, "Order No. 888 in no way limits an electric utility's statutory purchase obligations under PURPA." *Id.* at p. 10. "Any QF may use NU's or the New England Power Pool's open access transmission tariff to reach

NHEC and require NHEC to purchase that QF's output." *Id.* at pp. 10-11.

Idaho Power's Petition completely ignores FERC's rules which are intended to provide QFs with the right to use the open access to the transmission system to compel a sale to a utility of its choosing. FERC's rules and orders indisputably allow Kootenai to use Avista's transmission system to compel a purchase by a third-party utility in another state such as Idaho Power. There is no doubt that a QF can file a complaint at the IPUC to compel Idaho Power to purchase QF output. *Afton Energy, Inc.*, 107 Idaho at 784-86, 693 P.2d at 430-32; I.C. § 61-612. But Idaho Power points to no federal or state statute granting the IPUC roving PURPA implementation authority to hear disputes initiated by purchasing utilities regarding an out-of-state PURPA transaction. Idaho Power asks the IPUC to effectively read into FERC's rules a grant of authority to prevent QFs in the State of Idaho interconnected to an Idaho utility from using FERC's open access transmission tariffs to access the market created by the OPUC's implementation of PURPA. No such provision exists in State or Federal law, and therefore the IPUC simply lacks jurisdiction to insert itself as a barrier to Kootenai's attempt to sell QF output in Oregon under the OPUC tariffs.

**2. The IPUC should not attempt to expand the holding of its prior cases in a manner that would allow a utility to stop a PURPA transaction pursuant to a neighboring State's implementation of PURPA.**

Idaho Power's Petition relies on three IPUC complaint cases. *See Earth Power Energy and Minerals, Inc. v. Idaho Power Co.*, Case No. IPC-E-92-29, Order Nos. 25174, 25249 (1993); *Island Power Co., Inc. v. PacifiCorp, dba Utah Power & Light Co.*, Case No. UPL-E-93- 4, Order Nos. 25245 (1993), 25528 (1994); *Vaagen Bros. Lumber, Inc. v. Wash. Water Power Co.*, Case No. WWP-E-94-6, Order No. 25176

(1994). In each case, a utility argued that the IPUC had no jurisdiction over a QF transaction with out-of-state ties of some sort.<sup>9</sup> The IPUC's legal reasoning in these cases was that Section 210(f) of PURPA requires the IPUC to implement FERC's rules for "each electric utility for which it has ratemaking authority." See *Earth Power Energy and Minerals, Inc.*, Order No. 25174. The IPUC reasoned that PURPA places no geographic limits on that jurisdiction, and therefore the IPUC's federally granted jurisdiction over QF complaints could reach into neighboring states where utilities under its authority also have service territory. *Id.* Likewise, because the IPUC implements PURPA under federally granted jurisdiction, these cases assumed that State law limits on its jurisdiction beyond the State of Idaho were inapplicable. *Id.* Idaho Power now urges that these cases stand for the proposition that the IPUC has "concurrent jurisdiction" with neighboring state commissions over any matter brought before the IPUC related to implementation of PURPA. Idaho Power's argument fails for several reasons.

**a. The prior IPUC case trilogy cannot be relied upon to expand the IPUC's jurisdiction beyond that conferred by federal and state law.**

Preliminarily, the rule of law urged from Idaho Power is questionable because if stretched to its logical extent, it would provide the IPUC with roving QF jurisdiction spanning across the Western United States. Can the IPUC insert itself as an arbiter of a PURPA complaint or petition by PacifiCorp arguing that the QF rates and terms in California regulations are unjust, solely on account of the IPUC's ratemaking authority over PacifiCorp in Idaho? The premise seems absurd. Idaho Power has provided no limiting principals for its proposed, roving "concurrent PURPA jurisdiction," or any non-arbitrary basis upon which to establish such limiting principals, and its proposed rule

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<sup>9</sup> Ironically, now that the out-of-state transaction appears more favorable to the QF, Idaho Power urges the IPUC to assert jurisdiction.

could be rejected on that basis alone.

- b. The prior IPUC case trilogy is inapplicable because the IPUC did not rule that a utility can initiate a petition at the IPUC contesting an out-of-state transaction.**

Further, the cases are highly distinguishable from the facts in this case. The prior cases were complaint cases where a *QF* asked the IPUC to assert jurisdiction over the QF's attempted sale to an Idaho utility under the IPUC's tariffs. It is well settled law that the IPUC has jurisdiction over complaints brought by a *QF* against a utility under IPUC jurisdiction. See *Afton Energy, Inc.*, 107 Idaho at 784-86, 693 P.2d at 430-32; I.C. § 61-612.

No such complaint by a QF has been brought here. Indeed, Kootenai has attempted to go to great lengths to wheel its output to the State of Oregon simply to avoid the need to bring a complaint before the IPUC against another Idaho investor-owned utility – Avista. Idaho Power cites no precedent where the IPUC has asserted jurisdiction over a QF's attempt to sell its output outside of the State of Idaho. Unlike its authority to regulate the affairs of utilities under its jurisdiction, the IPUC cannot dictate how a QF will conduct its business or where it will sell its power. See 16 U.S.C. § 824a-3(e); 18 C.F.R. §§ 292.601 - 292.602. Idaho Power's trilogy of cases simply do not provide a basis for the IPUC to assert jurisdiction to require Idaho QFs interconnecting within the State of Idaho to use the IPUC's PURPA implementation rules, as Idaho Power requests.

- c. Even if applicable here, *Island Power Co., Inc.* compels a conclusion that the IPUC should not assert primary jurisdiction over Kootenai's proposed PURPA transaction with a point of delivery in the State of Oregon.**

Even if the cases did apply to a petition brought by a utility, the most analogous case of the three supports the proposition that the IPUC should only assert primary

jurisdiction over a QF sale when the point of delivery is within the State of Idaho. *See Island Power Co., Inc.*, Order No. 25245. Island Power, a QF located in Montana, proposed to buy transmission service from Idaho Power and deliver its net output to PacifiCorp's system at Goshen, Idaho, for use of the IPUC's QF rates and rules. PacifiCorp preferred its less favorable Montana QF rates and rules. The IPUC exercised its jurisdiction because, although the project was located in Montana, the QF's delivery point of the output to the purchasing utility was in Idaho. *Id.* The IPUC stated, "PacifiCorp has voluntarily chosen to do business both in Montana and Idaho. It consequently must do business with the regulatory authorities in each state." *Id.*

Kootenai's point of delivery is not in the State of Idaho, and *Island Power Co., Inc.* compels the IPUC not to assert primary jurisdiction even if the IPUC has the legal authority to do so. Idaho Power has voluntarily chosen to conduct business in the States of Idaho and Oregon, and the IPUC should reject Idaho Power's attempt to avoid using the QF rules in place where the electricity will be delivered. For their own presumably legitimate reasons, the States of Idaho and Oregon have implemented PURPA differently to accommodate local interests and concerns.<sup>10</sup>

Recent events do not support an assumption that the OPUC is indifferent regarding whether Idaho Power abides by the OPUC PURPA rules for QF deliveries in the State of Oregon. Indeed, the OPUC rejected Idaho Power's filing to reduce its avoided cost rates on October 4, 2011, in response to OPUC Staff's recommendation that consistency with the Company's IPUC tariffs did not warrant an out-of-cycle change from the OPUC's policies applicable to utilities under its jurisdiction. *In re Revisions to*

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<sup>10</sup> Different implementation in different states is entirely consistent with FERC's directives. *See Cogeneration Coalition of America, Inc.*, 61 FERC ¶ 61,262, p. 9 (1992) (ruling state regulatory authorities "are to be accorded a 'wide degree of latitude' in order to accommodate 'local interests and concerns.'")

*Schedule 85 (Advice No. 11-12)*, OPUC Docket No. UE-241, Order No. 11-414 (Oct. 4, 2011);<sup>11</sup> *see also generally* O.R.S. 758.525(1) (requiring utilities to update avoided cost rates every two years, subject to OPUC review and approval); *In Re Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, OPUC Docket No. UM 1129, Order No. 07-199 (2007) (rejecting QFs' request to raise Idaho Power's avoided cost rates outside of regular, two-year cycle even though intervening natural gas price forecast had substantially increased).

Therefore, even if the IPUC concludes it has the legal authority to do so, the IPUC should decline to assert primary jurisdiction over this matter where the point of delivery is in the State of Oregon and the OPUC has a well-established implementation of PURPA for Idaho Power.<sup>12</sup>

**3. Requiring Kootenai to use the IPUC PURPA implementation rules for its sale in Oregon would violate the Dormant Commerce Clause of the United States Constitution by burdening Kootenai's ability to participate in the interstate market for its electricity and for its environmental attributes.**

The Commerce Clause of the United States Constitution provides that "Congress shall have Power . . . To regulate Commerce . . . among the several States . . ." U.S. Const., Art. I, § 8, cl. 3. The Dormant Commerce Clause, however, also imposes limitations on states in the absence of congressional action. "It is well settled that actions are within the domain of the Commerce Clause if they burden interstate commerce, *or impede its free flow.*" *C&A Carbone, Inc. v. Town of Clarkstown, New York*, 511 U.S. 383, 389 (1994) (emphasis added). "The central rationale for the rule against discrimination is to prohibit state or municipal laws whose object is local economic

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<sup>11</sup> For the IPUC's convenience, Kootenai has attached OPUC Order No. 11-414 at Attachment No. 4.

<sup>12</sup> In making this argument in the alternative, Kootenai maintains that the IPUC does not have jurisdiction over Idaho Power's Petition.

protectionism[.]” *Id.* at 390.

State laws requiring that goods be processed in-state prior to entering interstate commerce are *per se* invalid because such laws block the flow of interstate commerce at the state’s borders. *See, e.g., id.* at 390-95 (striking down ordinance requiring non-recyclable solid waste to be processed at designated facility within municipality before shipping); *South Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 100 (1984) (striking down Alaska regulation that required all Alaska timber to be processed within the state before export); *New England Power Co. v. New Hampshire*, 455 U.S. 331, 339 (1982) (holding that law restricting exports of hydropower violated commerce clause by hoarding resources for State’s economic benefit). “Discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the municipality can demonstrate under rigorous scrutiny, that it has no other means to advance a legitimate local interest.” *C&A Carbone, Inc.*, 511 U.S. at 392.

Here, Kootenai is attempting to sell its output in interstate commerce. “Section 210 of PURPA sets forth the benefit to which QFs are entitled. *It creates a market for their energy* by requiring that the FERC establish regulations that obligate public utilities to sell electric energy to and purchase electric energy from QFs.” *Freehold Cogeneration Assocs., L.P. v. Bd. of Regulatory Commn. of the State of New Jersey*, 44 F.3d 1178, 1191 (3rd Cir. 1995) (emphasis added). Kootenai is simply trying to sell its electricity in the market created by the OPUC’s implementation of PURPA, and its proposed transaction clearly falls within the requirements of the FERC and OPUC regulations permitting access to that market. Any action by the IPUC that would burden Kootenai’s ability to

sell its QF's electricity in that market at the insistence of Idaho Power would be a clear cut case of discrimination against interstate commerce in favor a local proprietor (Idaho Power).

Further, any IPUC restriction on Kootenai's access to the OPUC mandated PURPA market would also violate the Dormant Commerce Clause by impairing Kootenai's ability to sell its environmental attributes in the interstate market. As noted above, Kootenai seeks to use the OPUC tariff contract instead of Avista's proposed contract because Avista's contract clouds Kootenai's title to its environmental attributes, and would provide no additional compensation for those environmental attributes. In the market created by the IPUC's PURPA implementation, Kootenai would not have clear title to all of its environmental attributes unless it is successful in litigating that issue against Avista. Restricting Kootenai's access to other State's PURPA markets would burden the free flow of an interstate commodity – the QF's tradable environmental attributes unbundled and separate from the PURPA energy and capacity. The State of Idaho has no renewable portfolio standard or other legislation creating renewable energy credits, and the IPUC has no authority to restrict Idaho QFs from selling those commodities in markets created by other States' legislation.

Idaho Power requests the IPUC to require all QFs located in the State of Idaho to use the IPUC's PURPA implementation rules. But the IPUC cannot process all Idaho QF transactions prior to a sale of electricity or environmental attributes in other States' PURPA markets. In short, IPUC restriction on Kootenai's access to the OPUC mandated PURPA market would be local protectionism in favor of electric utilities under the IPUC's authority that would burden the free interstate flow of goods, and it would

therefore violate the Dormant Commerce Clause.

**4. Idaho Power's assertion that the avoided cost rates are too high is a legal red-herring, and factually contradicts Idaho Power's own recent filings before the IPUC.**

The Commission should not rely upon Idaho Power's assertion that Kootenai is attempting to "boost profits" at the expense of Idaho Power's ratepayers. Kootenai's attempt to find the best price for its electrical output and environmental attributes is precisely what FERC intended to provide to QFs with the mandatory purchase provisions, the right to wheel codified in 18 C.F.R. § 292.303(d), and its open access transmission policies. *See Pub. Serv. Co. of N.H.*, 83 FERC ¶ 61,224, at pp. 10-11; *Florida Power & Light Co. et al.*, 29 F.E.R.C. at ¶¶ 61,293-61,294. Further, "Congress did not intend to impose traditional ratemaking concepts on sales by qualifying facilities to utilities." *American Paper Institute, Inc. v. American Elec. Power Service Corp.*, 461 U.S. 402, 414 (1983). Kootenai's "profits" are not relevant to Idaho Power's avoided costs which PURPA requires it to pay.

Further, although Idaho Power now postures as though the OPUC rates are too high for Kootenai's project, this appears to be inconsistent with Idaho Power's other recent regulatory filings. Kootenai's landfill gas project will be a base load facility with a predictable capacity factor of over 90 percent, and will relieve Idaho Power's ratepayers of fuel price volatility. Idaho Power has recently submitted to the IPUC sworn testimony and an exhibit stating that such base load facilities warrant rates higher than those produced by the gas surrogate avoided resource methodology. Specifically, Idaho Power calculated a value of \$86.66/MWh under the Integrated Resource Plan ("IRP") Methodology for a base load QF with capacity factor over 90 percent, such as Kootenai's QF. *See Direct Testimony*

of Mark Stokes, Idaho Power Company, IPUC Case No. GNR-E-11-01, at pp. 18-20 & Exhibit 1 (2011).<sup>13</sup> Idaho Power calculated that rate from data in its acknowledged 2009 IRP, and proposed that the rates would change only after acknowledgement of its bi-annual IRP, *id.*, which has not yet occurred for the 2011 IRP, *see* Case No. IPC-E-11-11. Idaho Power has also proposed to use the IRP Methodology in Oregon for projects of the Kootenai QF's size in ongoing OPUC Docket Number UM 1396.

Idaho Power's own evidence therefore undercuts the factual basis for its position that Kootenai's energy is not worth the price the OPUC rates will require it to pay. In the end, setting avoided costs is an inexact science, and it is not the IPUC's role to second guess the avoided cost rate determinations of the OPUC any more than it would be the OPUC's role to second guess those set by the IPUC.

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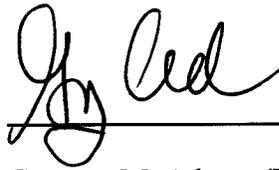
<sup>13</sup> Mr. Stokes' Exhibit is included in Kootenai Attachment No. 2 at pp. 4-6. By comparison, the current published rate under the IPUC surrogate resource methodology for Kootenai's QF online in 2012 for a fifteen year term would be \$64.81/MWh (levelized). Order No. 32337. Notably, Idaho Power advocated in this testimony before the IPUC that a predictable bi-annual rate change would benefit QFs, and now complains that the OPUC has followed that process in denying Idaho Power's request to update the OPUC rates.

## CONCLUSION

Kootenai respectfully requests that the IPUC dismiss this case for lack of jurisdiction. Additionally, because Kootenai's QF will be commercially operable very soon, Kootenai respectfully requests that the IPUC rule on Idaho Power's Petition as soon as possible.

Respectfully submitted this 25<sup>th</sup> day of November 2011.

RICHARDSON AND O'LEARY, PLLC

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

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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of November, 2010, a true and correct copy of the within and foregoing **ANSWER AND MOTION TO DISMISS BY KOOTENAI ELECTRIC COOPERATIVE, INC.** was served by ELECTRONIC MAIL and HAND DELIVERY, to:

Donovan E. Walker  
Lisa Nordstrom  
Idaho Power Company  
1221 West Idaho Street  
Boise, Idaho 83707-0070  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington  
Boise, Idaho 83702  
[Jean.jewell@puc.idaho.gov](mailto:Jean.jewell@puc.idaho.gov)

  
\_\_\_\_\_  
Gregory M. Adams

**IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-23**

**Kootenai Electric Cooperative, Inc.'s**

**Attachment No. 1**

**Correspondence Regarding Executable Power Purchase Agreement Tendered by**

**Avista Corporation**

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



October 11, 2011

**Via Regular Mail**

Greg Adams  
Richardson & O'Leary  
515 N. 27<sup>th</sup> St.  
Boise, ID 83702

**Re: PURPA Power Purchase Agreement  
Kootenai Electric Cooperative, Inc.—Fighting Creek Project**

Dear Mr. Adams:

Please find enclosed three execution copies of the final power purchase agreement between Avista Corporation ("Avista") and Kootenai Electric Cooperative, Inc. ("KEC") for the output from KEC's Fighting Creek project. Please have KEC execute all three copies. Please have KEC send all three executed copies to:

Robert Lafferty  
Director, Power Supply  
Avista Corporation  
P.O. Box 3727  
Spokane, WA 99220

After Avista receives the executed copies of the PPA, Avista will execute and return one original to KEC. Avista will also make the required filing of the PPA with the Idaho Public Utilities Commission.

Please call me if you have any questions.

Sincerely,

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

Michael G. Andrea  
Senior Counsel

cc: Bob Lafferty  
Steve Silkworth



**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

October 19, 2011

*Via U.S. Mail and Electronic Mail*

Michael G. Andrea  
Avista Corporation  
1411 East Mission Avenue  
Spokane, Washington 99202  
[michael.andrea@avistacorp.com](mailto:michael.andrea@avistacorp.com)

**Re: Kootenai Electric Cooperative's Fighting Creek Landfill Gas to Energy Station**

Mr. Andrea:

I write on behalf of Kootenai Electric Cooperative, Inc. (Kootenai) in response Avista's tender of an executable power purchase agreement for the Fighting Creek Landfill Gas to Energy qualifying facility (QF) on October 11, 2011, and our telephone conversation this morning. As you know, Kootenai and Avista were able to resolve all issues in the power purchase agreement other than the ownership of environmental attributes.

Per our prior conversations and my email to you dated September 21, 2011, Kootenai has requested that Avista disclaim ownership of environmental attributes unless Avista agrees to compensate Kootenai for environmental attributes over and above the value of the published avoided cost rates. Because Avista has not offered to pay Kootenai any amount above the published gas plant rates for avoided energy and capacity costs, Kootenai maintains that Avista should disclaim ownership of the environmental attributes of the project. For a landfill biogas station, environmental attributes may include renewable energy credits as well as carbon offsets associated with production of the fuel. As indicated in my September 21, 2011 email to you, Kootenai proposed using the language from Commission-approved Idaho Power contracts with QFs producing renewable energy credits and carbon offsets under a published rate contract.

To be clear, Kootenai would agree to the clause contained in the Double A Dairy Digester biogas project contract approved less than a year ago, which provides:

Seller retains ownership under this Agreement of Green Tags, Renewable Energy Certificate (RECs), carbon credits, or the equivalent environmental attributes, directly associated with the production of energy from the Seller's Facility sold to Idaho Power. IPUC Case No. IPC-E-10-26, Application at § 8.1.

Mr. Michael Andrea  
October 19, 2011  
Page 2

Avista has refused to agree to disclaim ownership and instead insists on a Section 7.8 which states that ownership of environmental attributes will be governed by applicable laws. Kootenai maintains that this provision would violate both state and federal law by, among other reasons, clouding Kootenai's title to the environmental attributes without compensation to Kootenai for that commodity and by subjecting this QF contract to ongoing utility-type regulation.

In light of our disagreement, Kootenai proposed in my email to you dated September 21, 2011, that we seek Commission guidance on the appropriate terms for Section 7.8.<sup>1</sup> I also stated Kootenai was willing to enter into a contract with Avista's Section 7.8 pending resolution by the Commission. Specifically, if the Commission (or any appeal or petition directly arising from the Commission proceeding) rules in Avista's favor, Section 7.8 would remain as Avista had drafted it. If the outcome is in Kootenai's favor, the parties would amend the contract to include the terms deemed appropriate by the Commission (or subsequent adjudicator). Kootenai requested that Avista propose any alternative arrangement that would allow Kootenai to sell its output pending resolution of Section 7.8. Last week, however, you stated to me on the telephone that Avista will not agree to any procedure other than signing and submitting Avista's final draft contract for approval, without any changes. Thus, Kootenai would be left to file a complaint to modify the terms of Section 7.8 of the agreement at the time that the parties submit the agreement for approval. Kootenai was disappointed that Avista would not agree to a procedure that would allow for sale of the output pending resolution of ownership of environmental attributes, and it is not at all clear to me what good faith reason Avista may have for such refusal.

In any event, Kootenai prefers to avoid litigation altogether, if possible, and requests that Avista provide Kootenai with two months to evaluate and pursue an alternative off-taker for this project. If Kootenai is unable to secure an agreement with the alternative off-taker, Kootenai will execute the agreement provided by Avista on October 11, 2011, and re-commence the process of submitting a joint petition for approval of that agreement and resolution of Section 7.8 before the Idaho Public Utilities Commission.

The last issue to be addressed is the Interconnection Agreement. Kootenai received the executable Interconnection Agreement this week, and has no revisions to it. If Kootenai is successful in obtaining a power purchase agreement with the alternative off-taker, Kootenai will wheel the output over Avista's transmission system. Thus, Kootenai will still need a revised Interconnection Agreement regardless of whether it sells to Avista or the alternative off-taker. The Interconnection Agreement provided by Avista is satisfactory to Kootenai for either purpose. But if Avista requires revisions to the Interconnection Agreement to accommodate the sale to an alternative off-taker, please let Kootenai know as soon as possible. Otherwise, Kootenai will execute that Interconnection Agreement in the near future.

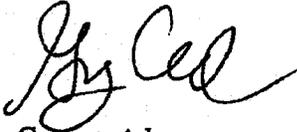
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<sup>1</sup> My September 21, 2011 email also suggested that we seek Commission resolution of two other provisions - §§ 4.8 and 19. But we have subsequently resolved the disagreement on those provisions, and Kootenai agrees to the §§ 4.8 and 19 contained in the contract tendered on October 11, 2011.

Mr. Michael Andrea  
October 19, 2011  
Page 3

Please let me know if you have any questions.

Very truly yours,

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

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

cc: Doug Elliott, Kootenai Electric Cooperative, Inc.

**IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-23**

**Kootenai Electric Cooperative, Inc.'s**

**Attachment No. 2**

**Excerpts of Correspondence with Idaho Power Subsequent the Filing of Idaho  
Power's Petition for Declaratory Order**

## Greg Adams

---

**From:** Greg Adams  
**Sent:** Thursday, November 17, 2011 4:24 PM  
**To:** 'Walker, Donovan'; 'Alphin, Randy'  
**Cc:** 'Doug Elliott'; Peter Richardson  
**Subject:** Kootenai Electric Landfill Gas Project  
**Attachments:** Letter to IPCO 11-17-11.pdf; IPCO Off System QF PPA -KEC .pdf; OR SCH 85.pdf; RE Lolo to Oxbow Ownership Change.htm; IPCO Stokes Exhibit 1.pdf

Donovan and Randy,

Please see the attached letter and enclosures. We hand delivered a copy to Idaho Power's headquarters this afternoon.

Please confirm receipt.

Thanks.

Greg Adams  
Richardson & O'Leary PLLC  
515 N. 27th Street, 83702  
P.O. Box 7218, 83707  
Boise, Idaho  
Voice: 208.938.2236  
Facsimile: 208.938.7904

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Thank you.



**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

November 17, 2011

***Via U.S. Mail and Hand Delivery***

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

**Re: Kootenai Electric Cooperative's Fighting Creek Landfill Gas to Energy Station  
Request for Standard Oregon Power Purchase Agreement**

Mr. Walker and Mr. Allphin:

I write on behalf of my firm's client, Kootenai Electric Cooperative, Inc. (Kootenai), in a continued effort to enter into a power purchase agreement for Kootenai's Fighting Creek Landfill Gas to Energy qualifying facility (QF). We would have appreciated the opportunity to discuss Kootenai's QF plans prior to Idaho power filing its Petition for Declaratory Order in Idaho PUC Case No. ICP-E-11-23. I write in an attempt to keep the line of communications open outside the adjudicatory process Idaho Power has initiated.

First, I would like to briefly clarify a few matters raised in the Petition. Kootenai is not simply attempting to "boost profits," as Idaho Power suggests. Kootenai negotiated with Avista in good faith for several months under the Idaho Commission's QF rules. As has been the trend in recent Idaho QF contracts, Avista insisted on a term that would cloud title to the environmental attributes over the life of the power purchase agreement. However, under Kootenai's landfill gas agreement with the County which owns the landfill, Kootenai only owns 50 percent of the renewable energy credits and carbon offsets. Thus, Kootenai cannot agree to a power purchase agreement that clouds the seller's title to the environmental attributes of its generation. Kootenai is attempting to wheel its output to Oregon because the Oregon Commission requires Idaho Power's Oregon Schedule 85 contract to expressly disclaim Idaho Power's ownership of environmental attributes. That is the sole issue on which Kootenai is attempting to avoid litigation with Avista.

We were also somewhat surprised to see Idaho Power claim the avoided cost rates in Oregon to be excessive for this project. This will be a base load facility with a predictable capacity factor of over 90 percent. Earlier this year, Idaho Power submitted an exhibit to the Idaho Commission stating that it had calculated a rate of \$86.66/MWh under the Integrated Resource Plan Methodology for a base load QF with capacity factor over 90 percent, such as Kootenai's QF (exhibit enclosed). As you know, Idaho Power has proposed to use the IRP Methodology in Oregon in ongoing docket

Mr. Donovan Walker  
Mr. Randy Allphin  
November 17, 2011  
Page 2

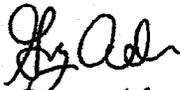
number UM 1396. It is not clear why Idaho Power now believes the current Schedule 85 rates to be in excess of its actual avoided costs when the rates under Idaho Power's preferred methodology would be little different.

In light of the above, Kootenai would like to again request that Idaho Power agree to discuss this project and applicability of the Oregon tariffs so as to avoid the need for unnecessary litigation that will likely please neither the Oregon nor the Idaho Commissions. Oregon Schedule 85 states that it is applicable for power delivered in Oregon. From the information we have obtained, the electricity will not be delivered to Idaho Power's system on the 240 kilovolt Lolo to Oxbow line until it reaches the Engineer Station at Innaha, Oregon. Please see the attached correspondence from Avista's transmission personnel. Section 1.37 of Avista's OATT defines the Point of Delivery as the point where the energy "will be made available to the Receiving Party . . . ." It appears that the energy is not available to Idaho Power here until it reaches the State of Oregon. Additionally, unlike some recent QF transactions to which Idaho Power has objected, Idaho Power's own recent pleadings state the federal QF rules allows a QF like Kootenai to use a third-party's transmission system (such as Avista's) to move its power out of the State of Idaho for a sale to different utility (such as Idaho Power). We see nothing out of the ordinary with this transaction.

Kootenai and Avista have executed the new interconnection agreement referenced in my prior letter and is waiting to hear favorably from Idaho Power prior to completing the formalities to secure a firm point to point transmission agreement. To speed up the process, we have completed the Schedule 85 standard QF contract with Kootenai's project specifics. At this point, Kootenai again requests that Idaho Power lodge the internal request to its transmission personnel to investigate Idaho Power's ability to designate this resource as a Network Resource at the Point of Delivery specified. Kootenai would be willing to sign whatever forms necessary to initiate that process.

Kootenai hopes that the additional information included with this letter will convince Idaho Power to discuss this project, so that Kootenai may progress towards a fully executed agreement. Please contact me at your earliest convenience to discuss this request.

Very truly yours,



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

cc: Doug Elliott, Kootenai Electric Cooperative, Inc.

Enclosures: Draft Schedule 85 Energy Sales Agreement for Fighting Creek QF  
Electronic mail correspondence from Avista Transmission

**BEFORE THE**  
**IDAHO PUBLIC UTILITIES COMMISSION**  
**CASE NO. GNR-E-11-01**  
**IDAHO POWER COMPANY**

**STOKES, DI**  
**TESTIMONY**

**EXHIBIT NO. 1**

# Idaho Power IRP Methodology Avoided Cost Rates for PURPA (10 aMW resources assumed to be on-line in 2012)

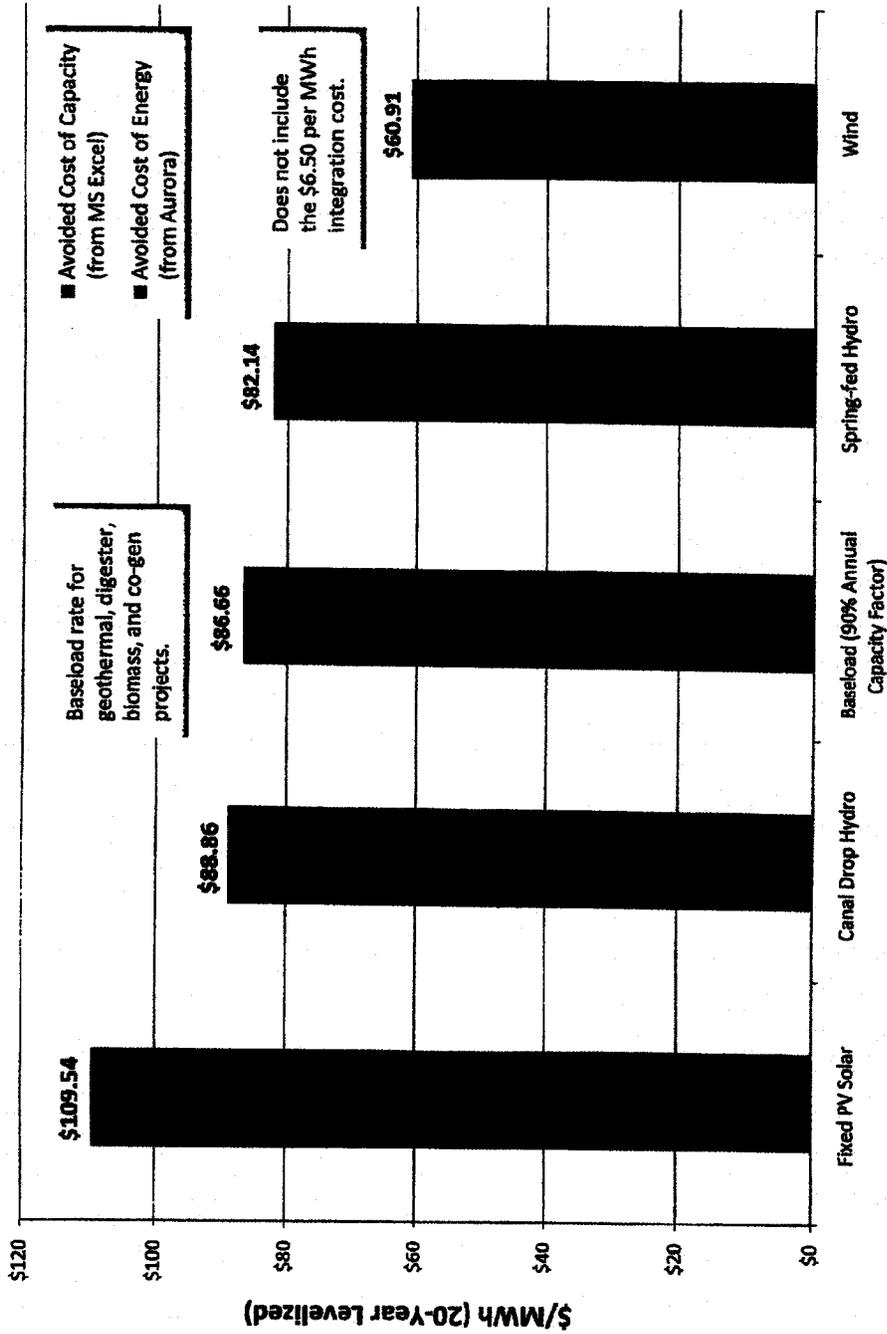


Exhibit No. 1  
 Case No. GNR-E-11-01  
 M. Stokes, IPC  
 Page 1 of 2

# Peak Hour Capacity Factors Used in the IRP Methodology

(Calculated from 3:00 pm to 7:00 pm for the month of July)

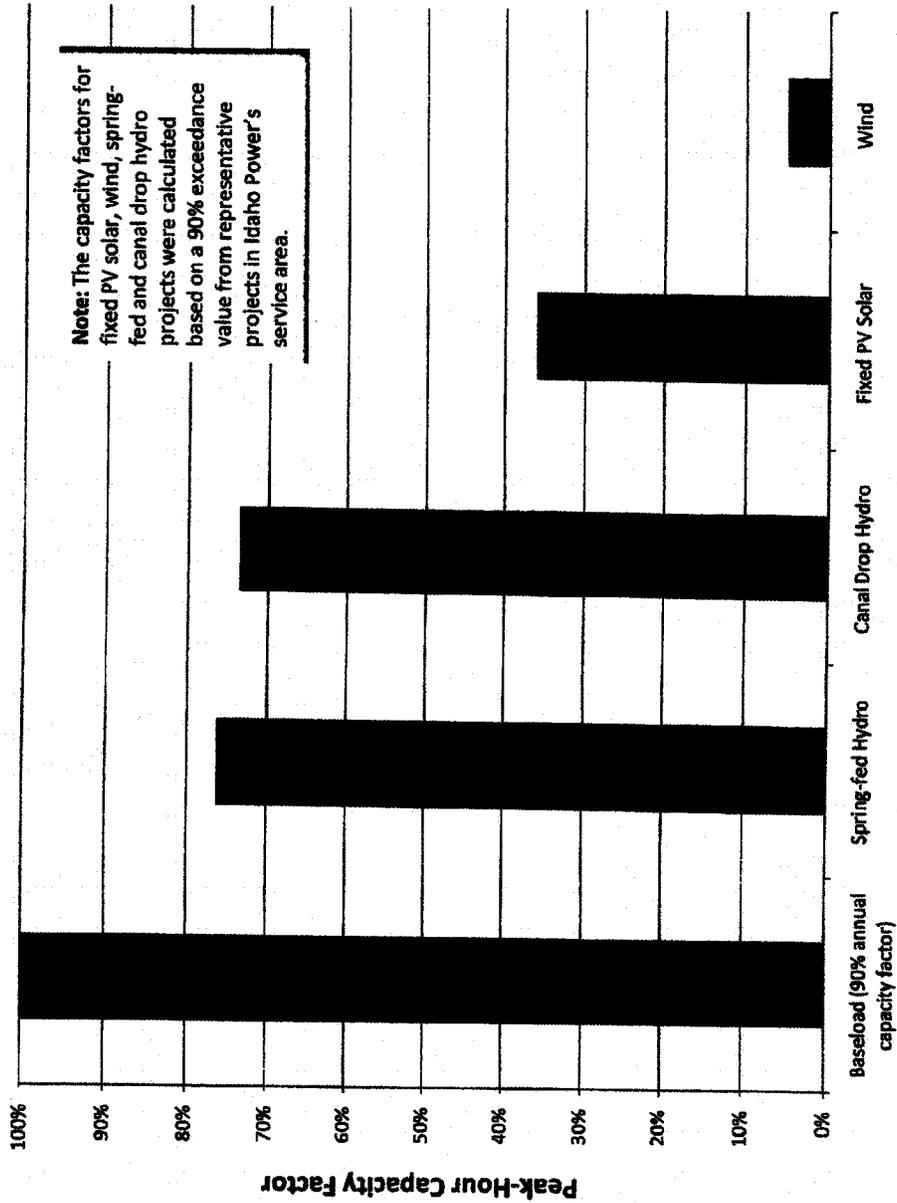


Exhibit No. 1  
 Case No. GNR-E-11-01  
 M. Stokes, IPC  
 Page 2 of 2

**From:** Clark, Warren [warren.Clark@avistacorp.com]  
**Sent:** Wednesday, October 26, 2011 12:26 PM  
**To:** Michael Raschio  
**Cc:** Greg Adams; Doug Elliott; Schlect, Jeff; Andrea, Michael; Clark, Warren  
**Subject:** RE: Lolo to Oxbow Ownership Change

Mike,

I understand the ownership change between Avista Corporation (Avista) and the Idaho Power Company (Idaho Power) on the Lolo-Oxbow 230 kV line to be as defined below:

The Lolo-Oxbow 230 kV line is a 108.11 mile jointly owned transmission line between Avista and the Idaho Power. Avista owns the northern 63.41 mile portion of the line from the Lolo Substation (near Lolo, Idaho) to 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) at Imnaha, Oregon. Idaho Power owns the southern 44.60 mile portion of the line from 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) at Imnaha, Oregon to the Oxbow Substation (near Oxbow, Oregon). The physical interchange metering for the Lolo-Oxbow 230 kV line between Avista and Idaho Power is located at the northern terminal of the line (the Lolo Substation). The scheduling point (POR/POD) on the Avista OASIS and IPC OASIS is defined as Lolo.

Sincerely,

Warren J. Clark, P.E.  
Senior Transmission Contracts Engineer  
**AVISTA Corp.**  
PHONE: 509-495-4186  
FAX: 509-777-5175  
EMAIL: [warren.clark@avistacorp.com](mailto:warren.clark@avistacorp.com)

-----Original Message-----

**From:** Michael Raschio [<mailto:maraschio@comcast.net>]  
**Sent:** Tuesday, October 25, 2011 2:39 PM  
**To:** Clark, Warren  
**Cc:** Greg Adams; Doug Elliott  
**Subject:** Lolo to Oxbow Ownership Change

Warren

Can you please confirm through email, for the record that the location of ownership change between Avista and Idaho Power for the Lolo to Oxbow 230-kV line is in Oregon.

Mike

**IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-23**

**Kootenai Electric Cooperative, Inc.'s**

**Attachment No. 3**

**Filings with and Orders of the Federal Energy Regulatory Commission Regarding  
Avista's Ownership of the 230 Kilovolt Transmission Line from Avista's Lolo  
Substation to Innaha, Oregon**

ORIGINAL

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

**AVISTA**  
Corp.

FILED  
OFFICE OF THE SECRETARY

99 NOV 24 AM 9:07

FEDERAL ENERGY  
REGULATORY  
COMMISSION

November 23, 1999

Mr. David P. Boergers  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Dear Secretary Boergers:

**Subject: Transmission Project, FERC No. 2261—Lolo-Divide Creek Line**

In response to your letter of September 30, 1999, Avista Corporation (Avista) submits for filing an original and eight copies of its request that the LoLo-Divide Creek 230 kV transmission line license for Project No. 2261, issued December 22, 1959, maintain the status of a primary line. Attached to the filing are two single line diagrams of the line.

Avista's request to maintain the primary status of the line is based on the following information:

- In 1958, Avista (formerly The Washington Water Power Company) entered into an April 23, 1958, Interconnection Agreement with PacifiCorp (formerly Pacific Power and Light Company) and Idaho Power Company (Idaho) that required Idaho to construct, operate, and maintain a 230 kV transmission line from Idaho's 230 kV substations at its Brownlee and Oxbow power developments to a terminal structure, owned by Avista, located on the bank of the Snake River northwest of Divide Creek, in Idaho County, Idaho (said point hereinafter referred to as "Divide"). The Interconnection Agreement also required Avista to construct, operate, and maintain a 230 kV transmission line extending from Divide to Avista's Lolo 230 kV substation located near Lewiston, Idaho (said point hereinafter referred to as "Lolo").
- On March 19, 1959, Avista received a letter from the Commission requesting Avista to file an application for a license for the proposed transmission line project, the 230-kilovolt line from Divide Creek to the Lolo Substation near Lewiston, Idaho.
- Also on March 19, 1959, the Commission issued an order amending Idaho's license for major Project No. 1971 to include therein the Oxbow-Palette Junction-Hells Canyon and the Palette Junction-Divide Creek 230 kV line section of the Oxbow-Lewiston (Lolo) line. The above proposed line sections were to connect to the Avista's proposed 230 kV line from Divide to Lolo and the three sections were to function as a continuous line. The Commission found Avista's proposed 230 kV line from Divide to Lolo to be part of the project within the meaning of Section 3 (11) of the Federal Power Act.

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November 23, 1999

- On November 4, 1999, Avista received information from Idaho stating that Idaho Power Company has three sections in the Oxbow-Lolo 230 kV line licensed under Project No. 1971. These sections are the Oxbow-Palette Jct. 230 kV line #907, Palette Jct.-Imnaha 230 kV line #908, and the Imnaha-Divide Creek 230 kV line #909. Idaho Power Company does interpret them to be FERC primary transmission lines for delivering all of the Project No. 1971 power to the market.
- Avista's Lolo-Divide Creek 230 kV transmission line is only one section of the Lolo-Oxbow 230 kV line. Therefore, Avista feels the Lolo-Divide Creek 230 kV line section should be considered a primary transmission line to be consistent with Idaho's interpretation, and hence, the total Lolo-Oxbow 230 kV line would be classified as a primary transmission line.

If you have any questions regarding this filing, please contact Cathy Williams, compliance coordinator, at 509-495-8576 (or e-mail at [cwilliams@avistacorp.com](mailto:cwilliams@avistacorp.com)) or myself at 509-495-4084.

Sincerely,

*Cathy Williams*  
*for Steve Fry*

Steven A. Fry, P.E.  
Hydro Safety and License Administrator

Enclosures

c: Bob Anderson  
Gary Casey  
Warren Clark  
Cathy Williams  
Harry T. Hall (FERC-PRO)  
J. Mark Robinson (FERC-DLC)

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D C 20426

OFFICE OF ENERGY PROJECTS

Project No. 2261  
Lolo-Divide Creek Transmission  
Line Project  
Avista Corporation

JUL 20 2000

Mr. Steven A. Fry  
Avista Corporation  
1411 East Mission, P.O. Box 3727  
Spokane, WA 99220

Dear Mr. Fry:

Thank you for your letter dated November 23, 1999, responding to our letter dated September 30, 1999, to licensees of existing transmission line projects. We asked you to reexamine the licensed transmission line facilities, and tell us whether or not the transmission facilities are still primary lines.

You said, among other things, that the Lolo-Divide Creek transmission line is only one section of the multiple section Lolo-Oxbow line, a line that is licensed under the Hells Canyon Project No. 1971. You also said that the Lolo-Divide Creek line section should be considered a primary transmission line to be consistent with the total Lolo-Oxbow primary line.

We have reviewed the transmission operating (single-line) diagram for the Lolo-Divide Creek line enclosed with your letter. We agree that the line is used solely to transmit power from the hydroelectric project, and without the line project power could not be delivered to the market. Therefore, the Lolo-Divide Creek line is still a primary transmission line requiring licensing.

If you have any questions concerning this letter, please contact Jack Duckworth on (202) 219-2818.

Sincerely,

  
Tom DeWitt  
Hydro East Group 1 Leader

FERC-DOCKETED  
CH  
JUL 20 2000

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ORIGINAL

**VanNess  
Feldman**  
ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION  
1050 Thomas Jefferson Street N.W.  
Washington, D.C. 20007-3877  
(202) 298-1800 Telephone  
(202) 398-2416 Facsimile

Seattle, Washington  
(206) 823-9372

**Cheryl Felik Ryan**  
(202) 298-1845  
cfr@vnf.com

November 20, 2000

Mr. David P. Boergers, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Idaho Power Company and Avista Corporation, Docket No. EC01-32-00  
Avista Corporation, Project No. 2261  
Idaho Power Company, Project No. 1971

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FEDERAL ENERGY  
REGULATORY  
COMMISSION

Dear Mr. Boergers:

Pursuant to Section 203 of the Federal Power Act ("FPA") and Part 33 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. 33, Idaho Power Company ("Idaho Power") and Avista Corporation ("Avista") (together, "Applicants") hereby file an original and six (6) copies of an Application for Authorization Under Section 203 of the Federal Power Act. Specifically, Idaho Power seeks to sell, and Avista seeks to purchase, jurisdictional transmission facilities consisting of a 20.23 mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha. The proposed sale will not have any effect on either Idaho Power's or Avista's other jurisdictional facilities or services and is compatible with the public interest.

Applicants respectfully request expedited action on this filing. Specifically, Applicant requests that this application be granted and authorization be obtained by December 20, 2000, which date is 30 days after filing. An order granting authority for the parties to enter into the proposed sale and purchase by that date is warranted because the proposed transaction is of a limited nature and has no adverse effects on competition, rates or regulation.

**VERO DOCKETED**

NOV 20 2000

*RM*

*DISK/05EE*

*001127.0185-1*

**VanNess  
Feldman**  
ATTORNEYS AT LAW

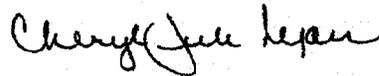
Mr. David P. Boergers, Secretary  
November 20, 2000  
Page 2

Applicants are also filing concurrently applications for amendment of Idaho Power's license for Project No. 1971 (deleting from the license the facilities to be transferred), and amendment of Avista's transmission line minor-part license for Project No. 2261 (adding to the license the facilities to be transferred).

Applicants have undertaken to serve a complete filing package by first-class mail on the affected state commissions, as required by Section 33.6 of the Commission's regulations. The entities thus served are the Washington Utilities and Transportation Commission, Idaho Public Utilities Commission, and Oregon Public Utility Commission.

Kindly acknowledge receipt of these documents by time-stamping two extra copies for our files. Thank you for your attention to this matter.

Respectfully submitted,



Cheryl Feik Ryan  
Attorney for Avista Corporation

Enclosures

**ORIGINAL**

OFFICE OF THE SECRETARY  
NOV 20 PM 3:22  
FEDERAL ENERGY COMMISSION

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Idaho Power Company and  
Avista Corporation

) Docket No. EC00-32-000

**APPLICATION FOR APPROVAL OF A  
DISPOSITION OF JURISDICTIONAL ASSETS  
AND FOR EXPEDITED CONSIDERATION**

Pursuant to Section 203 of the Federal Power Act ("FPA") and Part 33 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. 33, Idaho Power Company ("Idaho Power") and Avista Corporation ("Avista") (together, "Applicants") hereby file an application for authority for Idaho Power to sell, and Avista to purchase, jurisdictional facilities. The jurisdictional transmission facilities consist of a 20.23 mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.<sup>1/</sup> The proposed sale will not have any effect on either Idaho Power's or Avista's other jurisdictional facilities or services and is compatible with the public interest.

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<sup>1/</sup> The 20.23 mile section of line is part of the Oxbow-Lolo 230 kV line. Presently, Avista owns the line from Lolo to Divide Creek. Idaho Power owns the remaining portions of the line, from Divide Creek to Imnaha, and from Imnaha to Oxbow. These three sections function as a continuous line. See Order Further Amending License, Project No. 1971, issued March 19, 1959. All three sections of the line have been interpreted to be primary transmission lines for delivering Project No. 1971 power to the market. *Id.* See also Avista's November 23, 1999, filing with respect to Project No. 2261. To effect the sale proposed in this application, the parties are filing applications to amend the license held for Project No. 1971 (Idaho Power) and the license held for

Applicants respectfully request that this application be granted and authorization be obtained by December 20, 2000, which date is 30 days after filing. Expedited action is warranted in this case because the application is of a limited nature and has no adverse effect on competition, rates or regulation.

**I. COMMUNICATIONS**

The following persons are authorized to receive notice and communications on behalf of Avista:

Randall O. Cloward  
Avista Corporation  
P.O. Box 3727 MSC-16  
Spokane, WA 99220-3727  
(509) 495-4619  
Fax: (509) 495-8542

Cheryl Feik Ryan  
Van Ness Feldman  
A Professional Corporation  
1050 Thomas Jefferson Street, N.W.  
7<sup>th</sup> Floor  
Washington, DC 20007  
(202) 298-1800  
Fax: (202) 338-2416

The following persons are authorized to receive notice and communications on behalf of Idaho Power:

James C. Miller  
Senior Vice President, Delivery  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707  
(208) 388-2865  
Fax: (208) 388-6903

James R. Thompson  
Attorney  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707  
(208) 388-2672  
Fax: (208) 388-6936

Applicants request that each of these individuals be placed on the official service

---

Project No. 2261 (by Avista) concurrently with this application.

list established by the Secretary's office for this proceeding.

## **II. APPLICATION FOR AN ORDER AUTHORIZING PROPOSED TRANSACTION**

In 1958, Idaho Power entered into an April 23, 1958 Interconnection Agreement with PacifiCorp (formerly, Pacific Power and Light Company) and Avista (formerly, The Washington Water Power Company) that required Avista to provide the 20.23 mile section of the Lolo-Oxbow line located between Divide Creek and Innaha, Oregon. Idaho Power also entered into a April 23, 1958 Transmission Line Agreement with Avista that committed Idaho Power to construct, operate, and maintain the 20.23 mile section of the Lolo-Oxbow line. *See Exhibit H-1.* That contract obligates Idaho Power to transfer over the line all power scheduled by Avista within the capacity of the line. In return, Avista pays for all costs of construction, as well as all costs of operation and maintenance of the line. The agreement gives Avista the option to purchase the line at any time during the term of the agreement. Avista gave such notice on September 24, 1999. *See Exhibit H-2.*

For the reasons set forth herein, Applicants request that the Commission authorize the proposed transaction as being consistent with the public interest. As explained below the proposed transaction will have no adverse effects on competition, rates or regulation.

### **A. Information Required by Section 33.2 of the Commission's Regulations**

In support of this application and in accordance with Section 33.2 of the

---

Commission's regulations, Applicants submits the following information:

**1. The exact name and the address of the principal business office.**

The name and principal office of Avista are as follows:

Avista Corporation  
1411 East Mission  
P.O. Box 3727  
Spokane, Washington 99220-3727

The name and principal office of Idaho Power are as follows:

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

**2. Names and addresses of the persons authorized to receive notices and communications in respect to application.**

Communications regarding this application should be addressed to the individuals identified above in Part I.

**3. Designation of the territories served, by counties and States.**

Avista is a public utility whose service territory consists of counties in Washington and Idaho. In Washington, Avista provides electric service in the counties of Adams, Asotin, Ferry, Franklin, Garfield, Grant, Lincoln, Spokane, Stevens, and Whitman. In Idaho, Avista provides electric service in the counties of Benewah, Bonner, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone.

Idaho Power is a public utility whose service territory consists of counties in

Idaho, Oregon, and Nevada. In Idaho, Idaho Power provides electric services in the counties of Ada, Adams, Bannock, Bingham, Blaine, Boise, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Idaho, Jerome, Lemhi, Lincoln, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley and Washington. In Oregon, Idaho Power provides electric service in the counties of Baker, Harney, and Malheur. In Nevada, Idaho Power provides electric service in the county of Elko.

4. **A general statement briefly describing the facilities owned or operated for transmission of electric energy in interstate commerce or the sale of electric energy at wholesale in interstate commerce.**

Avista owns and operates approximately 1500 circuit miles of 115 kV transmission in the states of Washington and Idaho. In addition, Avista owns and operates 540 miles of 230 kV transmission in the states of Washington, Idaho, and Montana; one (1) mile of 60 kV transmission in the states of Washington and Idaho; and a share of the 500 kV Colstrip Project transmission facilities located in the State of Montana.

Avista owns the following hydro units that provide approximately 613,000 acre-feet of storage: Noxon Rapids, Cabinet Gorge, Long Lake, Little Falls, Nine Mile, Monroe Street, Post Falls, and Upper Falls. Approximately 207 MW of additional hydroelectric capacity is available to Avista through participant shares of four projects: Wells, Rocky Reach, Wanapum, and Priest Rapids. Avista operates the Northeast (61.2 MW) and Rathdrum (167 MW) combustion turbines, as well as Kettle Falls (51.7 MW), a wood-burning facility. Sources of non-utility generation include the Potlatch Corporation

cogeneration facility (126 MW), and four hydroelectric projects including the Spokane Upriver (15 MW), Jim Ford Creek, John Day Creek, and Sheep Creek. In addition, Avista has an interest in the Centralia project (consisting of two coal-fired units with a combined capacity of 1,340 MW) as well as an interest in the Colstrip project (consisting of four coal-fired units).

Idaho Power owns and operates approximately 4,600 miles of transmission lines. A combination hydro-thermal utility, Idaho Power owns and operates 17 hydroelectric plants on the Snake River and its tributaries and is part owner of three coal-fired power plants in Wyoming, Nevada and Oregon.

Idaho Power owns and operates the following hydro units totaling 1706 MW of generation: American Falls, Milner, Twin Falls, Shoshone Falls, Clear Lake, Thousand Springs, Upper Salmon "B", Upper Salmon "A", Upper Malad, Lower Malad, Bliss, C.J. Strike, Swan Falls, Cascade, Brownlee, Oxbow, and Hells Canyon. In addition, Idaho Power owns or has a partial ownership interest in the following steam and other generation totaling 1,031 MW: Jim Bridger, Boardman, Valmy, and Salmon Diesel.

5. **Whether the application is for disposition of facilities by sale, lease or otherwise, a merger or consolidation of facilities, or for purchase or acquisition of securities of a public utility, also a description of the consideration, if any, and the method of arriving at the amount thereof.**

The application is for authority for Idaho Power to sell, and for Avista to purchase, a 20.23 mile section of a jurisdictional transmission line. Under the 1958 Transmission

Line Agreement, Avista pays Idaho Power for construction, maintenance and operation of the transmission line as those expenses are incurred. Aside from any monies owed at the time of closing pursuant to this arrangement, no additional payment is required. The unamortized balance of the investment in the transmission line on Avista's books as of December 31, 1999, was \$420,556.23.

6. **A statement of facilities to be disposed of, consolidated, or merged, giving a description of their present use and of their proposed use after disposition, consolidation, or merger, and whether the proposed disposition of facilities or plan for consolidation or merger includes all the operating facilities of the parties to the transaction.**

The facilities to be transferred from Idaho Power to Avista include the 20.23 mile section of the transmission line between Idaho Power's Engineer Station 1600 plus 97.3 (on the section line between Sections 16 and 21, Township 1 North, Range 48 East, W M) at Imnaha, and Idaho Power's Engineer Station 2697 plus 20.8 (in Section 30, Township 29 North, Range 3 West, B M) on or near Divide Creek.

Presently, capacity over the line is posted on Avista's OASIS as available transmission capacity on the Avista transmission system. This is consistent with the 1958 Transmission Line Agreement which obligates Idaho to "transfer over said line all power scheduled by [Avista] within the capacity of the line." After the transfer of the facilities, the line will continue to be used in the same way, and Avista will continue to post the available transmission capacity on its OASIS.

These facilities do not represent all of the operating facilities of either Idaho Power or Avista.

7. **A statement (in the form prescribed by the Commission's Uniform System of Accounts for Public Utilities and Licensees) of the cost of the facilities involved in the sale, lease, or other disposition.**

The original cost of the facilities sold is as follows:

350	17,554.41
355	827,597.89
356	291,386.39
Total	1,136,538.69

8. **A statement as to the effect of the proposed transaction upon any contract for the purchase, sale, or interchange of electric energy.**

This sale will have no effect upon any contract for the purchase, sale or interchange of electric energy.

9. **A statement as to whether or not any application with respect to the transaction or any part thereof is required to be filed with any other Federal or State regulatory body.**

As noted in footnote 1, *supra*, applications for amendment of Idaho Power's license for Project No. 1971 deleting from the license the facilities to be transferred, and amendment of Avista's transmission line minor-part license for Project No. 2261 adding to the license the facilities to be transferred, are being filed with the Commission concurrently with this application.

**10. The facts relied upon by applications to show that the proposed disposition, merger, or consolidation of facilities or acquisition of securities will be consistent with the public interest.**

An applicant does not need to demonstrate that a transaction will have a positive benefit for the public in order to comply with Section 203. *Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 950 (1<sup>st</sup> Cir. 1993). It is necessary only that the transaction be compatible with the public interest. *See, e.g., Pacific Power & Light Co. v. FPC*, 111 F.2d 1014, 1016-17 (9<sup>th</sup> Cir. 1940). The Commission must approve any transaction that meets this standard. *Id.* The Commission generally considers three factors in assessing whether a transfer of jurisdictional facilities is in the public interest: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation. *See, e.g., Central Maine Power Co.*, 85 FERC ¶ 61,272 (1998).

The 20.23 mile line is a jurisdictional facility that cannot be assigned without the Commission's approval under Section 203 of the Federal Power Act. The line is a portion of the facilities built pursuant to the 1958 Interconnection Agreement. The capacity of the 20.23 mile line is currently posted on Avista's OASIS, consistent with the terms of the 1958 Interconnection Agreement. After the transfer of the line to Avista, Avista will continue to post the available transmission capacity associated with the facility. Thus, the transfer of ownership of this section of the Lolo-Oxbow transmission line will not affect competition in the overall transmission market.

The transfer of ownership will have no immediate effect on Avista's rates. At this

time, it is not clear whether the transfer will have an effect on Avista's rates in the future. In its next rate case, Avista would record the transferred assets in its transmission plant accounts at the book cost from which it took them from Idaho Power, less any depreciation recorded in the interim by Avista. At the same time, however, Avista would have a reduced balance in the investment account where it had recorded the previous payments made to Idaho Power. Therefore, it is likely that an effect on future rates, if any, would be negligible.

Finally, the transfer of ownership will have no effect on the ability of this Commission or the Oregon commission to regulate the facility.

Thus, the proposed transfer of ownership of the 20.3 mile section of the Lolo-Oxbow line does not raise competitive issues, does not adversely affect wholesale power sales or transmission rates, and does not adversely impact the ability of the Commission or state regulators to regulate the use of the facility. The Commission should therefore find that the proposed sale is in the public interest.

**11. A brief statement of franchises held, showing date of expiration if not perpetual.**

Applicants respectfully request waiver of this requirement as their franchised retail operations will not be transferred, merger, or consolidated as part of this transaction.

**12. A form of notice suitable for publication in the Federal Register.**

A form of notice suitable for publication in the Federal Register is appended to this

application. An electronic version of the notice is also provided on the enclosed diskette.

**B. List of Exhibits**

The table of exhibits below sets forth the exhibits filed in compliance with Section 33.3 of the Commission's regulations.

**Exhibit A: Copies of all resolutions of directors authorizing the proposed sale of facilities.**

Not applicable.

**Exhibit B: Statement of measure of control or ownership exercised by or over any party to the transaction.**

Not applicable.

**Exhibits C, D, E and F: Balance sheets and supporting plant schedules, statement of contingent liabilities, income statement, and analysis of retained earnings.**

Applicants request waiver of the requirement that they file the information required by these exhibits. The subject transaction involves the transfer of only minimal jurisdictional facilities. These exhibits, which require the filing of financial information such as balance sheets, income statements, and statements of contingent liability, are not relevant to this transaction. The Commission previously has granted waiver of these requirements when the application contained sufficient material to evaluate the proposed transaction. *See PSI Energy, Inc.*, 60 FERC ¶ 62,131 at 63,342 (1992). In this instance, applicants have provided information that meets this test and should allow the Commission to determine that the transfer is consistent with the public interest.

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**Exhibit G: Copies of each application and exhibit filed with any other Federal or State regulatory body in connection with the proposed transaction.**

No other application requesting authority to sell these facilities has been filed with any other regulatory body.

**Exhibit H: A copy of all contracts in respect to the sale of facilities.**

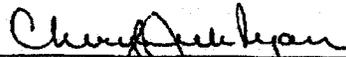
The 1958 Transmission Line Agreement and the Notice to exercise the Option to Purchase the section of transmission line between Imnaha and Divide Creek under the 1958 Transmission Line Agreement are attached as Exhibit H-1 and Exhibit H-2, respectively.

**Exhibit I: A general or key map showing in separate colors the properties of each party to the transaction, and distinguishing such parts of them as are included in the proposed sale.**

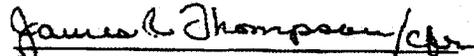
A diagram of the facilities being sold is attached hereto.

WHEREFORE, based on the foregoing, Applicants respectfully request that the Commission approve this application on an expedited basis and issue an order authorizing the sale of the 20.23 mile section of the Lolo-Oxbow line before December 20, 2000.

Respectfully submitted,



Cheryl Feik Ryan  
Van Ness Feldman  
A Professional Corporation  
1050 Thomas Jefferson Street, N.W.  
7<sup>th</sup> Floor  
Washington, DC 20007  
(202) 298-1845  
Attorney for Avista Corporation



James R. Thompson  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707  
(208) 388-2672  
Attorney for Idaho Power Company

Dated: November 20, 2000

---

**Exhibit A**

**RESOLUTION OF BOARD OF DIRECTORS**

**Not applicable.**

---

**Exhibit B**

**MEASURE OF CONTROL OR OWNERSHIP**

**Not applicable.**

**Exhibit C**

**BALANCE SHEETS**

Applicants request waiver of the requirement that they file the information required by this exhibit.

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**Exhibit D**

**STATEMENT OF CONTINGENT LIABILITIES**

Applicants request waiver of the requirement that they file the information required by this exhibit.

---

**Exhibit E**

**INCOME STATEMENT**

Applicants request waiver of the requirement that they file the information required by this exhibit.

**Exhibit F**

**RETAINED EARNINGS**

Applicants request waiver of the requirement that they file the information required by this exhibit.

**Exhibit G**

**OTHER PENDING APPLICATIONS AND FILINGS**

No other application requesting authority to sell these facilities has been filed with any other regulatory body.

---

**Exhibit H**

**RELATED AGREEMENTS**

The 1958 Transmission Line Agreement and the Notice to exercise the Option to Purchase the section of transmission line between Imnaha and Divide Creek under the 1958 Transmission Line Agreement are attached as Exhibits H-1 and Exhibit H-2, respectively.

TRANSMISSION LINE AGREEMENT

IDAHO POWER COMPANY  
THE WASHINGTON WATER POWER COMPANY

THIS AGREEMENT entered into this 23rd day of April, 1958, by and between IDAHO POWER COMPANY (Idaho) and THE WASHINGTON WATER POWER COMPANY (Washington).

WHEREAS, the parties hereto, together with PACIFIC POWER AND LIGHT COMPANY, entered into an Interconnection Agreement dated April 23, 1958, hereinafter referred to as "Interconnection Agreement"; and,

WHEREAS, the Interconnection Agreement provides that each party shall construct a portion of the transmission facilities required to carry out the terms of said agreement; and,

WHEREAS, as partial consideration for the execution of the Interconnection Agreement, the parties hereto have agreed that Washington should advance to Idaho part of its construction costs and reimburse Idaho for part of its expenses, as hereinafter more particularly set forth,

NOW, THEREFORE, the parties agree as follows:

Section 1 - Term

This Agreement shall become effective on the date of execution hereof, and shall remain in force and effect through July 31, 2005.

Section 2 - Washington to Advance Cost of Construction

(a) Washington will advance to Idaho on the basis of Idaho's estimate of construction requirements for each succeeding month, all costs of construction of the section of transmission line between Idaho's Engineer Station 1600 plus 97.3 (on the section line between Sections 16 and 21, Township 1 North, Range 4E East, W M) at Innaha, and Idaho's Engineer Station 2697 plus 20.8 (in Section 30, Township 29 North, Range 3 West, B M) on or near Divide Creek (which section of transmission line is hereinafter referred to as "line"), being a portion of the transmission line described in Paragraph 6.1(a) of said Interconnection Agreement, such advances to be made within ten (10) days of receipt of statement from Idaho.

(b) Idaho will report all expenditures to Washington in reasonable detail each month, and shall adjust the succeeding month's estimate by the difference between the preceding month's actual expenditures and the estimate previously furnished.

Section 3 - Accounting Provisions

(a) Idaho shall not be required to pay interest on the advances made by Washington.

(b) Washington will reimburse Idaho for all costs of operation and maintenance of said line, all property taxes thereon, and the cost of any necessary replacements, within ten (10) days after receipt of detailed statements from Idaho. <sup>shall advance</sup> A  
M

(c) Idaho will record depreciation of the line on its books, which amount will be charged against the advance received from Washington and concurrently credited to depreciation reserve.

Section 4 - Operation and Maintenance

(a) Idaho agrees to operate and maintain said line in good operating condition in accordance with standard engineering practice in the industry.

Section 5 - Transmission of Power

(a) In consideration of the above advances to be made by Washington and of the other terms of this agreement, Idaho agrees to transfer over said line all power scheduled by Washington within the capacity of the line.

Section 6 - Option to Purchase

(a) In further consideration of said advance by Washington and the terms of this agreement, Idaho hereby grants to Washington, its successors and assigns, the right and option to purchase said line (subject to obtainment of such regulatory authorizations as may at the time be required) at any time during the term of this agreement. Said option to purchase shall be at the original cost of said line, less all depreciation accrued on Idaho's books with respect to said line. On the exercise of said option, the line shall be sold and transferred to Washington, its

successors or assigns, and all advances made by Washington to Idaho for the construction <sup>or replacement</sup> of the line shall be retained by Idaho in payment for the sale and transfer thereof.

*MRJ*  
*M.L.*

(b) The option to purchase herein granted may be exercised by Washington by giving written notice by registered or certified mail directed to Idaho at its home office at Boise, Idaho, which notice shall specify the date and time the transfer is to be effected, which shall not be less than three (3) months from the date of mailing such notice.

Section 7 - Termination

In the event that the option provided in Section 6 hereof, for the purchase by Washington of said line, is not exercised prior to the expiration of the term of this agreement, said option shall terminate, and the remaining balance, if any, of the advances provided by Washington shall be cancelled.

Section 8 - Jurisdiction of Regulatory Authorities

This schedule is subject to the regulatory powers of any state or federal agency having jurisdiction.

EXECUTED in duplicate as of the 23rd day of April, 1958.

IDAHO POWER COMPANY

By *A. J. Johnson*  
Vice President.

(CORPORATE SEAL)  
ATTEST:

*B. R. Rogers*  
asst. Secretary.

THE WASHINGTON WATER POWER COMPANY

By *M. L. Blair*  
Vice - President.

(CORPORATE SEAL)

ATTEST:

*M. Miller*  
asst. Secretary.

Avista Corp.  
1411 East Mission P.O. Box 3727  
Spokane, Washington 99220-3727  
Telephone 509-449-0600  
Toll Free 800-727-9170

Exhibit H-2



September 24, 1999

Mr. James C. Miller  
Senior Vice President of Delivery  
Idaho Power Company  
P. O. Box 70  
Boise, Idaho 83707

RE: Notice to exercise the Option to Purchase the section of transmission line between Innaha and Divide Creek under the Transmission Line Agreement (see attachment) executed as of the 23<sup>rd</sup> day of April, 1958 between Idaho Power Company and Avista Corporation (previously know as the Washington Water Power Company)

Dear Mr. Miller:

According to Section 6 (Option to Purchase) of the Transmission Line Agreement, between IDAHO POWER COMPANY (Idaho) and AVISTA CORPORATION (Avista), Idaho hereby grants to Avista the right and option to purchase said line (transmission line between Idaho's Engineer Station 1600 plus 97.3 (on the section between Section 16 and 21, Township 1 North, Range 48 East, W M) at Innaha, and Idaho's Engineer Station 2697 plus 20.8 (in Section 30, Township 29 North, Range 3 West, B M) on or near Divide Creek) at any time during the term of this agreement. Said option to purchase shall be at the original cost of said line, less all depreciation accrued on Idaho's books with respect to said line. On the exercise of said option, the line shall be sold and transferred to Avista and all advances made by Avista to Idaho for the construction or replacement of the line shall be retained by Idaho in payment for the sale and transfer thereof.

Please consider this official notification that Avista intends to exercise the option to purchase said line with the transfer to be effective at 2359 hours Pacific Standard Time on December 30, 1999. Avista also requests all financial data, tax information, right-of-way information, construction drawings, transmission maps, etc. associated with said properties.

Avista would be interested in opening up discussions between Idaho's Transmission Operations and Maintenance Departments and Avista's Transmission Operations and Engineering Departments on the possibility of Idaho's continuing maintenance and operations of said line section including possible mutual backup assistance for line outages.

Should you have any questions in regards to this notification, please contact Warren Clark at (509) 495-4186.

Respectfully,

*Randall O Cloward*

Randall O. Cloward  
Director, Transmission Operations

**Attachment**

c: Diane Appelgate  
Gary Casey  
Warren Clark  
Gary Dahlke  
Dave DeFelice  
Rick Lloyd  
David Meyer  
Phil Robinson  
Rick Vermeers

**Exhibit I**

**MAPS**

**A diagram of the facilities being sold is attached hereto.**

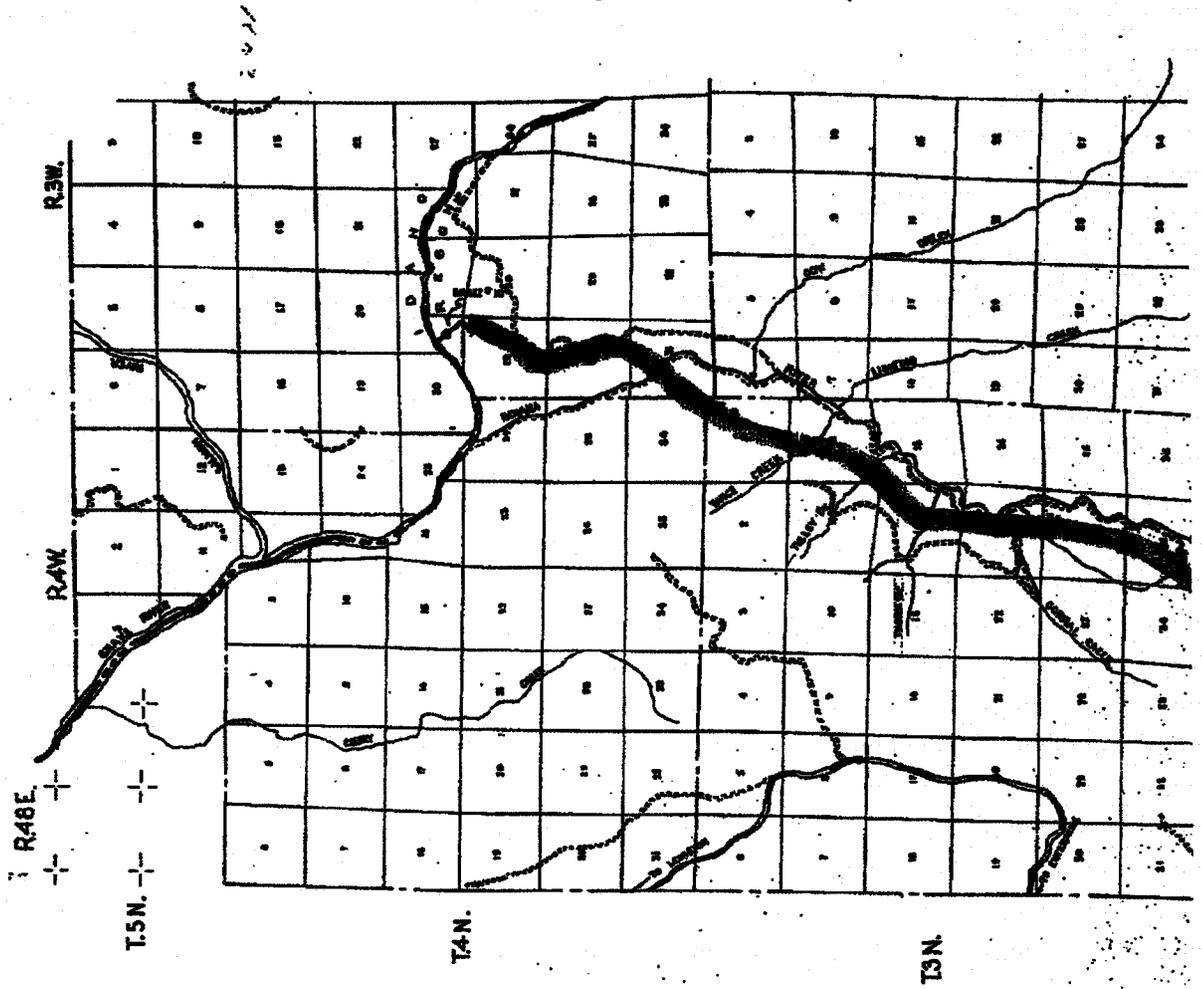
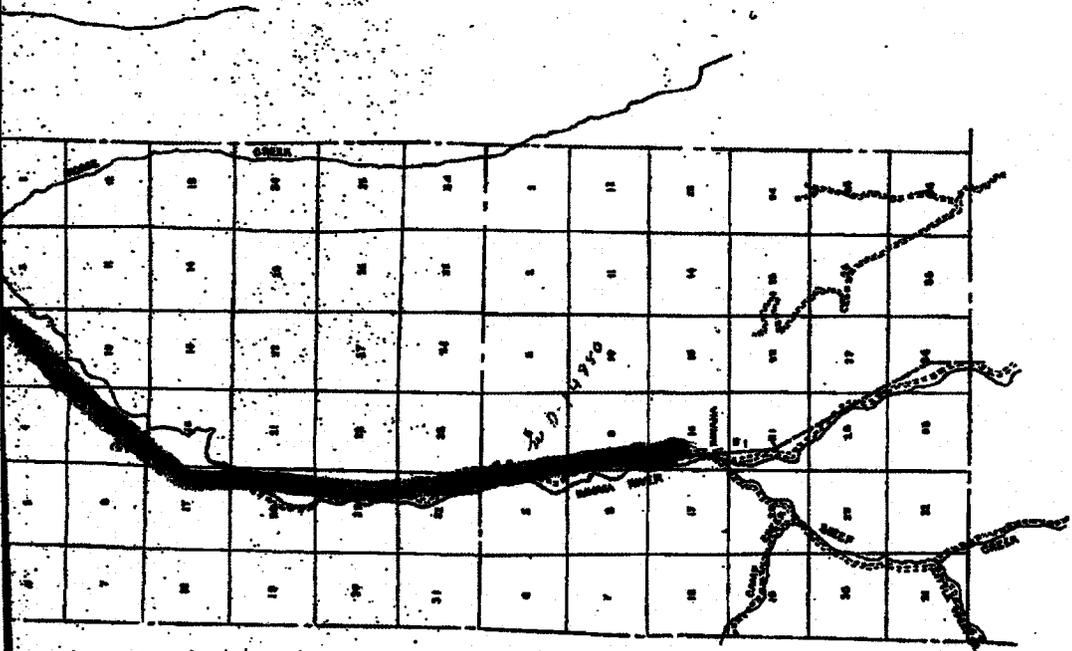
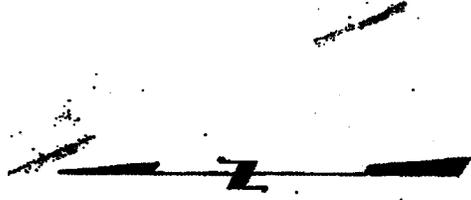


Exhibit I



T2N.

T1N.



SEE D-1470-1 To 10 For Plan & Profile

DATE	APPROVED
DESIGNED	CHECKED
DRAWN	SCALE

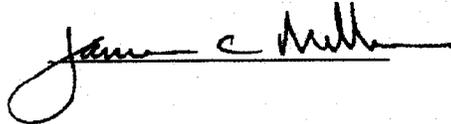
UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Power Company and  
Avista Corporation

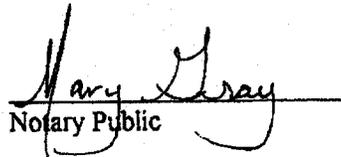
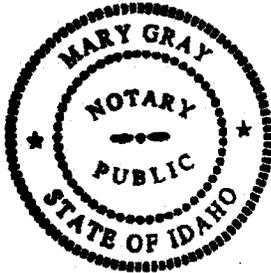
) Docket No. EC00-

VERIFICATION

James C. Miller, being duly sworn upon oath, states that he is the Vice President, Delivery at Idaho Power Company and has read the attached Application for Approval of A Disposition of Jurisdictional Assets; that he knows the contents thereof; that the statements made therein are true and correct to the best of his knowledge, information and belief; and that he has full power and authority to sign this document on behalf of Idaho Power Company.



Subscribed and sworn to before me, a Notary Public in and for the State  
of Idaho this 16<sup>th</sup> day of November, 2000.



Mary Gray  
Notary Public

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Power Company and  
Avista Corporation

) Docket No. EC00-

VERIFICATION

Randall O. Cloward, being duly sworn upon oath, states that he is the Director, Transmission Operations at Avista Corporation and has read the attached Application for Approval of A Disposition of Jurisdictional Assets; that he knows the contents thereof; that the statements made therein are true and correct to the best of his knowledge, information and belief, and that he has full power and authority to sign this document on behalf of Avista Corporation.

*Randall O Cloward*

Subscribed and sworn to before me, a Notary Public in and for the State  
of Washington this 13<sup>th</sup> day of November, 2000.

*Ralphine R. Fallquist*  
Notary Public  
*RALPHINE R. FALLQUIST*  
Commission expires  
*January 12, 2001*

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Idaho Power Company and	)	Docket No. EC00-
Avista Corporation	)	
Avista Corporation	)	Project No. 2261
Idaho Power Corporation	)	Project No. 1971

**NOTICE OF APPLICATION FOR APPROVAL  
OF A DISPOSITION OF JURISDICTIONAL ASSETS  
AND FOR EXPEDITED CONSIDERATION**

(November \_\_, 2000)

Take notice that on November 20, 2000, Idaho Power Company and Avista Corporation tendered for filing an Application for Authorization Under Section 203 of the Federal Power Act. Specifically, Idaho Power seeks to sell, and Avista seeks to purchase, jurisdictional transmission facilities consisting of a 20.23 mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha. Applicants respectfully request that this application be granted and authorization obtained by December 20, 2000.

Applicants are also filing concurrently applications for amendment of Idaho Power's license for Project No. 1971 (deleting from the license the facilities to be transferred), and amendment of Avista's transmission line minor-part license for Project No. 2261 (adding to the license the facilities to be transferred).

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. 18 C.F.R. §§ 385.214 and 385.211 (1999). All such motions or protests must be filed on or before \_\_\_\_\_, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

David P. Boergers  
Secretary

UNITED STATES OF AMERICA 93 FERC ¶ 62,206  
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Power Company  
Avista Corporation

Docket No. EC01-32-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued December 18, 2000)

On November 20, 2000, Idaho Power Company (Idaho Power) and Avista Corporation (Avista) (collectively, Applicants) filed a joint application pursuant to section 203 of the Federal Power Act (FPA)<sup>1/</sup> requesting Commission authorization for Idaho Power to sell jurisdictional transmission facilities consisting of a 20.23 mile section of the Lolo-Oxbow line located between Divide Creek and Imnaha, Oregon (Lolo-Oxbow Line) to Avista.

Idaho Power is a public utility which serves customers in Idaho, Oregon and Nevada. Avista is a public utility with customers in Washington and Idaho.

Pursuant to a 1958 Transmission Line Agreement between Idaho Power and Avista (1958 Agreement), Idaho Power agreed to construct, own, operate and maintain the Lolo-Oxbow Line, and transfer over the line all power scheduled by Avista, within the capacity of the line. In return, Avista pays Idaho Power for construction, maintenance and operation of the transmission line. Avista also has the option to purchase the Lolo-Oxbow Line from Idaho Power at any time during the term of the 1958 Agreement. Avista notified Idaho Power of its intent to purchase the line on September 24, 1999.

According to the application, the proposed transaction is consistent with the public interest and will not have an adverse effect on competition, rates or regulation. Applicants state that there will not be an adverse effect on competition because the treatment of the capacity of the Lolo-Oxbow Line will not change as a result of the proposed transaction. Applicants explain that the capacity on the transmission line is currently posted on Avista's OASIS as available transmission capacity on the Avista transmission system, and it will continue to be posted on Avista's OASIS after the proposed transaction. In regard to rates, Applicants state that the proposed transaction will have no immediate effect on Avista's rates, and the effect on future rates, if any, will likely be negligible. In regard to regulation, Applicants explain that the proposed transaction will have no effect on the ability of the Commission or the Oregon Commission to regulate the Lolo-Oxbow Line.

1/ 16 U.S.C. ¶ 824b (1994)

□

Docket No. EC01-32-000 - 2 -

Notice of the application was published in the Federal Register with comments due on or before December 11, 2000. No comments were received.

After consideration, it is concluded that the proposed transaction is consistent with the public interest and is authorized as of the date of this order, subject to the following conditions:

- (1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before the Commission;
- (3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate; and
- (5) Applicants shall promptly notify the Commission of the date the disposition of jurisdictional facilities is consummated.

Authority to act on this matter is delegated to the Director, Division of Corporate Applications, pursuant to 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within thirty (30) days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Michael C. McLaughlin, Director  
Division of Corporate Applications

**ORIGINAL**

FILED  
OFFICE OF THE SECRETARY

00 NOV 20 PM 4: 06

FEDERAL ENERGY  
REGULATORY  
COMMISSION

Before the  
Federal Energy Regulatory Commission

Avista Corporation ) Project No. 2261 -002

Application for Amendment  
of License

to Include

20.23 Mile Section of the Lolo-Oxbow Line Located in Oregon between  
Divide Creek and Innaha

I.

Avista Corporation (Applicant) applies to the Federal Energy Regulatory Commission (Commission) for an amendment of license for Lolo-Divide Creek Line, minor-part license (transmission line), Project No. 2261.

II.

The exact name, business address and telephone number of the Applicant are:

Avista Corporation  
1411 East Mission  
P.O. Box 3727  
Spokane, WA 99220-3727  
(509) 489-0500

The Commission is requested to send copies of all communications, orders, and correspondence on this Application directly to:

Steven A. Fry  
Avista Corporation  
P.O. Box 3727  
Spokane, WA 99220-3727  
(509) 495-4084

and

William J. Madden, Jr.  
Winston & Strawn  
1400 L Street, N.W.  
Washington, D.C. 20005-3502

**FEB 20 2000**

**NOV 20 2000**

Lolo Creek Divide, Project 2261  
Application for Amendment

Page 1 of 3

May 2000

0011290579-3

Attachment No. 3  
Page 40

### III.

The Applicant is a domestic corporation organized under the laws of the State of Washington and authorized to do business in the States of Idaho, Montana, and Oregon. Applicant is the licensee of the transmission line designated as Project No. 2261 in the records of the Federal Energy Regulatory Commission, issued on the 22<sup>d</sup> day of December 1959.

### IV.

Concurrently with this Application, Avista Corporation (Avista) and Idaho Power Company (Idaho Power) are filing an application for authority for Idaho Power to sell, and Avista to purchase, jurisdictional facilities. The jurisdictional transmission facilities consist of a 20.23-mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha. The 20.23-mile section is referred to as Divide Creek-Imnaha. Also, concurrently with this Application, Idaho Power is filing an application for amendment of its water power Project No. 1971, removing from its license the facilities to be transferred.

If the Commission approves the applications referred to above and authorizes the sale of the 20.23 mile section of the Lolo-Oxbow line, Applicant proposes that the following amendments to its license for Project No. 2261 be made:

- 1) Exhibit J, FERC Exhibit No. 2261-1, General Map of Project Area, be replaced with the enclosed Exhibit J, Sheets 1-2, revised to include the 20.23-mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.
- 2) Exhibit K, FERC Exhibit Nos. 2261-7 through 2261-11, Detail Map of Transmission Line, be replaced with the enclosed Exhibit K, sheets 1-8, revised to include the 20.23-mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.
- 3) Exhibit M, entitled "General Description and Specifications of Line," with attached drawings A-14172, A-14176, and A-14179, be replaced with the enclosed Exhibit M, revised to include the description and specifications of the 20.23-mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.
- 4) Adjust the annual charges for the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands used for transmission line right-of-way and for access road purposes, to reflect the addition of the 20.23-mile section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.
- 5) The name associated with FERC Project No. 2261 should be changed from Lolo-Divide Creek to Lolo-Imnaha, which encompasses 63.41 miles of the 108.11 mile Lolo-Oxbow line. (Breakdown is 43.18 miles—Lolo-Divide Creek; 20.23 miles—Divide Creek-Imnaha.)

V.

Wherefore, based on the foregoing, the Applicant requests that the license for Project No. 2261 be amended as proposed above.

This Application is executed in the

State of Washington

County of Spokane

By: Steven A. Fry  
Hydro Safety Manager  
Avista Corporation  
P.O. Box 3727  
Spokane, WA 99220

The undersigned has read the foregoing application, knows the contents thereof, and believes the statements herein to be true.

Avista Corporation (Applicant)

Steven A. Fry  
By: Steven A. Fry  
Hydro Safety Manager

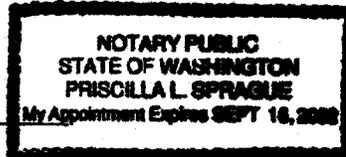
5-8-00  
Dated

Subscribed and sworn to before me, a Notary Public of the State of Washington, this 8 day of May, 2000.

PRISCILLA L. SPRAGUE Priscilla L. Sprague

Print Name:  
Notary Public in and for the State of  
Washington, residing in Spokane, Washington

My commission expires: Sept 16, 2002



FILED  
 OFFICE OF THE SECRETARY  
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 FEDERAL ENERGY  
 REGULATORY  
 COMMISSION

**FERC Project No. 2261—Lolo-Imnaha 230 kV  
 Minor-part License (Transmission Line)**

**Exhibit M Revised May 2000**

**General Description and Specifications of Line**

The Lolo-Imnaha transmission line extends from Avista Corporation's Lolo substation southeast of Lewiston, Idaho, to a point near Divide Creek on the Snake River approximately 43.18 miles south. The line then enters Oregon and extends approximately 20.23 miles south to a point at Imnaha, where the line connects with Idaho Power's Palette Jct.-Imnaha 230 kV transmission line.

The main features of the Lolo-Imnaha line are:

<b>Voltage</b>	230 kV
<b>Type of Structure</b>	Crossbraced two-pole H-frame
<b>Poles</b>	ASA Class 1 and 2 Western Red Cedar and Western Larch Pentachlorophenol treated
<b>Crossarms, 40-foot</b>	Western Larch poles with minimum diameter of 11 inches Pentachlorophenol treated Douglas Fir poles: 5 1/8" x 12", 6 3/4" x 12" or 2-5 1/8" x 12" assemblies Pentachlorophenol treated
<b>Guys</b>	7/16 inch high strength galvanized steel strand
<b>Anchors</b>	20-inch steel cross plate
<b>Conductors</b>	1272 MCM 61 strand aluminum Maximum tension 9,000 pounds with NESC heavy loading
<b>Insulators</b>	12 standard 10-inch 15,000 pound ball and socket units per string in suspension positions 12 standard 10-inch 25,000 pound ball and socket units per string in strain positions
<b>Normal Span of Line</b>	600 feet
<b>Shield Wires</b>	Two stranded steel overhead ground wires
<b>Telephone Wires</b>	None

UNITED STATES OF AMERICA 96 FERC ¶ 62,135  
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Power Company  
Avista Corporation

Project No. 1971-070  
Project No. 2261-002

ORDER AMENDING LICENSES  
DUE TO PARTIAL TRANSFER OF TRANSMISSION LINE

(Issued August 9, 2001)

On November 20, 2000, Idaho Power Company (IPC) and Avista Corporation (Avista), separately, filed applications to amend the licenses for Project No. 1971 and 2261, respectively. The requested amendments would remove a 20.23-mile-long section of the Lolo - Oxbow Transmission Line from the Project No. 1971 license and include that transmission line section into the Project No. 2261 minor part license.<sup>1</sup>

Avista included in its filing, 2 Exhibit J drawings and 8 Exhibit K drawings, which we have designated as follows: J-1 & J-2 (2261-12 & 13); K-1 through K-8 (2261-14 to 2261-21). IPC included a revised Exhibit J&K, which we have designated 1971-304, and revised Exhibit M-N-O.

This order approves the filed drawings which conforms to the Commission's rules and regulations. Ordering paragraphs (A)(7) and (B)(8) of this order requires the licensees to file microfilm copies of the approved drawings.

This action does not authorize any construction. The license terms and conditions not expressly revised by this order, including the effective and termination dates, will remain the same. Consequently, issuance of this order is not a major federal action significantly affecting the quality of the human environment.

The Director orders:

(A) The license for Project No. 1971 is hereby amended, effective the first day of the month in which this order is issued as follows:

---

<sup>1</sup> The sale of the transmission line section was approved by the Commission on December 18, 2000, (See 93 FERC 62,206) and was recorded on January 22, 2001.

Project No. 1971-070  
Project No. 2261-002

2

(1) The 20.23-mile section (from Divide Creek - Imnaha) of the Lolo - Oxbow Transmission Line is deleted from the license, including all references in the license and exhibits.

(2) Exhibit J&K (FERC No. 146), Palette Junction - Divide 230 kV Transmission Line (rev. January 1960), is replaced with Exhibit J&K (FERC No. 304), Palette Junction - Imnaha 230 kV Transmission Line, revised January 13, 2000.

(3) The following exhibit filed November 20, 2000, is approved and made part of the license:

<b>Exhibit</b>	<b>FERC Drawing No.</b>	<b>Title</b>	<b>Superseded Drawing No.</b>
J & K	1971-304	Palette Junction - Imnaha 230 kV Transmission Line	1971-146

(4) Exhibit M-N-O (rev. 4-2-59) comprising two typewritten pages entitled "Palette Junction - Divide 230-kV Transmission Line" is replaced with Exhibit M-N-O (rev. 1-5-00) filed November 20, 2000, comprising two typewritten pages entitled "Palette Junction - Imnaha 230-kV Transmission Line."

(5) The project description in finding paragraph (5)(b)(4)(c) of the license for Project No. 1971 is amended to read:

(c) Palette Junction - Imnaha

A 230-kV single-circuit transmission line extending approximately 24.5 miles in a northerly direction from Palette Junction to a point at Imnaha as described in:

Exhibit M (Rev. 1-5-00) - General Description and Specifications of Equipment;

Project No. 1971-070  
Project No. 2261-002

3

(6) Subparagraph (b) of Article 44 of the license for Project No. 1971 is amended to read:

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of 5,249.664 acres of its lands used for transmission line right-of-way only, an amount as may be determined from time to time pursuant to the Commission's regulations.

(7) Within 90 days of the date of issuance of this order, the licensee shall file three original sets of aperture cards of the approved drawing. The aperture cards should be reproduced on silver or gelatin 35 mm microfilm. All microfilm should be mounted on Type D (3 1/4" x 7 3/8") aperture cards.

Prior to microfilming, the FERC Drawing Number (1971-304) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number should be typed in the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (J & K), Drawing Title, and date of this order should be typed in the upper left corner of each aperture card. See Figure 1.

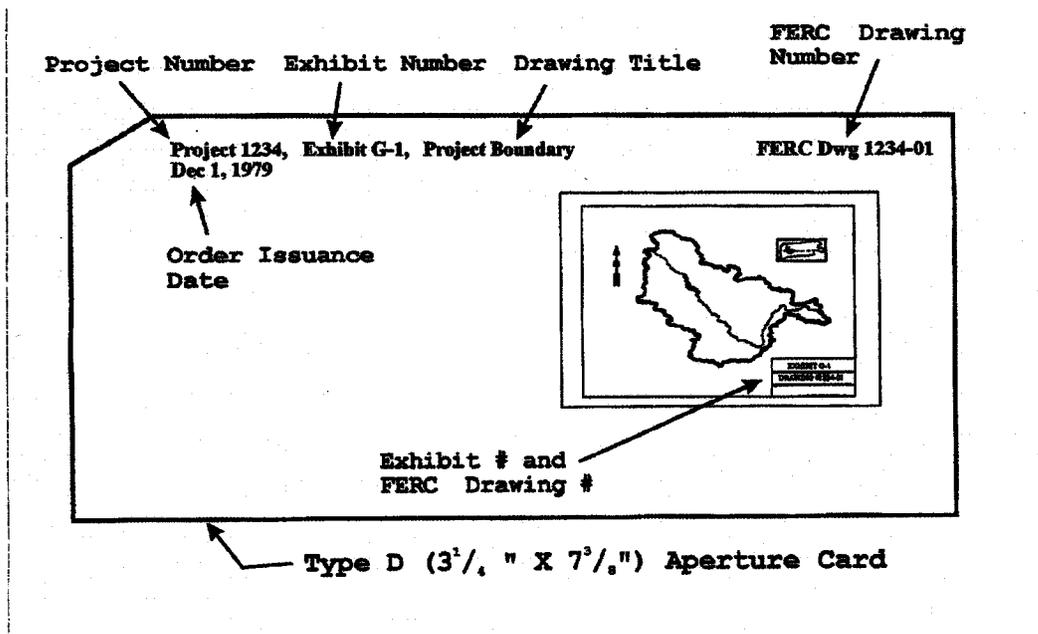


Figure 1. Sample Aperture Card Format

Project No. 1971-070  
Project No. 2261-002

4

Two sets of aperture cards should be filed with the Secretary of the Commission. The third set of aperture cards should be filed with the Commission's Portland Regional Office.

(B) The license for Project No. 2261 is hereby amended, effective the first day of the month in which this order is issued as follows:

(1) The name of Project No. 2261 is changed from Lolo - Divide Creek Transmission Line to Lolo - Imnaha Transmission Line, encompassing 63.41 miles of the 108.11-mile-long Lolo - Oxbow Line.

(2) Exhibit J, FERC Exhibit No. 2261-1, General Map of Project Area, is replaced with Exhibit J, Sheets 1-2, FERC Nos. 2261-12 and 2261-13, to include the 20.23-mile-long section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.

(3) Exhibit K, FERC Exhibit No. 2261-7 through 2261-11, Detailed Map of Transmission Line, is replaced with Exhibit K, Sheets 1-8, revised to include the 20.23-mile-long section of the Lolo-Oxbow line located in Oregon between Divide Creek and Imnaha.

(4) The following exhibits, filed on November 20, 2000, are approved and made part of the license:

<b>Exhibit</b>	<b>FERC Drawing No.</b>	<b>Title</b>	<b>Superseded Drawing No.</b>
J-1	2261-12	General Map of Project Area, Lolo-Imnaha, Lolo-Divide Creek Section	2261-1
J-2	2261-13	General Map of Project Area, Lolo-Imnaha, Divide Creek-Imnaha Section	None
K-1 of 8	2261-14	Detail Map 230kV Transmission Line Lolo-Divide Creek Section	2261-11

K-2 of 8	2261-15	Detail Map 230kV Transmission Line Lolo-Divide Creek Section	2261-10
K-3 of 8	2261-16	Detail Map 230kV Transmission Line Lolo-Divide Creek Section	2261-9
K-4 of 8	2261-17	Detail Map 230kV Transmission Line Lolo-Divide Creek Section	2261-8
K-5 of 8	2261-18	Detail Map 230kV Transmission Line Lolo-Divide Creek Section	2261-7
K-6 of 8	2261-19	Detail Map 230kV Transmission Line Divide Creek-Innaha Section	None
K-7 of 8	2261-20	Detail Map 230kV Transmission Line Divide Creek-Innaha Section	None
K-8 of 8	2261-21	Detail Map 230kV Transmission Line Divide Creek-Innaha Section	None

(5) Exhibit M, entitled "General Description and Specifications of Line," with attached drawings A-14172, A14176, and A14179, is replaced with Exhibit M filed November 20, 2000, revised to include the descriptions and specifications of the 20.23-mile-long section of the Lolo-Oxbow line located in Oregon between Divide Creek and Innaha.

(6) Subparagraph (ii) of Article 16 of the license for Project No. 2261 is amended to read:

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of 34.536 acres of its lands used for transmission line right-of-way only, an amount as may be determined from time to time pursuant to the Commission's regulations.

(7) Article 18 is added to the license for Project No. 2261.

Project No. 1971-070  
Project No. 2261-002

6

Article 18. The licensee shall within 180 days of the issuance of this order, file an Operations and Maintenance plan for those portions of the transmission line located on National Forest Service System lands. The Operations and Maintenance plan shall be jointly prepared with the U.S. Forest Service, and address resource issues and concerns, and appropriate protection measures.

(8) Within 90 days of the date of issuance of this order, the licensee shall file three original sets of aperture cards of the approved drawings. The aperture cards should be reproduced on silver or gelatin 35 mm microfilm. All microfilm should be mounted on Type D (3 1/4" x 7 3/8") aperture cards.

Prior to microfilming, the FERC Drawing Number (2261-12, etc.) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number should be typed in the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (K-1 of 8, etc.), Drawing Title, and date of this order should be typed in the upper left corner of each aperture card. See Figure 1.

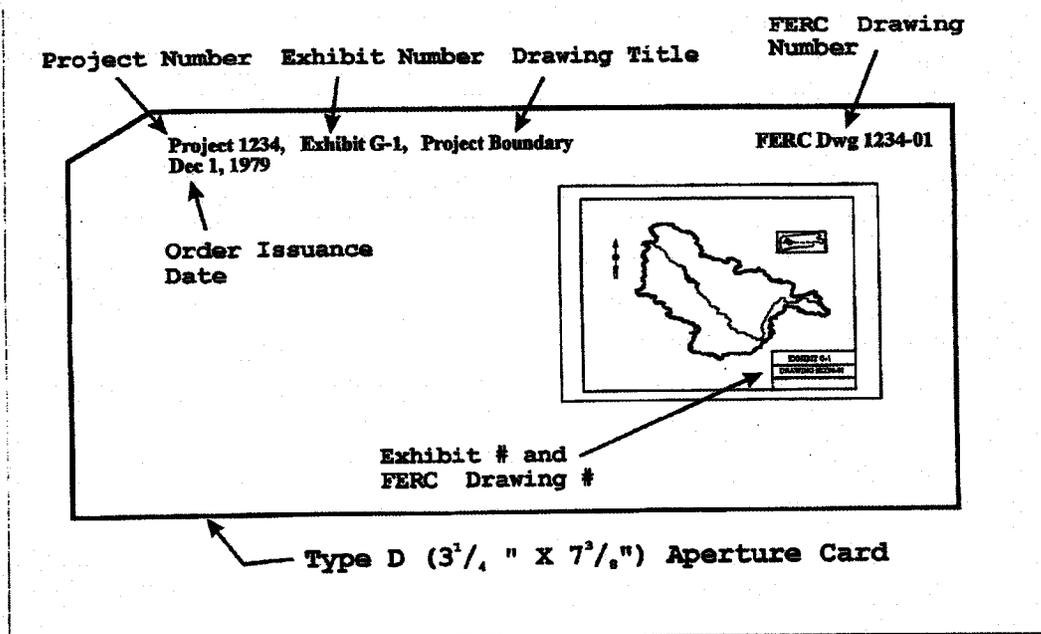


Figure 2. Sample Aperture Card Format

Project No. 1971-070  
Project No. 2261-002

7

Two sets of aperture cards should be filed with the Secretary of the Commission. The third set of aperture cards should be filed with the Commission's Portland Regional Office.

(C) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.713.

Mohammad Akbar  
Group 2 Leader  
Division of Hydropower Administration  
and Compliance

ORIGINAL

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December 30, 2002

FEDERAL ENERGY  
REGULATORY COMMISSION

Ms. Magalie Roman Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Subject: Lolo Innaha Transmission Line FERC No. 2261-O & M Plan

Dear Secretary Salas:

Enclosed are an original and eight copies of the Operation and Maintenance Plan, Innaha to Divide Creek Transmission Line - A Sub-section of the Oxbow to Lolo Transmission Line (Operation and Maintenance Plan). This Operation and Maintenance Plan is submitted in compliance with the "Order Amending Licenses Due to Partial Transfer of Transmission Line" concerning the Lolo Innaha Transmission Line (FERC Project No. 2261), issued on August 9, 2001. That Order added Article 18 to the license for Project No. 2261:

License Article 18. *The licensee shall within 180 days of the issuance of this order, file an Operation and Maintenance plan for those portions of the transmission line located on National Forest Service system lands. The Operation and Maintenance plan shall be jointly prepared with the U. S. Forest Service, and address resource issues and concerns, and appropriate protection measures.*

The latest "Order Granting Extension of Time Under Article 18", issued on September 10, 2002, extended the deadline for filing the Operation and Maintenance Plan to January 9, 2003. The Operation and Maintenance Plan is signed and approved by the Wallowa Whitman National Forest, of the United States Forest Service, and Avista Corporation. If you have any questions concerning this request, please contact Robin L. Bekkedahl at 509.495.8657.

Sincerely,

  
Steven A. Fry  
Hydro Licensing and Safety Manager  
509.495.4084

Enclosures (Original plus eight copies)

c: Peter J. McGovern, FERC-DHAC  
William Guey-Lee, FERC-DHAC  
Harry Hall, FERC-PRO

c w/o enclosure: Tom Glassford, Wallowa Whitman National Forest Service  
Lynn Roehm, Wallowa Whitman National Forest Service  
Karyn L. Wood, Wallowa Whitman National Forest Service

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**Operation and Maintenance Plan**  
**Innaha to Divide Creek Transmission Line –**  
**A Sub-section of the Oxbow to Lolo Transmission Line**

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**Robin L. Bekkedahl**  
**Avista Corporation**  
**1411 E. Mission Avenue – MSC-1**  
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**AVISTA CORPORATION  
FERC LICENSE FOR TRANSMISSION LINES  
OPERATION AND MAINTENANCE PLAN**

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O&M Plan: Imnaha to Divide Creek Transmission Line

## **AVISTA CORPORATION FERC LICENSE FOR TRANSMISSION LINES DRAFT OPERATION AND MAINTENANCE PLAN**

### **1. INTRODUCTION**

Industry restructuring, competition, and the 1996 outages caused by single trees falling into high-voltage transmission lines, have focused attention on the need to ensure reliability of the transmission systems of both individual utilities and the entire western interconnected grid. Avista Utilities (Avista), a subsidiary of Avista Corporation, maintains its transmission lines to ensure the structural and engineering integrity of the system. Providing safe, reliable power to customers requires an effective and timely operation and maintenance program. In addition, the Western System Coordinating Council (WSCC) has established reliability standards for Avista's transmission line system.

Periodically, Avista performs operation and maintenance (O&M) activities on its transmission line within the Wallowa-Whitman National Forest (WWNF). This transmission line is licensed with the Federal Energy Regulatory Commission (FERC) under the Lolo to Imnaha transmission line license (FERC Project No. 2261). The scope of this *Operations and Maintenance (O&M) Plan* is limited to O&M activities associated with the Imnaha to Divide Creek 230-kV transmission line, which is a segment of the Lolo to Imnaha transmission line (Figure 1-1). The current pole configuration is a H-frame, wooden structure (Figure 4-1). O&M activities are necessary to preserve the integrity and reliability of the transmission lines. These activities need to comply with various land-use plans and environmental laws and policies, such as the *Wallowa-Whitman National Forest Land and Resource Management Plan* (USFS 1990) and the draft environmental impact statement for the *Hells Canyon National Recreation Area Comprehensive Management Plan* (USFS 1999), *Imnaha Wild and Scenic River Plan* (USFS 1993).

In addition to the measures outlined in the *O&M Plan*, Avista is responsible for complying with all other federal, state, and local laws that apply to the O&M of its Imnaha to Divide Creek transmission line. To ensure compliance with the plan, Avista recognizes the obligations to adhere to the procedural protocol on the operation and maintenance of the transmission line.

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O&M Plan: Innaha to Divide Creek Transmission Line

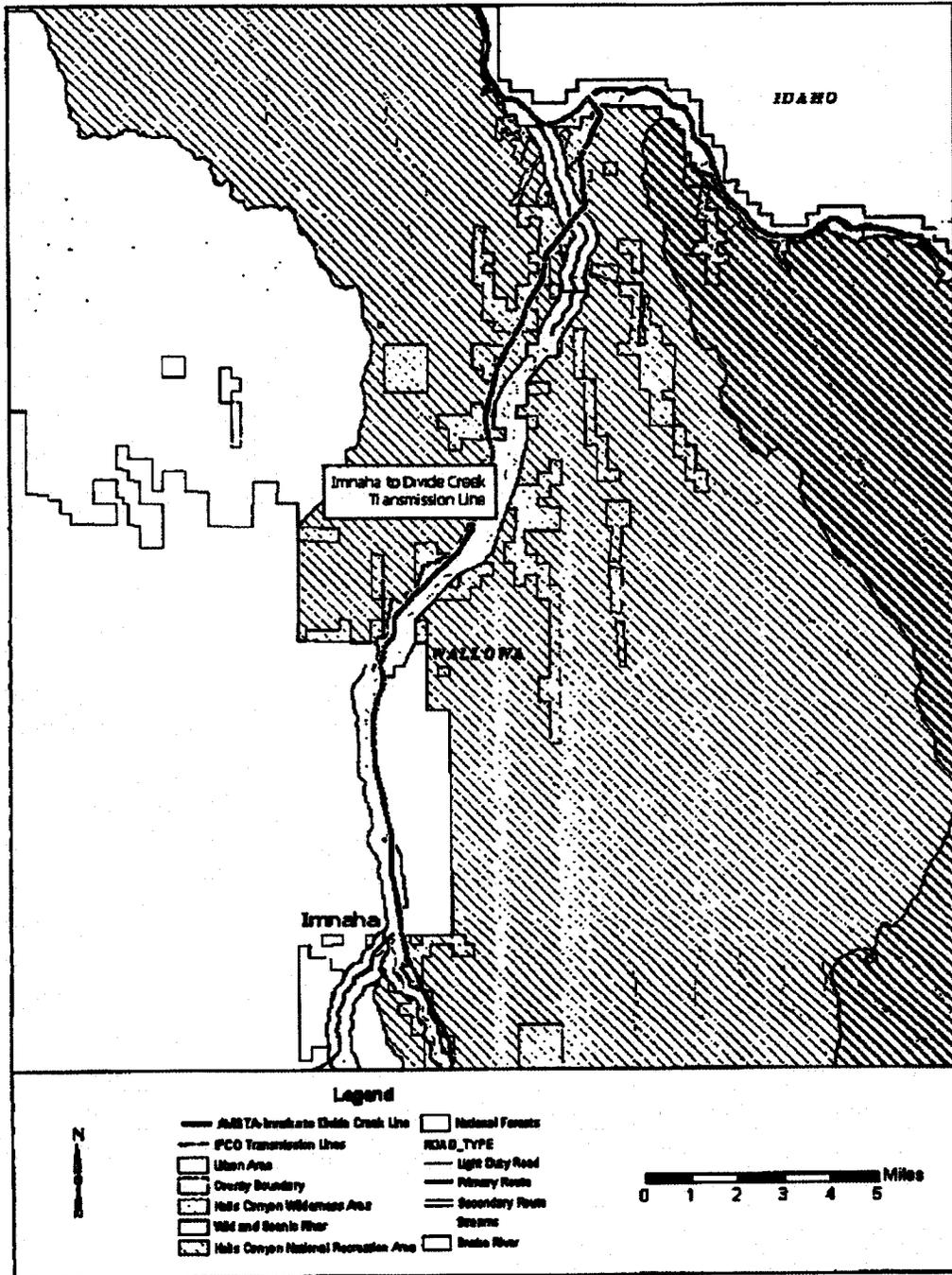


Figure 1-1. Location of the Innaha to Divide Creek 230-kV transmission line

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O&M Plan: Imnaha to Divide Creek Transmission Line

## 2. COMMUNICATION

Avista and the WWNF recognize that communication is an integral component to the success of this *O&M Plan*. To facilitate communication between Avista and the WWNF, the two parties will meet once a year specifically to discuss O&M issues. These annual coordination meetings will focus on the following items:

- Overview of recent O&M activities
- Avista's scheduled O&M activities
- Anticipated WWNF activities that could affect Avista's plans (such as road improvements or closures, resource plan updates, and others)
- Proposed amendments to this *O&M Plan*
- Issues regarding shared data
- Policy changes
- Changes in threatened, endangered and sensitive botanical and wildlife species lists
- Any other issues that warrant attention

The annual coordination meetings will be held in January. The Avista Environmental Permit Coordinator (EPC) and the WWNF Lands Program Manager (LPM) are responsible to schedule and coordinate the annual meeting. A list of key personnel and contact information is included in Appendix A.

In addition to direct communication, the WWNF and Avista will share resource data, especially geographic information systems (GIS) data. This data is necessary to effectively carry out the intent of this *O&M Plan*. Data management and transfer will be discussed at the annual coordination meetings.

## 3. PROJECT NOTIFICATION, REVIEW, AND APPROVAL PROCEDURES

Avista performs a number of activities to keep its transmission lines operational and in good repair. These projects can be planned—such as those for routine patrols, inspections, scheduled maintenance, and scheduled emergency maintenance—or they can be unplanned—such as those for emergency maintenance in cases where public safety and property are threatened. For the purpose of this *O&M Plan*, activities are divided into the following three categories:

- 1) No-Effect Projects
- 2) May Affect Projects
- 3) Emergency Situations

Descriptions of the typical maintenance activities included in each of the three categories are included in Appendix B. In addition, equipment and vehicles used during maintenance activities are described in Appendix C.

All O&M activities require prior notification to the WWNF, using the form included in Appendix D. Information about project type, location, project magnitude, and schedule

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will be recorded on the form. If a form is incomplete, the WWNF may return it to Avista with a letter or verbal explanation detailing what information is missing and why the agency review cannot be completed.

In addition to recognizing certain time periods for maintenance with regard to the natural environment, Avista will also consider scheduling periods with regard to the recreation environment. Avista will not deliberately schedule maintenance and operation of the transmission line during primary hunting season unless an emergency exists. When ATV's are needed for O&M work, Avista will place a visible identifier with the company logo on the ATV. When ATV's are needed, they will be used for the sole purpose of maintaining the transmission line.

### **3.1 No-Effect Projects**

No-effect projects are typically those activities that meet the following criteria:

- 1) Do not affect T/E
- 2) Are not within the PACFISH buffers
- 3) .25 mile distance from cultural sites

Avista will implement the environmental protection measures identified in this *O&M Plan* to ensure that activities do not harm the environment and that they comply with the WWNF's land-use plan, National Environmental Policy Act (NEPA) regulations, and other agency guidelines. Examples of no-effect activities are listed in Appendix B.

Projects that have no-effect to the natural and social environment can be reviewed at the annual meeting. To assist in review time, Avista will submit a list of the projects, a cover letter, and a schedule 2-3 weeks to the WWNF LPM prior to the annual meeting. The no-effect activity list will be those projects based on the criteria above.

The protocol for these activities is as follows:

- The Avista EPC submits a list of the no-effect activities based on the defined criteria. The list of projects, cover letter, and schedule are submitted to the WWNF LPM 2-3 weeks prior to the annual meeting.
- The WWNF LPM does a preliminary review and disperses the projects to the affected departments (i.e. TES Coordinator) for comments.
- The WWNF LPM collects comments from the departments before the annual meeting.
- The annual meeting is held.
- WWNF LPM responds at the annual meeting on the status of the project list. If further review is needed, the WWNF LPM will notify Avista within 30 days of the annual meeting on the status of the projects.
- For those activities that were not reviewed at the annual meeting, the Avista EPC submits the no-effect projects to the WWNF LPM for review.
- The WWNF LPM disperses the projects to the affected departments (i.e. TES Coordinator) and collect comments.

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**O&M Plan: Imnaha to Divide Creek Transmission Line**

- Within 30-45 calendar days or sooner after the submittal of the project request, WWNF LPM notifies Avista of the determination.

### **3.2 May Affect Activities**

May affect projects that meet the following criteria:

- 1) Within the PACFISH buffer area
- 2) Potentially affect or does affect a T/E
- 3) Within .25 mile distance from a cultural site

Avista can submit an unofficial "may affect" project form to the WWNF LPM. If available, these activities can be discussed as a means of providing preliminary information and procedural status at the annual review meeting. Avista will assume all necessary responsibility for approval from the affected agencies.

The protocol for these activities is as follows:

- Avista EPC submits description of project, site plan, and other information to affected agencies.
- Avista EPC notifies or mails unofficial project form to the WWNF LPM.
- After the formal approvals are received from the affected agencies, Avista submits the official project form with agency approvals to the WWNF LPM.
- The WWNF LPM reviews and disperses the projects to the affected departments (i.e. TES Coordinator) for comments.
- The WWNF LPM notifies the Avista EPC within 45 calendar days of the decision on the project.

### **3.3 Emergency Situations**

An emergency situation could arise that would require Avista to respond immediately. Emergency situations are those that threaten human safety and property, cause outages to Avista's system or the western grid system, or have other dire consequences. Examples of emergency situations are listed in Appendix B.

If an emergency situation arises, Avista may take remedial action to fix the problem, safeguard human health, and prevent damage to the environment. Avista must verbally inform the appropriate WWNF emergency contact (see Appendix A) of the situation, if possible, prior to or as soon as possible after undertaking the remedial action. Then Avista must submit a form (see Appendix D) notifying the WWNF of the remedial action, including an explanation of the circumstances that prompted the action, within three working days of undertaking the action.

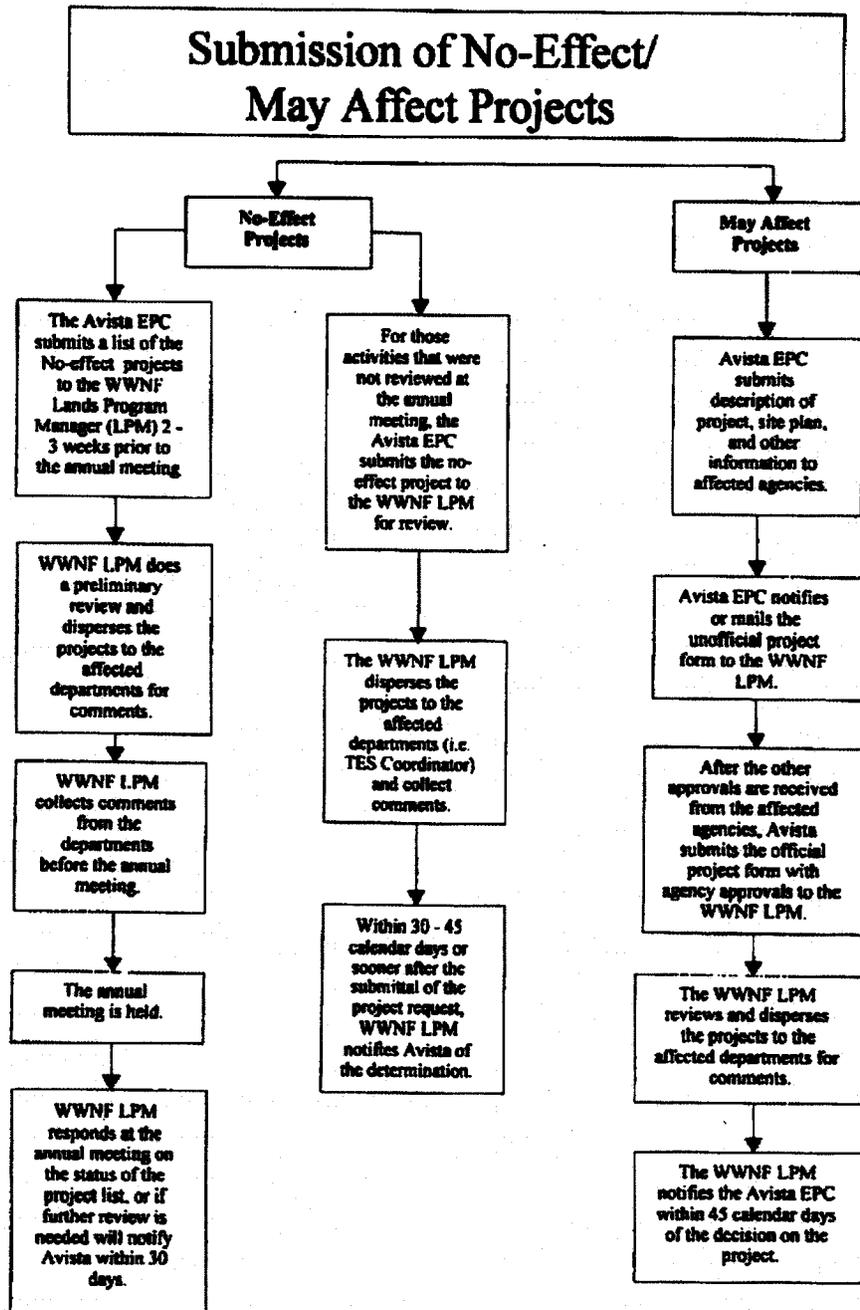


Figure 3.1. Flowchart for no-effect and may affect projects

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#### **4. ENVIRONMENTAL PROTECTION MEASURES**

To ensure that O&M activities do not cause significant damage to the environment and that they comply with WWNF land-use plans, NEPA regulations, and other regulations and guidelines, O&M projects will be conducted in compliance with the following measures regarding environmental inspection: approved work area and site access, transportation systems management, rights-of-way clearing, noxious weed control, restoration and revegetation, protection of streams, rare or sensitive species, wildlife, cultural resources, aesthetic resources, and fire hazards.

##### **4.1 Environmental Inspection**

To ensure its compliance with the environmental protection measures identified in this *O&M Plan*, Avista will provide an environmental inspector for activities on which Avista and the WWNF mutually agree. The environmental inspector will monitor the O&M activity, compliance, and document the mitigation measures in a report. The report shall be distributed to both Avista and the WWNF.

Avista will do annual routine air patrols on the transmission line. If any portion or area of the rights of way has any identifiable anomalies related to the operations and maintenance of the transmission line, Avista will notify WWNF of the concern. Avista will work with the WWNF to rectify the problem.

##### **4.2 Approved Work Area and Site Access**

All O&M activities are confined to Avista's Innaha to Divide Creek transmission line and service road rights-of-way. Projects that extend outside the licensed rights-of-way, but are on WWNF land are not regulated under this *O&M Plan*.

Access to the project area is confined to existing federal, state, and local roads, as well as Avista-licensed service roads and transmission line rights-of-way. Public access to service roads (closed WWNF roads) will be determined on a case-by-case basis with the WWNF (see section 4.3.3). Avista is responsible for any selective road closures (that is, roads that are closed to the public but accessible to WWNF and Avista for maintenance purposes). These roads will be closed using a method approved by the WWNF (such as gating or earthen or rock barriers). Selective roads will be inspected and repairs made as necessary. Inspections and repairs will be made proportionate to the usage of these roads. Except for routine road maintenance for Avista activities, road modifications—such as blading, filling, or widening of curves—are prohibited unless specifically approved by the WWNF in writing before the activity is undertaken.

##### **4.3 Transportation Systems Management**

Roads necessary for the O&M of transmission lines are described as either access roads or service roads. The sole purpose of service roads is to provide Avista maintenance

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O&M Plan: Imneha to Divide Creek Transmission Line

crews access to the transmission lines. These roads would not exist if the transmission lines did not exist. In contrast, access roads serve a broader purpose, such as contributing to the WWNF, county, or state road system. Access roads provide direct or indirect access to the transmission lines, but that access is not their primary purpose.

Based on the WWNF's classification for the transportation system, roads used to access transmission line rights-of-way are generally one of the following four types:

- 1) Public roads, including state highways and county roads. These roads are for public use, and the appropriate government agency maintains them. Avista considers these access roads.
- 2) Open WWNF transportation roads. The WWNF and/or joint users maintain these roads, which are open to the public. These roads—including drainage features, cuts, and fill slopes—must be protected during Avista's maintenance activities. Avista considers these access roads.
- 3) Closed WWNF transportation roads. These roads are still needed for the long-term transportation plan, but they have been closed to the public because of WWNF's management policies, intended to protect natural resources and eliminate maintenance costs. These roads—including drainage features, cuts, and fill slopes—must be protected during Avista's maintenance activities. Parties wanting to use these roads for access must obtain approved road closure permits. In addition, they may be assigned some maintenance responsibility proportionate to their use of the closed road. Although these roads may serve a broader purpose, Avista maintains these roads.
- 4) Transmission line service roads. These roads are necessary for access to and maintenance of transmission lines, but they are not part of the planned WWNF road network and are generally closed to the public. Avista maintains these roads, as needed, and considers them service roads.

#### 4.3.1 Road Maintenance Standards

Road maintenance performed by Avista will conform to standards in WWNF Handbook FSH 7709.56 Road Preconstruction Handbook for Traffic Service Level D and 7709.58 Transportation System Maintenance Handbook. The service level standards for access is listed as type D roads. Type D roads are those where traffic is limited, slow moving, and associated with a single purpose. The service roads within the WWNF are rarely needed and provide limited access to the transmission lines.

The maintenance level descriptions for the service roads to access the transmission lines are considered a Level 1. According to the FSH 7709.56, Level 1 maintenance is assigned to intermittent service roads during the time they are closed to vehicular traffic. The closure period must exceed 1 year. Basic custodial maintenance is performed to keep damage to adjacent resources to an acceptable level and to perpetuate the road to facilitate future management activities. Emphasis is normally on maintaining drainage facilities and runoff patterns. Planned road deterioration may occur at this level. Appropriate traffic management strategies are "prohibit" and "eliminate." These roads are closed to vehicular traffic, but may be open and suitable for non-motorized uses.

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#### 4.3.2 Vegetation Management on Service Roads

Because closed WWNF roads and service roads may receive little or no use for prolonged periods of time, they may naturally become overgrown with trees and shrubs. The growth of these trees and shrubs may be desirable when the vegetation screens the closed road from the public and thereby reduces use and resulting impacts on resources. Effective screening may also reduce the need for more permanent structures, such as gates or earthen or rock barriers, to control access. However, when vegetation begins to restrict access for maintenance vehicles or poses a safety hazard to maintenance personnel, then management procedures must be implemented to control the vegetation. Avista will do necessary road work for access in conjunction with the projects. The following is a list of guidelines for tasks related to road maintenance:

- 1) Service roads are to be cleared of brush, trees, large rocks, slash, and deadfall as deemed necessary by Avista and the WWNF. They will also be cleared whenever conditions of the road could damage equipment or endanger the safety of employees accessing the powerlines.
- 2) All initial road maintenance is to be performed by hand crews using pickups, ATVs, chainsaws, or hand tools. Locations of road repair needing heavy equipment will be mapped, and the work needed will be identified and coordinated with the WWNF.
- 3) All trees, brush, slash, deadfall, and large rocks will be removed from the service road to accommodate access by, at least, ATVs. Material removed will be placed below the edge of the drainage side of the road so that it provides a filtering window to help control erosion and sedimentation.
- 4) All trees and brush taller than 12 inches are to be removed from the roadbed to facilitate access by large vehicles when necessary. All trees and brush less than 12 inches tall will be left to help control sedimentation and erosion. Any large branches that could damage vehicles and trucks will be limbed.

#### 4.3.3 Service Road Access Restrictions

The WWNF may restrict general access on closed WWNF access and service roads. Avista is to close such roads using a WWNF-approved method, such as gating or earthen or rock barriers. Gates are to be locked with both an Avista and WWNF lock (this O&M Plan will be updated to reflect any road closures.)

#### 4.4 Rights-of-Way Clearing

Vegetation can interfere with the flow of electric power, pose safety problems, and interfere with maintenance activities. Maintaining adequate clearance between vegetation and conductors is essential to safe and reliable operations. This particular 20.23 mile section of the transmission line does not pose any significant vegetation concerns or management. Due to the nature of the vegetation in this area of the transmission corridor, there are no anticipated vegetation projects expected or predicted. According to the previous records of the Idaho Power Company, there have been no vegetation management issues or concerns within this section of the transmission line on WWNF lands.

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*O&M Plan: Imnaha to Divide Creek Transmission Line*

#### **4.4.1 Vegetation Management**

General vegetation management in the rights-of-way is scheduled according to maintenance cycles. The intent of the scheduled maintenance program is to accomplish the following tasks:

- 1) Trim trees and tall shrubs to the extent that the clearance lasts for the duration of the cycle. A cycle is 5 or more years depending on the mixture of vegetative growth in an area.
- 2) Remove trees to provide clearance and improve access to facilities.
- 3) Remove trees growing within tower structures.
- 4) Facilitate a low-growing plant community that stabilizes the site, inhibits the growth of tall-growing shrubs and trees, and provides habitat for wildlife.
- 5) Identify and remove hazardous trees that could fall and contact facilities.
- 6) Use techniques (i.e. feathering) at the edge of the right-of-way.

Line patrols will identify any conditions that may require immediate attention including trees that interfere with transmission conductors, danger trees outside the corridor, and trees whose growth will not allow safe clearance until the next scheduled maintenance cycle. Avista will notify WWNF of any tree clearing work as needed.

#### **4.5 Noxious Weed Control**

Maintenance vehicles and equipment, which will be needed for O&M projects traveling off road onto unbladed areas or involved in ground disturbance, will be washed before entrance on WWNF land. The equipment is to be cleaned with steam, high-pressure water, or compressed air to remove soil and debris.

To help limit the spread and establishment of noxious weed communities in disturbed areas, desired vegetation needs to become established promptly. Therefore, the area should be reseeded as soon as possible, during the optimal period after ground disturbing activities. Certified "noxious weed-free" seed and mulch must be used on all areas to be seeded (see section 4.6).

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O&M Plan: Imnaha to Divide Creek Transmission Line

Distance	Structure Line Vegetation Voltage	Preferred Undergrowth Clearance (feet)	Preferred Side Clearance (feet)	Preferred Clearing Width (feet)	Clear (feet)
<b>Single Pole</b>	69 kV	50	25	50	10
	138 kV	50	25	50	10
<b>H-Frame</b>	230 kV	50	35	100	10
	345 kV	50	40	120	10
<b>Lattice Tower</b>	230 kV	50	50	100	25
	345 kV	50	50	120	25

Figure 4-1. Preferred line-clearing practices for transmission line structures.

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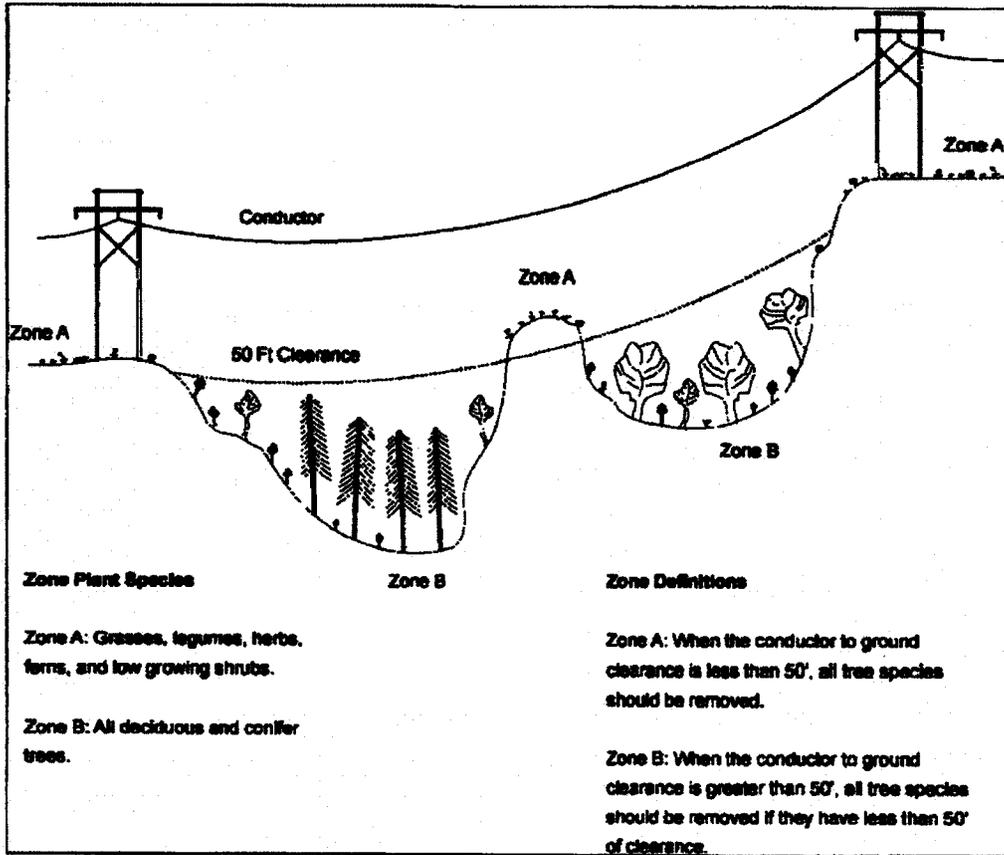


Figure 4-2. Preferred transmission line clearing practices for under conductor clearance

#### 4.6 Restoration and Revegetation

The purpose of revegetation following O&M activities is to prevent soil erosion and spreading of noxious weeds. Avista will repair damage to resources, roads, and fences caused by routine, emergency, or maintenance activities. The damage will be repaired as soon as weather, ground, and scheduling conditions permit. For maintenance and operational activities that affect a significant amount of ground disturbance, cleanup and reseeded of the section will be done. Any excess dirt that is disturbed during routine maintenance and operations will be used to refill the area. Erosion control protection measures and best management practices will be used to eliminate/minimize project-related impacts to the aquatic system for all maintenance activities.

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*O&M Plan: Imnaha to Divide Creek Transmission Line*

If needed, Avista will seed an area in consultation with the WWNF. All seed used must meet all of the requirements of the Federal Seed Act and applicable Oregon laws regarding seeds and noxious weeds. All seed must be certified as "noxious weed free". The projects that need reseeding will be determined on a "site by site" basis in consultation with the WWNF. Seeding mixtures will be mutually agreed between the WWNF and Avista.

#### **4.7 Stream Protection Measures**

Streams, or watercourses with definable streambeds or streambanks, regardless of whether there is flowing water, are important because they provide habitat for a variety of animal and plant species. Avista's transmission line parallels and crosses numerous waterways and riparian and wetland areas. Of critical importance is the protection of habitat for the bull trout, steelhead, and spring chinook salmon, which are listed as threatened species under the Endangered Species Act of 1973 (ESA, Public Law 93-205). The WWNF has adopted certain measures prescribed in the INFISH (USFS 1995) and PACFISH (USFS and BLM 1995) environmental assessment documents to help mitigate disturbance activities on these species and their habitats.

Avista will exercise care to ensure protection of all aquatic, riparian, and wetland habitat on WWNF land. To minimize the possibility of instream activities interfering with fish migration and spawning, all instream activities supporting the target species of fish are to be conducted between July 15 and August 15, unless the WWNF and appropriate regulatory agencies agree to alternative dates. If woody vegetation within 100 feet of streams needs to be managed, it will be cut with a chainsaw. Herbaceous plants and low growing shrubs will be left in place.

#### **4.8 Protection Measures for Threatened, Endangered, and Sensitive Plant Species**

When O&M activities classified as "may affect" occur in areas harboring threatened, endangered, or sensitive (TES) plant species, the known sites are to be marked to ensure that the species can be avoided and protected. However, only those sites that occur directly within the transmission line rights-of-way or near possible maintenance activities need to be marked. Avista-appointed personnel will mark these sites before maintenance activities starts. After the work is complete or no longer poses a threat to the sensitive resources, the markings will promptly be removed to protect the site's significance and location from unwanted attention.

If sensitive species are found before or during maintenance activities, Avista will establish a 100-foot buffer zone around the species or population and then contact the WWNF immediately. Until the WWNF authorizes Avista to proceed, either orally or in writing, all activities must cease within the 100-foot buffer zone.

In 1999, Idaho Power Company conducted a rare plant survey within the corridor of the Imnaha to Divide Creek transmission line and service roads on WWNF land. Although

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no new rare plant populations were located, a previously reported population of *Mirabilis macfarlanei* (Macfarlane's four-o'clock) was relocated. *Mirabilis macfarlanei* was previously listed as endangered and has been relisted as threatened under the ESA by the U.S. Fish and Wildlife Service (USFWS) since March 1996. Plants were found on the service road cutbank and in the vicinity of the transmission line rights-of-way for structure 61. To protect the plants from livestock, this population has been fenced. In addition, because of the species presence, all O&M activities in the vicinity (other than aerial inspections) are considered projects that may affect the population. Thus, all projects must be approved in advance by the USFWS.

The regional forester sensitive species list for the Pacific Northwest Region of the Forest Service (Region 6) is available at the following website:

[http://www.fs.fed.us/r6/nr-botany/sen\\_plants.htm](http://www.fs.fed.us/r6/nr-botany/sen_plants.htm)

#### 4.9 Wildlife Protection Measures

Road and transmission line corridors influence wildlife in a variety of ways. The corridors may function as the following, which may in turn modify wildlife habitat: specialized habitats, barriers, or filters to the movement of wildlife; sources of disturbance or direct mortality; or sources of effects on vegetation communities. The way a corridor functions, and thus the protection measures that Avista must implement, depend on several factors, including the animal species or species assemblages under consideration.

##### 4.9.1 Timing Restrictions

Several wildlife species that are not considered threatened, endangered, or sensitive are still a management concern. These species include management indicator species and species with high societal value, such as deer, elk, and others. Proper timing of O&M activities is important to the protection of these species (Table 4-1). The WWNF must review O&M activities that coincide spatially and/or temporally with important life stages of species of concern. Several species of concern on the WWNF—including bats, wolverine, lynx, gray wolf, and pileated woodpeckers—would unlikely be affected by O&M activities along the Imnaha to Divide Creek transmission line rights-of-way. Timing restrictions for nesting and roosting raptors are discussed in section 4.9.3.

**Table 4-1 Timing Constraints for O&M Activities Associated with Wildlife Species.**

Wildlife Species	Life Stage	Restrictive Time Period	O&M Constraints*
Elk	Wintering	December–April	No-effect and May affect Activities
	Calving	May–June	May affect activities
Mule deer	Wintering	December–April	No-effect and May affect activities
	Fawning	May–June	May affect activities
Bighorn sheep	Wintering	December–April	No-effect and May affect activities
	Kidding	April–May	May affect activities

\* Constraint details are to be determined for each site.

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#### 4.9.2 Avian Collision and Electrocutation

Transmission lines and avian mortality can be in conflict with each other when transmission lines intercept areas where birds concentrate, such as migratory flyways, feeding areas, and nesting or roosting sites. Collisions are more likely during periods of high wind or low visibility, such as on foggy, rainy, or snowy days. This area is not a flyway. Imnaha does not support the waterfowl and class of birds for potential of conflict with transmission lines. According to the SAIC study, there is not potential collision risk associated with the Imnaha to Divide Creek transmission line (SAIC and Spatial Dynamics 2000a).

Raptors are the avian group most susceptible to electrocution because of their large size and frequent use of powerline structures. Wires on larger transmission structures are sufficiently spaced to preclude electrocution. The Imnaha to Divide Creek transmission line has very low potential to electrocute raptors (SAIC and Spatial Dynamics 2000b). There has been no evidence or observations of electrocutions of raptors in this area of transmission line. As needed, Avista will follow pole modification and design criteria in Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996 (APLIC 1996).

#### 4.9.3 Raptor Nesting

Birds of prey are protected by the Migratory Bird Treaty Act and utilities or individuals found guilty of disturbing nests, eggs, chicks, or breeding adults may be imprisoned and/or heavily fined.

Roosting and perching birds, especially osprey, can cause power outages if their feces or nesting materials interfere with conductors or insulators. Avista, in consultation with the USFWS, is to manage nesting on transmission line structures to reduce conflicts. Such management may include relocating nests, modifying structures, and providing nesting platforms. Avista will continue to consult with the USFWS, WWNF, and Oregon Department of Fish and Wildlife when a problem nest is located on WWNF land.

Spatial and temporal management zones or buffers for nests and roosting sites can protect raptors from being disturbed by O&M activities. Any restrictions on an O&M activity needs to address the location, type, and duration of the activity. Table 4-2 includes suggestions of time periods during which O&M activities must be reviewed and may be restricted, depending on their potential to disturb nesting and perching raptors. In general, the WWNF must review all O&M activities that would occur within 400 meters of a raptor nest before the work can begin. In addition, the WWNF is responsible for providing Avista with location data of all known nest sites in the vicinity of the transmission line rights of way.

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**Table 4-2 Time Periods During Which O&M Activities Must Be Reviewed and May Be Restricted Within 400 Meters of Raptor Nests or Roosting Areas.**

Raptor Species	Life Stage	Restrictive Time Period	O&M Constraints*
Bald eagle	Nesting	March–July	All activities reviewed
Bald eagle	Winter Roost	November–March	No-effect and may affect activities reviewed
Cooper's hawk	Nesting	April–July	No-effect and may affect activities reviewed
Golden eagle	Nesting	March–June	No-effect and may affect activities reviewed
Northern goshawk	Nesting	April–August	No-effect and may affect activities reviewed
Osprey	Nesting	April–August	May affect activities reviewed
Peregrine falcon	Nesting	March–July	No-effect and may affect activities reviewed
Red-tailed hawk	Nesting	March–July	No-effect and may affect activities reviewed
Sharp-shinned hawk	Nesting	April–July	No-effect and may affect activities reviewed

\* Constraint details are to be determined for each site.

**4.9.4 TES Wildlife Protection Measures**

Avista is to follow the same project-level protocols for TES wildlife species as it is for rare plants (see section 4.8), although marking sites may not be practical for all species. The regional forester sensitive species list for the Pacific Northwest Region of the Forest Service (Region 6) is available at the following website:

<http://www.fs.fed.us/r6/nr/wildlife/tes/list/index.htm>

**4.10 Cultural Resource Protection Measures**

The transmission line rights-of-way have been inventoried for cultural resources. During “may affect” classified O&M activities, Avista is to avoid all known sites on, or eligible for inclusion in, the National Register of Historic Places. Before a “may affect” classified activity begins, known cultural sites are to be marked to ensure that they can be avoided and protected during the maintenance activity. In fact, marked areas represent general avoidance areas: no distinction will be made between biological and cultural sites. Again, only those sites that occur directly within the transmission line rights-of-way or near any possible O&M activities need to be marked. Avista-appointed personnel will mark the sites before maintenance begins. After maintenance is complete or when activities no longer poses a threat to the cultural resources, the markings will promptly be removed to protect the site’s significance and location and significance from unwanted attention.

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#### **4.10.1 Unanticipated Discovery of Cultural Resources**

If new historic or prehistoric materials are discovered during maintenance activities, Avista will immediately stop all work in the area and then contact the WWNF as soon as possible. The location of the find will be flagged or fenced off to protect it from further impact. Until the WWNF provides written authorization to proceed, no further work will take place in the immediate area.

#### **4.10.2 Unanticipated Discovery of Human Remains**

All human interments will be treated with the respect accorded them by state and federal laws applying to human remains. If the discoveries are unanticipated, state law does not distinguish between historic and prehistoric burials as far as what steps are required for initial notification or disinterment. If human remains are discovered during maintenance activities, Avista will immediately stop all work in the area to protect the integrity of the find and notify the county sheriff and WWNF as soon as possible. In addition, the location of the find will be flagged or fenced off to protect it from further impact. The WWNF will determine what mitigation is necessary and, once the mitigation is complete, work can resume.

### **4.11 Protection of Aesthetic Resources**

As part of ongoing O&M, Avista is responsible for implementing general guidelines to protect the aesthetic resources in the area of the transmission lines. The objective of the following guidelines is to reduce the visual impacts of structures, conductors, and rights-of-way through time:

- Use non-specular conductors when conductors are replaced or upgraded.
- Incorporate aesthetic concerns into the designs when structures need to be replaced or added (to the extent that these designs are compatible with existing engineering needs).
- Review proposed structure types and line locations with the WWNF during the design phase of any planned rebuild in the Hells Canyon National Recreation Area.
- Use newer technologies to make facilities more compatible with the natural landscape.

### **4.12 Fire Protection**

Fire regulations are generally effective between April 1 and October 31 and at other times with unusual weather conditions. O&M activities are to follow industrial fire precaution levels and regulations (see Appendix G).

#### **4.12.1 Avoidance of Fire-Related Problems**

Avista is responsible for inspecting the transmission line for fire hazards. When working on or around transmission lines on WWNF land during fire season, each Avista representative, whether staff or contractor will have approved suppression tools and equipment. In addition, Avista will follow requirements and procedures included in *Fire*

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*Protection and Suppression* (Appendix G). The contracting officer for the WWNF, referred to in the first page of *Fire Protection and Suppression* (Appendix G), is the Area Ranger (see Appendix A).

Because continuous operation of the transmission lines is necessary for Avista to supply electric service to its customers, the WWNF will use its best efforts to avoid using fire suppression techniques that could take the lines out of service. If the WWNF decides that it must use fire suppression techniques that could affect operation of the lines, it will notify Avista as soon as possible.

#### 4.12.2 Emergency Notification Procedures

If Avista becomes aware of an emergency situation that is caused by a fire on or threatening WWNF land and that could damage the transmission lines or their operation, it will notify the appropriate WWNF contact (see Appendix A).

Likewise, if the WWNF becomes aware of an emergency situation that is caused by a fire on or threatening WWNF land and that could damage the transmission lines or their operation, it will try to notify the appropriate Avista contact (see Appendix A).

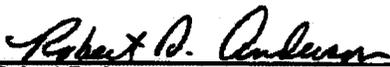
If a naturally-ignited fire within the Hells Canyon Wilderness is close to the transmission lines, the WWNF will notify Avista. These fires are allowed to burn within the wilderness under the conditions of the Prescribed Natural Fire Program.

## 5. O&M PLAN MODIFICATION

This section summarizes amendments made to the *O&M Plan* after the plan's acceptance. The amendment history includes the date on which changes were made, a brief description of those changes, and the signatures of the Avista and Wallowa-Whitman National Forest officers accepting the changes.

## 6. O&M PLAN ACCEPTANCE

The following officers of Avista and the Wallowa-Whitman National Forest have accepted this *O&M Plan*:

  
Robert D. Anderson  
Director of Environmental Affairs  
Avista Corporation

  
Date

  
Karyn L. Wood  
Forest Supervisor  
Wallowa-Whitman National Forest

  
Date

Avista Corp

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## 7. LITERATURE CITED

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- U.S. Forest Service (USFS) and Bureau of Land Management (BLM). 1995. Environmental Assessment for the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (PACFISH). U.S. Department of Agriculture, USFS, and U.S. Department of the Interior, BLM.

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**APPENDIX A—KEY PERSONNEL CONTACT INFORMATION**

**Wallowa-Whitman National Forest**

**Emergency Contact(s):**

***Fire Reporting***

Northeast Oregon Interagency Fire Center  
60131 Pierce Rd., LaGrande, OR 97850  
Phone: 911, (541) 963-7171, (541) 962-8575

***Hazmat Reporting***

Dave Quinn  
Hazmat Coordinator, Northeast Oregon Interagency Fire Center  
60131 Pierce Rd., LaGrande, OR 97850  
Phone: (541) 962-8660,  
Cell Phone: (541) 786-1275

Jason Peterson  
Hazmat Coordinator, Wallowa Whitman FS  
1550 Dewey Ave.  
Baker City, OR 97814  
Phone: (541) 523-1271  
Cell Phone.: (541) 519-4551

**Routine Contacts**

Tom Glassford, Primary Contact  
Lands Program Manager  
Hells Canyon NRA, 88401 Hwy 82  
Enterprise, OR 97828  
Phone: (541) 426-5537

Nick Lunde  
Fire Management Officer  
Hells Canyon NRA, 88401 Hwy 82  
Enterprise, OR 97828  
Phone: (541) 426-5583  
Cell Phone: (514) 519-8439

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**Jody Williamson  
Law Enforcement Officer  
Hells Canyon NRA, 88401 Hwy 82  
Enterprise, OR 97828  
Phone: (514) 426-5511**

**Kendall Clark  
Area Ranger/HCNRA  
Hells Canyon NRA, 88401 Hwy 82  
Enterprise, OR 97828  
Phone: (541) 426-5501**

**Steve Lucas  
Heritage Resource Program Manager  
Hells Canyon NRA, 88401 Hwy 82  
Enterprise, OR 97828  
Phone: (541) 426-5532**

**Don Crompton  
Safety/Occ Health Manager  
Wallowa-Whitman National Forest, 1550 Dewey Ave  
Baker City, OR 97814  
Phone: (541) 523-1427,  
Cell Phone: (541) 519-5978**

**Wallowa County Sheriff Office (if needed)  
101 South River, Street Room 101  
Enterprise, OR 97828  
(541) 426-3131**

**County Emergency Service Department  
101 South River, Street Room 101  
Enterprise, OR 97828  
(514) 426-4543**

**Avista Corporation**

**Bill Spears  
Construction Design Representative  
1330 Fair Street  
Clarkston, WA 99403  
Phone: (208) 798-1472  
Work hours: 7 a.m. to 5 p.m.  
Primary contact for maintenance on the powerline**

**Avista Corp**

**O&M Plan: Imnaha to Divide Creek Transmission Line**

**Glen Logsdon  
Operations Manager  
1330 Fair Street  
Clarkston, WA 99403  
Phone: (208) 798-1472  
Work hours: 7 a.m. to 5 p.m.**

**Any emergency after work hours:  
1 (800) 372-1645**

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## **APPENDIX B—TYPICAL OPERATION AND MAINTENANCE ACTIVITIES**

### **No-Effect Projects**

No-effect projects are those activities that do not damage vegetation, soil, or other sensitive resources, including rare plants, wildlife, riparian habitat, and aquatic resources. Personnel are generally present in any one area for less than an hour. These activities are not within the buffer of PACFISH regulations, threatened and endangered (T/E) wildlife and botanical species, and culturally sensitive sites. The following are examples of no-effect projects:

- Routine annual air patrols (except October and November unless emergency) from a helicopter to inspect for structural and conductor defects, conductor clearance problems, and hazard tree identification.
- Routine ground patrols from the ground to inspect structural and conductor components. Such inspections may require either an ATV or pickup traveling on access and service roads and may rely on either direct line of sight or binoculars.
- Structure maintenance and repair requiring that personnel access a structure either by ATV or on foot and then climb the structure.
- Structure or conductor maintenance from a bucket truck. This maintenance does not require that personnel leave the access or service road, nor does it require a landing site.
- Cathodic protection surveys, typically requiring that personnel use an ATV or pickup and make brief stops to check the integrity and functionality of the anodes and ground beds. Cathodic protection keeps steel lattice structures from rusting.
- Level 1 road maintenance, including activities to improve surface conditions and drainage; removing minor physical barriers, such as rocks and debris; and others.
- Climbing inspections of structures to evaluate hardware and make minor repairs, if necessary. Personnel access these structures by pickup, ATV, or foot.
- Structure or conductor maintenance in which access vehicles must leave the road.
- Wood pole treatment to retard rotting and structural degradation. Personnel access structures by pickup, ATV, or foot, inspect and test (including the subsurface) the poles, and then treat them by injecting preservatives directly into the poles.

### **May Affect Projects**

May affect projects are those routine maintenance activities that are in the buffer area of the PACFISH regulations, T/E wildlife and/or botanical species, or cultural sites. These activities are those that may affect but not likely to adversely affect the environment. Personnel are present in any one location or area for an extended time, generally more than an hour. The following are examples of may affect projects:

- Routine cyclical vegetation clearing to trim or remove tall shrubs and trees to ensure adequate ground to conductor clearances. Personnel access the area by pickup, ATV, or foot, use chainsaws to clear the vegetation, and typically spend less than half a day in any one area.

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- Hazard (spot) removal of trees or snags that pose a risk of falling into conductors or structures and causing outages or fires. Personnel access hazard trees by ATV or foot from an access or service road and cut them with a chainsaw.
- Vegetation removal on service roads to allow the necessary clearance for access and provide for worker safety. Hand crews access the service roads by pickup or ATV and use chainsaws and hand tools to clear the vegetation.

The following projects could adversely affect the environment:

- Vegetation removal within 300 feet of riparian or wetland areas, including riparian habitat conservation areas and segments of a river designated as wild or scenic.
- Non-cyclical vegetation clearing to remove saplings or larger trees in rights-of-way.
- Structure or conductor maintenance in which earth must be moved, such as the creation of a landing pad for a bucket truck.
- Replacement of wood poles.
- Replacement or construction of steel lattice structures.
- Road maintenance involving erosion control, water drainage installation or repair (such as culverts or rock crossings), road rehabilitation after major disturbances (such as slumping), or other road maintenance requiring heavy equipment, except minor road grading.
- Follow-up restoration activities such as seeding, noxious weed control, and erosion control.
- Replacement of a conductor, an activity that may require the use of several types of trucks so that the conductor can be hung and pulled into place.

#### **Emergency Situations**

Emergency situations are those conditions that may result in eminent or direct threats to public safety or impair Avista's ability to provide power to its customers. The following are examples of past emergency situations:

- Broken conductor splices.
- Lightning strike or burning of wood pole structures.
- Damage to structures from high winds, ice, or other weather-related conditions.
- Line or system outages or fire hazards caused by trees falling into conductors.
- Breakage or failure of crossarms or insulators, which could or does cause conductor failures.
- Vandalism to structures or conductors from shooting or other destructive activities.

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**APPENDIX C—TYPICAL OPERATION AND MAINTENANCE EQUIPMENT**



**Chase Truck (typical for routine O&M)**



**Line Truck (typical for pole/conductor maintenance)**

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**Bucket Truck (typical for pole/conductor maintenance)**



**Backhoe (typical for pole replacement)**

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**Helicopter (routine air patrols)**



**ATV**

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**APPENDIX D—OPERATION AND MAINTENANCE PROJECT NOTIFICATION FORM**

PROJECT DESCRIPTION			
Name of Project:		File No. (Forest Service Use Only):	
Project Description (Attach site sketch and, if necessary, additional sheets – site sketch should illustrate sensitive resources and protection measures:			
LOCATION		SCHEDULE & PROJECT TYPE	
Forest Service District:		Proposed schedule (begin date--end date):	
Transmission line(s):		Activity class: <input type="checkbox"/> No-Effect Projects <input type="checkbox"/> May Affect Projects <input type="checkbox"/> Emergency Situation	
Road and structure number(s):		Access route to site:	
Legal description (indicate quarter section, township, and range):			
RESOURCES		LOCATION/EXPLANATION	
Is in-stream work required? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Will this project affect wetland or riparian areas? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Are known cultural resources in the vicinity of the project? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Will this project affect known cultural resources? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Are TES plant species in project area? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Will project affect TES plant species? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Will project affect TES wildlife species? Yes <input type="checkbox"/> No <input type="checkbox"/>			
Will project affect aesthetics resources in the project area? Yes <input type="checkbox"/> No <input type="checkbox"/>			
MAINTENANCE TECHNIQUES & MITIGATION MEASURES			
Identify proposed maintenance techniques and mitigation measures specific to this project:			
OTHER PERMITS			
Other permits and approvals (include name, address, and telephone number of agency contact):			
SIGNATURE			
Name:		Signature:	Date:
Title:	Phone:	Fax:	Email:

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PROJECT DESCRIPTION		
Name of Project:	File Name:	
Project Description:		
PROJECT CONCURRENCE		
SIGNATURE		
Name:	Signature:	Date:

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**APPENDIX E—USDA FOREST SERVICE, PACIFIC NORTHWEST REGION  
“FIRE PROTECTION AND SUPPRESSION” DOCUMENT**

**USDA FOREST SERVICE  
PACIFIC NORTHWEST REGION**

**FIRE PROTECTION AND SUPPRESSION**

**1. Fire Period and Closed Season**

Specific fire prevention measures are listed below and shall be effective for the period April 1 to October 31 of each year. The WWNF may change the dates of said period by advance written notice if justified by unusual weather or other conditions. Required tools and equipment shall be kept currently in serviceable condition and immediately available for initial attack on fires.

**2. Fire Plan**

Before starting any operations on the project, the Contractor, Permittee, Licensee, or Purchaser, hereinafter referred to as the "Contractor," shall prepare a fire plan in cooperation with the Contracting Officer providing for the prevention and control of fires in the project area.

The Contractor shall certify compliance with fire protection and suppression requirements before beginning operations during the fire period and closed season, and shall update such certification when operations change.

**3. Substitute Measures**

The Contracting Officer may by written notice authorize substitute measures or equipment or may waive specific requirements during periods of low fire danger.

**4. Emergency Measures**

The WWNF may require emergency measures, including the necessary shutting down of equipment or portions of operations in the project area during periods of fire emergency created by hazardous climatic conditions.

**5. Fire Control**

The Contractor shall, independently and in cooperation with the WWNF, take all reasonable action to prevent and suppress fires in the project area. Independent initial action shall be prompt and shall include the use of all personnel and equipment available in the project area.

For the purpose of fighting forest fires on or in the vicinity of the project, which are not caused by the Contractor's operations, the Contractor shall place employees and equipment temporarily at the disposal of the WWNF. Any individual hired by the WWNF will be employed in accordance with the Interagency Pay Plan for Emergency Firefighters. The WWNF will compensate the Contractor for equipment rented at fire fighting equipment rates common in the area, or at prior agreed to rates.

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#### 6. Compliance with State Forest Laws

Listing of specific fire precautionary measures herein is not intended to relieve the Contractor in any way from compliance with the State Fire Laws covering fire prevention and suppression equipment, applicable to operations under this contract, permit or license.

#### 7. Fire Precautions

Specific fire precautionary measures are as follows:

##### a. Smoking and Open Fires

Smoking and fires shall be permitted only at the option of the Contractor. The Contractor shall not allow open fires on the project area without advance permission in writing from WWNF.

Unless restricted by State Law or Federal Regulation, smoking shall be permitted only in such portions of the project area that are free of flammable material. Smokers shall sit down to smoke in such a position that any burning material will fall within a cleared area, and shall extinguish and press out in mineral soil all burning material before leaving the cleared area.

##### b. Fire Extinguishers and Equipment on Trucks, Tractors, etc.

All power-driven equipment operated by the Contractor on National Forest land, except portable fire pumps, shall be equipped with one fire extinguisher having a UL rating of at least 5 BC, and one "D" handled or long handled round point shovel, size "0" or larger. In addition, each motor patrol, truck and passenger-carrying vehicle shall be equipped with a double-bit axe or Pulaski, 3-1/2 pounds or larger.

Equipment shall be kept in a serviceable condition and shall be readily available.

##### c. Power Saws

Each gasoline power saw operator shall be equipped with a pressurized chemical fire extinguisher of not less than 8-ounce capacity by weight, and one long-handled round point shovel, size "0" or larger. The extinguisher shall be kept in possession of the saw operator at all times. The shovel shall be accessible to the operator within 1 minute.

##### d. Extinguishers

One refill for each type or one extra extinguisher sufficient to replace each size extinguisher required on equipment shall be safely stored in the fire tool box or other agreed upon place on the project area that is protected and readily available.

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**e. Spark Arresters and Mufflers**

Each internal combustion engine shall be equipped with a spark arrester meeting either (1) USDA WWNF Standard 5100-1a, or (2) appropriate Society of Automotive Engineers (SAE) recommended practice J335(b) and J350(a) as now or hereafter amended unless it is:

(1) Equipped with a turbine-driven exhaust supercharger such as the turbocharger. There shall be no exhaust bypass.

(2) A passenger-carrying vehicle or light truck, or medium truck up to 40,000 GVW, used on roads and equipped with a factory-designed muffler complete with baffles and an exhaust system in good working condition.

(3) A heavy duty truck, such as a dump or log truck, or other vehicle used for commercial hauling, used only on roads and equipped with a factory designed muffler and with a vertical stack exhaust system extending above the cab.

Exhaust equipment described in this subsection, including spark arresters and mufflers, shall be properly installed and constantly maintained in serviceable condition.

**f. Emergency Fire Precautions**

The Contractor shall restrict operations in accordance with the Industrial Fire Precaution Levels listed below. The WWNF may change the Industrial Fire Precaution Levels to other values upon revision of the National Fire Danger Rating System and may change the specific Industrial Fire Precaution Levels when such changes are necessary for the protection of the National Forest. When sent to the Contractor, the revised Industrial Fire Precaution Levels will supersede the attached levels.

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**INDUSTRIAL FIRE PRECAUTIONS SCHEDULE**

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**LEVEL INDUSTRIAL FIRE PRECAUTION (IFPL)**

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I. Closed season—Fire precaution requirements are in effect. A fire watch/security is required at this and all higher levels unless otherwise waived.

II. Partial hoot owl—The following may operate only between the hours of 8 p.m. and 1 p.m., local time:

- a. power saws, except at loading sites;
- b. cable yarding;
- c. blasting;
- d. welding or cutting of metal.

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**III. Partial shutdown—The following shall be prohibited except as indicated:**

**Cable yarding—**except that gravity operated logging systems employing non-motorized carriages may be operated between the hours of 8 p.m. and 1 p.m., local time, when all block and moving lines, except the line between the carriage and the chokers, are suspended 10 feet above the ground;

**Power saws—**except power saws may be used at loading sites and on tractor/skidder operations between the hours of 8 p.m. and 1 p.m., local time.

In addition, the following are permitted between the hours of 8 p.m. and 1 p.m., local time:

- a. tractor/skidder operations;
- b. mechanized loading and hauling of any product or material;
- c. blasting;
- d. welding or cutting of metal;
- e. any other spark-emitting operation not specifically mentioned.

**IV. General shutdown—All operations are prohibited.**

The following definitions shall apply to these Industrial Fire Precaution Levels:

**Cable yarding systems:** A yarding system employing cables and winches in a fixed position.

**Closed season (Fire Precautionary Period):** That season of the year when a fire hazard exists as declared by the responsible agency official.

**Contracting Officer:** The person executing the contract, permit or license on behalf of the Government and includes that person's designated representative, acting within the limits of their authority or the duly appointed successor to the individuals.

**Loading sites/woods site/project area:** A place where any product or material (including but not limited to logs, firewood, slash, soil, rock, poles, posts, etc.) is placed in or upon a truck or other vehicle.

**Low hazard area:** Means any area where the responsible agency representative (WDNR, ORF, BIA, BLM) determines the combination of elements reduces the probability of fire starting and/or spreading.

R6-FS-6300-52  
(Rev. 5/97)

Avista Corp

O&M Plan: Imnaha to Divide Creek Transmission Line

Tractor/skidder operations: include a harvesting operation, or portion of a harvesting operation, where tractors, skidders, or other harvesting equipment capable of constructing fireline, are actively yarding forest products and can quickly reach and effectively attack a fire start.

Waivers, written in advance, may be used for any and all activities. Activities for which waivers may be issued include, but are not limited to:

- a. mechanized loading and hauling;
- b. road maintenance such as sprinkling, graveling, grading and paving;
- c. cable yarding using gravity systems or suspended lines and blocks, or other yarding systems where extra prevention measures will significantly reduce the risk of fire;
- d. power saws at loading sites or in felling and bucking where extra prevention measures will significantly reduce the risk of fire;
- e. maintenance of equipment (other than metal cutting and welding) or improvements such as structures, fences and powerlines.

Such waiver, or substitute precautions will prescribe measures to be taken by the Contractor to reduce the risk of ignition, and/or the spread of fire. The Contracting Officer shall consider site specific weather factors, fuel conditions, and specific operations that result in less risk of fire ignition and/or spread than contemplated when precaution level was predicted. Consideration shall also be given to measures that reduce the precaution levels above. The Contractor shall assure that all conditions of such waivers or substitute precautions are met.

The Contractor shall obtain the predicted Industrial Fire Precaution Level daily, prior to the start of work, from the appropriate Ranger District headquarters. If predictions made after 6:00 p.m., local time, are significantly different than the original prediction, the WWNF will inform the Contractor when changes in restrictions or industrial precautions are made.

NOTE: The IFPL system does not apply on lands protected by ODF east of the summit of the Cascades.

Where hauling involves transit through more than one shutdown/regulate use area, the precaution level at the woods loading site shall govern the level of haul restriction, unless otherwise prohibited by other than industrial precaution level system.

R6-FS-6300-52  
(Rev. 5/97)

Avista Corp

O&M Plan: Imnaha to Divide Creek Transmission Line

#### 8. Fire Tools

The Contractor shall furnish serviceable fire fighting tools in a readily accessible fire tool box or compartment of sound construction with a hinged lid and hasp so arranged that the box can be secured or sealed. The box shall be red and marked "Fire Tools" in letters one inch high. It shall contain a minimum of:

- a. 2 axes or Pulaskis with a 32-inch handle;
- b. 3 adze eye hoes. One Pulaski may be substituted for 1 adze eye hoe;
- c. 3 long-handled, round point shovels, size "0" or larger.

#### 9. Fire Security

When the Industrial Fire Precautions Level is "1" or higher, unless a waiver is granted, the Contractor shall designate a person who shall perform fire security services listed below on the project area and vicinity. The designated person shall be capable of operating the Contractor's communications and fire fighting equipment specified in the contract, excluding helicopters, and of directing the activities of the Contractor's personnel on forest fires. In lieu of having the designated person perform the required supervisory duties, the Contractor may provide another person meeting the qualifications stated above to direct the activities of Contractor's personnel and equipment during all fire fighting activities.

Services described shall be for at least 1 hour from the time the Contractor's operations are shut down. For the purposes of this provision, personnel servicing equipment, and their vehicles, who are not engaged in cutting or welding metal are excluded.

Fire security services shall consist of moving throughout the operation area or areas constantly looking, reporting, and taking suppression action on any fires detected. Where possible, the designated person shall observe inaccessible portions of helicopter operating areas from vantage points within or adjacent to project area.

#### 10. Blasting

Whenever the Industrial Fire Precaution Level is "1" or greater, a fire security person equipped with a long-handled, round point, No. "0" or larger, shovel, and a five-gallon backpack pump can filled with water will stay at location of blast for 1 hour after blasting is done. Blasting may be suspended by WWNF in writing, in an area of high rate of spread and resistance to control.

Fuses shall not be used for blasting. Explosive cords shall not be used without written permission of WWNF, which may specify conditions under which such explosives may be used and precautions to be taken.

R6-FS-6300-52  
(Rev. 5/97)

## LARGE-FORMAT IMAGES

One or more large-format images (over 8 1/2" X 11") go here.  
These images are available in FERRIS at:

For Large-Format(s):

Accession No.: 20030504-1055

Security/Availability:

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File Date: 12-31-02 Docket No.: P-2261

Parent Accession No.: 20030102-0088

Set No.: 1 of 1

Number of page(s) in set: 8

TRP-G REV. 4/2003 (yellow)

**FEDERAL ENERGY REGULATORY COMMISSION**  
Washington, D. C. 20426

**OFFICE OF ENERGY PROJECTS**

Project No. 2261-006 - Washington  
Lolo-Immaha Transmission Line Project  
Avista Corporation

Mr. Steven A. Fry  
Hydro Licensing & Safety Manager  
Avista Utilities  
1411 East Mission  
P.O. Box 3727  
Spokane, WA 99220-3727

**FEB 07 2003**

Subject: Operation and Maintenance Plan pursuant to license article 18 in compliance with "Order Amending Licenses Due to Partial Transfer of Transmission Line," issued August 9, 2001

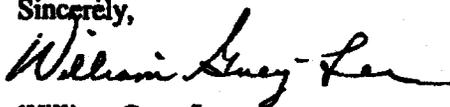
Dear Mr. Fry:

This letter acknowledges receipt of the Operation and Maintenance Plan, filed with the Commission on December 31, 2002, pursuant to the Order Amending Licenses Due to Partial Transfer of Transmission Line, issued August 9, 2001. The order added article 18 to the license for Project No. 2261, which requires the licensee to file, within 180 days of issuance, an operation and maintenance plan for those portions of the transmission line located on National Forest System lands. The plan is required to be jointly prepared with the U.S. Forest Service and address resource issues, concerns, and appropriate protection measures.

The Operations and Maintenance Plan fulfills the filing requirements of Article 18.

Thank you for your cooperation and if you have any questions concerning this letter, you may contact me at (202) 502-6064, or email at [william.guey-lee@ferc.gov](mailto:william.guey-lee@ferc.gov).

Sincerely,



William Guey-Lee  
Division of Hydropower Administration  
and Compliance

## WINSTON & STRAWN LLP

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July 20, 2007

### VIA ELECTRONIC FILING

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: Supplement To June 22, 2007 Update As To Avista Corporation's  
Plans With Respect To Transmission Line Only Project No. 2261**

Dear Secretary Bose:

This letter provides supplemental information in support of Avista Corporation's ("Avista") June 22, 2007 letter to the Commission regarding Avista's intention with respect to seeking a subsequent license for its transmission line only Project No. 2261. As discussed therein, it is Avista's belief that the 230 kV transmission line licensed as Project No. 2261 (the Imnaha/Lolo Line) is no longer a "primary line" as defined in § 3(11) of the Federal Power Act ("FPA"), 16 U.S.C. § 796(11). Accordingly, the transmission line does not have to be licensed, and Avista does not intend to seek a subsequent license for Project No. 2261.

To assist the Commission in analyzing the "primary line" issue raised by Avista's June 22, 2007 letter, Avista has appended hereto the following documents: an excerpt from a January 1, 2002 Western Systems Coordinating Council Map Of Principal Transmission Lines that shows the Imnaha/Lolo Line, the three developments (Brownlee, Oxbow, and Hells Canyon) that are licensed to Idaho Power Company ("IPC") as the Hells Canyon Project No. 1971 ("HCP"), and the principal transmission lines extending from the HCP (Attachment A); a one-line electrical diagram of Avista's Lolo substation near Lewiston, Idaho, where the northern end of the Imnaha/Lolo Line terminates (Attachment B); and an IPC one-line electrical diagram of some of the transmission lines and other facilities of the HCP (Attachment C).<sup>1</sup>

<sup>1</sup> This IPC one-line electrical diagram is from 1991; Avista believes that the general electrical configuration of the HCP facilities depicted thereon remains accurate.

**WINSTON & STRAWN LLP**

Kimberly D. Bose  
July 20, 2007  
Page 2

The northern end of the Imnaha/Lolo Line terminates at Avista's Lolo substation, where it connects with other portions of Avista's 230 kV transmission system. The southern end of the Imnaha/Lolo Line connects to an IPC 230 kV transmission line originating at the switchyard of the Oxbow development of the HCP. There is no other tie back from the Lolo substation to any part of the HCP except through other utilities' transmission systems.

It appears from the 1959 order licensing Project No. 2261 that the Commission licensed the Lolo portion of the Imnaha/Lolo Line because it believed that it was a "primary line" of the HCP. However, the Imnaha/Lolo Line no longer serves a "primary line" function for the HCP as defined in § 3(11) of the FPA.

Specifically, it appears from Attachment A and the IPC one-line electrical diagram (Attachment C) that there are a number of 230 kV transmission lines in addition to the Imnaha/Lolo Line connecting the HCP with the region's bulk power transmission system. Attachment A indicates that most of those lines run south from the HCP to the Boise, Idaho area. The graphs submitted with Avista's June 22, 2007 letter show that over the last 6 1/2 years power has moved over the Imnaha/Lolo Line south into Idaho from Avista 90.9% of the time. Given that the HCP generates continuously because of minimum flow requirements, it is clear that power from the HCP is transmitted to load centers the vast majority of the time through transmission lines other than the Imnaha/Lolo Line.

Because there are clearly other paths by which IPC transmits HCP power to load centers, the Imnaha/Lolo Line cannot meet the test for a "primary line" set forth by the Commission in numerous cases, including *Pacific Gas and Electric Co.*, 85 FERC ¶ 61,411 at p. 62,559 (1998) (if without the line "there would be no way to market the full capacity of the project, then that line is primary to the project"). Indeed, in its application for new license for the HCP (at p. A-22), IPC is proposing to eliminate from the HCP all transmission lines except for one; it proposes to retain only one "primary line" as part of the HCP (the Pine Creek-Hells Canyon 69 kV line (Line 945) extending from the Oxbow switchyard to the Pine Creek substation and to the Hells Canyon substation). IPC does not propose to include as a primary line for the HCP the 230 kV transmission line extending from the Oxbow switchyard that connects to the Imnaha/Lolo Line. IPC's proposal is a clear acknowledgement that the Imnaha/Lolo Line is not a "primary line" and that the HCP interconnects with the regional transmission system at the HCP switchyards and substations.

Currently, while the Imnaha/Lolo Line might sometimes carry HCP power north,<sup>2</sup> it is also used to get non-HCP power to distribution systems and to get non-HCP power from Avista and other sources to the interconnected bulk transmission system and to the IPC system. The Commission's document entitled *Identifying Transmission Facilities at FERC Hydroelectric Projects* dated January 1993 contains two useful cases describing hypothetical transmission lines and indicating whether or not they should be classified as "primary" transmission lines. Page 4

<sup>2</sup> Avista does not have the ability to ascertain whether power flowing north on the Imnaha/Lolo Line from the IPC system is from the HCP or some other resource.

**WINSTON & STRAWN LLP**

Kimberly D. Bose

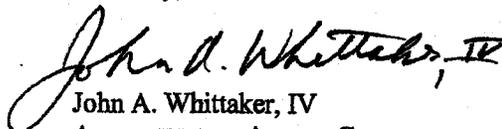
July 20, 2007

Page 3

of this document, under the paragraphs noted for "Case 2," describes a line that "is needed to get non-project power to a certain distribution system,...is needed to get non-project power to a neighboring utility system." The "Finding" paragraph for Case 2 indicates that such a "line is part of the distribution system, or interconnected primary transmission system, and should not be licensed" as a "primary line." The hypothetical situation laid out in this "Case 2" scenario describes the Innaha/Lolo Line situation perfectly.

Finally, Avista believes that, even if the HCP were no longer operating, the Innaha/Lolo Line would remain in use, since it provides significant benefits to the larger regional bulk transmission system. Indeed, if HCP generation ceased, IPC would have a greater need to use this line to import outside generation to its system than it does today.

Sincerely,

  
John A. Whittaker, IV  
ATTORNEY FOR AVISTA CORPORATION

cc: Dianne Rodman  
Charles Cover  
Mohamad Fayyad

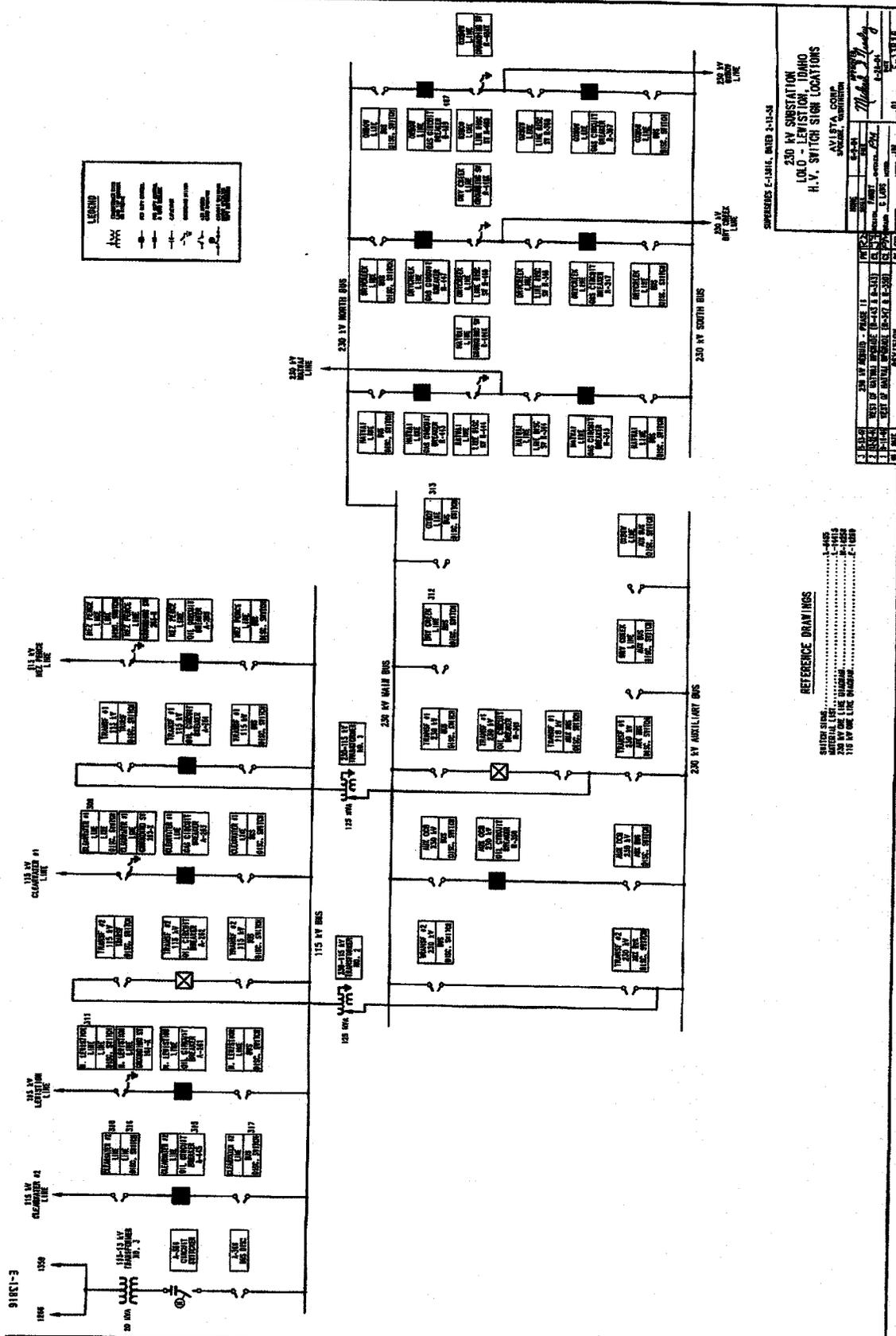
# Attachment A

# WESTERN SYSTEMS COORDINATING COUNCIL MAP OF PRINCIPAL TRANSMISSION LINES JANUARY 1, 2002

1. BONNEVILLE POWER ADMINISTRATION
2. AVISTA CORP.
3. SEATTLE CITY LIGHT
4. TACOMA POWER
5. PACIFICORP
6. PORTLAND GENERAL ELECTRIC COMPANY
7. PUGET SOUND ENERGY
8. CHELAN COUNTY PUBLIC UTILITY DISTRICT
9. DOUGLAS COUNTY PUBLIC UTILITY DISTRICT
10. GRANT COUNTY PUBLIC UTILITY DISTRICT
11. NEBRASKA PUBLIC POWER DISTRICT
12. TRI-STATE GENERATION & TRANSMISSION ASSOCIATION, INC.
13. WESTERN AREA POWER ADMINISTRATION - MID-PACIFIC AREA
14. PACIFIC GAS AND ELECTRIC COMPANY
15. STATE OF CALIFORNIA - DEPT OF WATER RESOURCES
16. SIERRA PACIFIC POWER COMPANY
17. SACRAMENTO MUNICIPAL UTILITY DISTRICT
18. DEPT OF WATER & POWER - CITY OF LOS ANGELES
19. SOUTHERN CALIFORNIA EDISON COMPANY
20. METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
21. SAN DIEGO GAS & ELECTRIC COMPANY
22. BRITISH COLUMBIA HYDRO & POWER AUTHORITY
23. WEST KOOTENAY POWER LTD
24. THE MONTANA POWER COMPANY
25. IDAHO POWER COMPANY
26. WESTERN AREA POWER ADMINISTRATION - UPPER MISSOURI AREA
27. WESTERN AREA POWER ADMINISTRATION - LOWER MISSOURI AREA
28. NORTHERN CALIFORNIA POWER AGENCY
29. WESTERN AREA POWER ADMINISTRATION - LOWER COLORADO AREA
30. ARIZONA PUBLIC SERVICE COMPANY
31. SALT RIVER PROJECT
32. TUCSON ELECTRIC POWER COMPANY
33. WESTERN AREA POWER ADMINISTRATION - UPPER COLORADO AREA
34. WESTPLAINS ENERGY
35. PUBLIC SERVICE COMPANY OF COLORADO
36. COLORADO SPRINGS UTILITIES
37. TRANSMISSION AGENCY OF NORTHERN CALIFORNIA
38. EL DORADO ENERGY
39. BUREAU OF RECLAMATION, U.S. DEPT. OF INTERIOR
40. PUBLIC SERVICE COMPANY OF NEW MEXICO
41. EL PASO ELECTRIC COMPANY
42. NEVADA POWER COMPANY
43. BLACK HILLS POWER & LIGHT COMPANY
44. ARIZONA ELECTRIC POWER COOPERATIVE
45. PLATTE RIVER POWER AUTHORITY
46. TRANSALTA UTILITIES CORPORATION
47. DESERT GENERATION & TRANSMISSION CO-OPERATIVE
48. BASIN ELECTRIC POWER COOPERATIVE
49. IMPERIAL IRRIGATION DISTRICT
50. INTERMOUNTAIN POWER AGENCY
51. COMISION FEDERAL DE ELECTRICIDAD
52. TURLOCK IRRIGATION DISTRICT
53. MODESTO IRRIGATION DISTRICT
54. CITY OF FARMINGTON
55. TEXAS - NEW MEXICO POWER COMPANY
56. CITY OF VERNON
57. UTAH MUNICIPAL POWER AGENCY
58. ATCO ELECTRIC LTD.

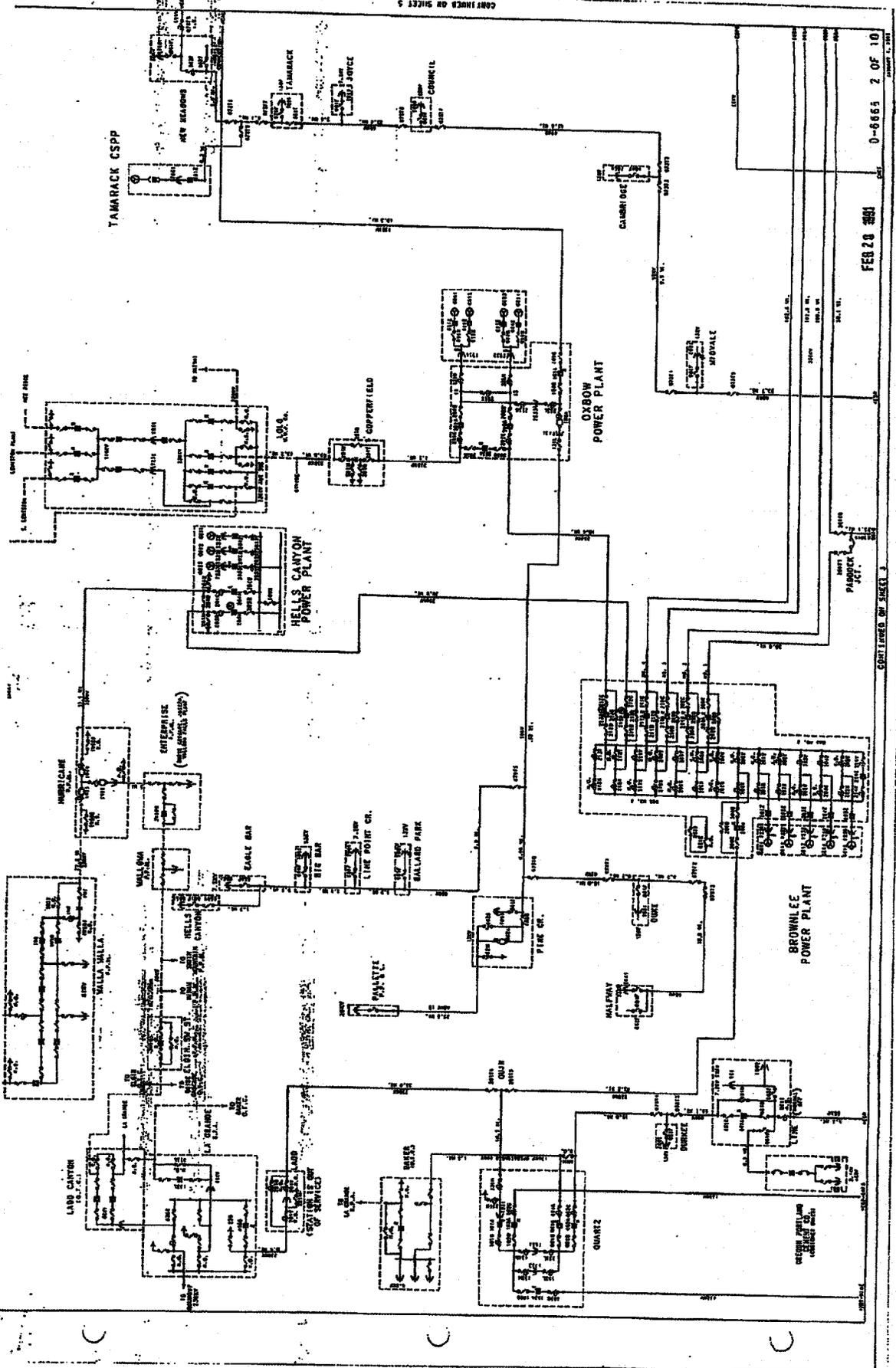


# **Attachment B**



REFERENCE DRAWINGS  
 SWITCHING...  
 MATERIAL...  
 230 kV BUS LINE DRAWING...  
 115 kV BUS LINE DRAWING...

# Attachment C



Submission Contents

Supplement\_ltr\_P-2261.pdf..... 1-10

127 FERC ¶ 62,034  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Avista Corporation

Docket No. JR07-1-000  
Project No. 2261-007

ORDER ACCEPTING PETITION FOR JURISDICTIONAL REVIEW THAT  
LICENSING IS NOT REQUIRED

(Issued April 13, 2009)

1. On June 22, 2007, with a supplement filed on July 20, 2007, Avista Corporation (licensee), filed a Petition for Jurisdictional Review (Petition) requesting the Commission to determine that the existing Lolo-Imnaha Transmission Line (Lolo Line), licensed as FERC Project No. 2261, is not a primary line subject to the Commission's jurisdiction. The Lolo Line is located near Lewiston in Nez Perce and Idaho Counties, Idaho, and occupies lands of the United States in the Wallowa-Whitman National Forest (Forest Service). The project is not located on Tribal lands.

BACKGROUND

2. On April 20, 1959, and supplemented April 21, 1959, the Washington Water Power Company (applicant) of Spokane, Washington, filed an application for a license with the Federal Power Commission (FPC) for a proposed minor-part project, the Lolo-Divide Creek Line, consisting of a transmission line. The applicant received a minor-part license on December 22, 1959.<sup>1</sup> The Commission later amended the license to reflect the licensee's new name, Avista Corporation.<sup>2</sup> As originally licensed, the Lolo-Divide Creek Line consisted of a 230-kV wood pole line that extended from Avista's Lolo substation southeast of Lewiston, Idaho, approximately 43 miles in a southerly direction to a point near Divide Creek where it connected to a similar line originating at the Oxbow Plant of Idaho Power Company's Hell's Canyon Project No. 1971 (Hell's Canyon).

3. The minor-part license was issued under Section 4(e) of the Federal Power Act (FPA) for a period of 50 years,<sup>3</sup> effective as of July 23, 1959, for the

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<sup>1</sup> *Washington Water Power Co.*, 22 FPC 1088 (1959).

<sup>2</sup> *Washington Water Power Co. and Avista Corp.*, 86 FERC ¶ 62,108 (1999).

<sup>3</sup> Section 4(e) of the FPA authorizes the Commission to issue licenses "for the purpose of constructing, operating, and maintaining dams, water conduits,

Docket No. JR07-1-000  
Project No. 2261-007

2

construction, operation and maintenance of the Lolo-Divide Creek Transmission line. The license was also subject to the terms and conditions set forth in Form L-8 (December 15, 1953) entitled "Terms and Conditions of Minor-Part Project (Transmission Line) Affecting Lands of the United States," 14 FPC 974. In the license order, the Commission found that the transmission line was located in part on federal lands and was part of a complete project within the meaning of section 3(11) of the FPA.

4. On August 9, 2001, the Commission amended the licenses for Project Nos. 1971 and 2261 to remove a 20.23-mile segment of the Lolo-Oxbow transmission line from the Project No. 1971 license and include that section in the Project No. 2261 minor part license.<sup>4</sup> At that time, the name of Project No. 2261 was changed from the Lolo-Divide Creek transmission line to the Lolo-Imnaha Transmission line, encompassing 63.41 miles of the 108.11-mile-long Lolo-Oxbow line.

#### PUBLIC NOTICE

5. Notice of the petition was published on April 15, 2008. Protests, comments, and/or motions to intervene were to be filed by May 14, 2008. The U.S. Department of Agriculture, Forest Service, Pacific Northwest Region, filed a motion to intervene on May 13, 2008. No other protests, comments, or motions to intervene have been received.

#### DISCUSSION

6. Avista requests that the Commission confirm that the project is not required obtain a new license, because the Lolo Line is no longer a primary line, as defined by §3(11), 16 U.S.C. §796(11) of the FPA, and is not required to be licensed by the Commission. Avista asserts that documents provided with the petition demonstrate that the Lolo Line is not used solely to transmit power from Hell's Canyon to load centers, and there are other ways for the full capacity of Hell's Canyon to be marketed. Accordingly, Avista states that it does not intend to seek a subsequent license for Project No. 2261, and that the Commission's jurisdiction over the Lolo Line expire on July 22, 2009, upon expiration of the current license.

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reservoirs, power houses, transmission lines, or other project works necessary or convenient... for the development, transmission, and utilization of power... upon any part of the public lands or reservations of the United States...." (16 U.S.C. §797(e)(2000).

<sup>4</sup> *Idaho Power Co. and Avista Corp.*, 96 FERC ¶ 62,135 (2001).

Docket No. JR07-1-000  
Project No. 2261-007

3

7. At the request of the licensee, the FPC originally licensed the project as a primary transmission line. From the evidence presented, this is no longer the case. A transmission line is primary if the "line is used solely to transmit power from (Federal or Commission-licensed) projects to load centers," and if without it "there would be no way to market the full capacity of the project."<sup>5</sup> According to the information supplied with the petition, the Lolo Line is primarily used to deliver power from Avista to Idaho Power Company, and there are other ways for the full capacity of the Hells Canyon Project to be marketed. Therefore, the line is not a primary line of Hells Canyon or any other licensed project.

8. However, because part of the transmission line is located on federal lands, we must provide for the orderly transfer of jurisdiction to the Forest Service. The FPA affords us sufficient authority to provide for the orderly transfer of jurisdiction over project facilities on federal land when their jurisdictional status changes.<sup>6</sup> Once the current license expires and any necessary special use authorizations for the Lolo-Imnaha Transmission Line have been received, the project will no longer require a Commission license.

9. Therefore, we find that the Lolo-Imnaha Transmission Line is not a primary line, and is not required to be relicensed. The Commission's jurisdiction over the project will cease once the current license expires, or after the licensee has obtained the necessary Special Use Permit from the Forest Service, whichever is later.

The Director orders:

(A) Avista Corporation's Petition for Jurisdictional Review, filed on June 22, 2007, with a supplement filed on July 20, 2007, requesting a finding that the Lolo-Imnaha Transmission Line is no longer a primary line and is not required to be relicensed, is granted. The current license will expire on July 22, 2009. The Commission will retain jurisdiction over the Lolo-Imnaha Transmission Line after that date, or until Avista Corporation has obtained the necessary Special Use

<sup>5</sup> See *Pacific Gas and Electric Co.*, 85 FERC ¶ 61,411 (1998).

<sup>6</sup> See *Southern California Edison Co.*, 107 FERC ¶ 61,067, at P 13-15 (2004), affirming that removal of transmission lines that are no longer primary, and therefore not required to be licensed, can be conditioned on licensee receiving Forest Service approval to use the lands and on filing necessary permits or approvals with the Commission. See also *Pacific Gas and Electric Co.*, 85 FERC ¶ 61,411 (1998), requiring that exclusion of transmission lines and associated facilities be conditioned on receipt of necessary permits for continued occupancy of federal lands to prevent creation of a regulatory gap.

Docket No. JR07-1-000  
Project No. 2261-007

4

Permit from the Forest Service, whichever is later. After the license expires and a Special Use Permit has been obtained from the Forest Service, the Commission will no longer have jurisdiction over the Lolo-Imnaha Transmission Line under Part I of the Federal Power Act. This order is issued without prejudice to any future determination, upon new or additional evidence, that licensing is required.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.713.

William Guey-Lee  
Chief, Engineering and Jurisdiction Branch  
Division Hydropower Administration  
and Compliance

**IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-23**

Kootenai Electric Cooperative, Inc.'s

Attachment No. 4

*In re Revisions to Schedule 85 (Advice No. 11-12), OPUC Docket No. UE-241,*

Order No. 11-414 (Oct. 4, 2011)

ORDER NO. 11 414  
ENTERED OCT 11 2011

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 241

In the Matter of  
IDAHO POWER COMPANY  
Revisions to Schedule 85  
(Advice No. 11-12).

ORDER

**DISPOSITION: FILING REJECTED**

On September 14, 2011, Idaho Power Company (Idaho Power) filed Advice No. 11-12 with the Public Utility Commission of Oregon (Commission), requesting to revise Schedule 85 to update cogeneration and small power production contract rates. A full description of the filing, its procedural history, and Staff's recommendation are contained in the Staff Report, attached as Appendix A and incorporated by reference.

At the public meeting on October 4, 2011, Staff recommended the filing be suspended for investigation. Alternatively, Staff noted that the filing could also be rejected, as it was not a tariff filing under ORS 757.210. Peter Richardson on behalf of Tumbleweed Energy and Western Desert Energy, and Irion Sanger on behalf of D.R. Johnson Lumber, urged the Commission to reject the filing without investigation.

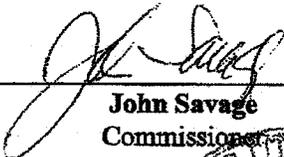
Based on the information presented at the public meeting, we conclude that the filing should be rejected.

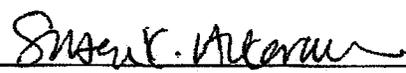
ORDER NO. 119 414

**ORDER**

IT IS ORDERED that Idaho Power Company's request to revise Schedule 85, Cogeneration and Small Power Production Standard Contract Rates, Advice No. 11-12, is rejected.

Made, entered, and effective OCT 11 2011

  
\_\_\_\_\_  
John Savage  
Commissioner

  
\_\_\_\_\_  
Susan K. Ackerman  
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ORDER NO. 11 414

ITEM NO. 1

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: October 4, 2011

REGULAR  CONSENT  EFFECTIVE DATE October 14, 2011

DATE: September 23, 2011

TO: Public Utility Commission

FROM: Steve Schue *s.s.*

THROUGH: *li* Lee Sparling and *MG* Maury Galbraith

SUBJECT: IDAHO POWER COMPANY: (Advice No. 11-12) Revises Schedule 85, Cogeneration and Small Power Production Standard Contract Rates.

**STAFF RECOMMENDATION:**

I recommend the Commission suspend the Schedule 85 revisions submitted by Idaho Power Company (Idaho Power or Company) in Advice No. 11-12 for further investigation.

**DISCUSSION:**

General:

Idaho Power requests changes to its Schedule 85 Cogeneration and Small Power Production Standard Contract Rates (avoided costs), to be effective October 14, 2011. The Company cites OAR 860-029-0080(3), which requires a utility to file new avoided costs within 30 days of a Commission IRP acknowledgement. Idaho Power also states that:

"In Final Order No. 32279, issued on June 28, 2011, the Idaho Public Utilities Commission approved updated rates for Cogeneration and Small Power Production Standard Contract rates using the [surrogate avoided resource] SAR methodology for the Company's Idaho jurisdiction. The filing in Idaho was driven by the Northwest Power and Conservation Council's [Council] Sixth Northwest Power Plan [August 2011 Fuel Price] update to natural gas prices. As addressed in Order No. 05-584, the Company maintains administrative efficiencies between Idaho and Oregon by using the SAR methodology in both jurisdictions. The Company is making this filing to update the rates under Schedule 85 –

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Cogeneration and Small Power Production Standard Contract Rates to maintain the administrative efficiencies detailed in Order No. 05-584. Once the 2011 IRP is acknowledged in both states, another filing will be made to update the remaining non-gas inputs used in the SAR calculations."

Idaho Power would like to update its Oregon rates now, rather than within 30 days of its next IRP acknowledgement, expected in February of 2012. Its current Oregon rates, as requested in Advice No. 10-18, were established for service on or after December 15, 2010.

I recommend that the Commission suspend Idaho Power's request to change avoided costs now, rather than filing within 30 days of its next IRP acknowledgement. Several disadvantages outweigh the potential benefits of a more accurate gas price component in Idaho Power's avoided cost rates.

Potential Benefits of an Updated Gas Price Component:

Although neither OAR 860-029-0080(3) nor the "administrative efficiencies" provisions of Order No. 05-584 support the request, the provisions of that order concerning exceptions to the usual approximately two-year cycle might be used by Staff to support the request. On page 29, the order states that:

"Understanding that circumstances may change to make existing cost rates either too low or too high, we recognize that other parties besides the utility may wish to address avoided cost rates on an unscheduled basis. Consequently, we will exercise our discretion, when appropriate, to direct a utility to make an avoided cost filing between scheduled filings. The Commission may institute a supplementary proceeding to review a utility's avoided costs on its own motion or at the request of any party. We encourage parties to notify the Commission when it may be appropriate to review avoided cost rates between filing deadlines."

Staff could rely on this "circumstances have changed" provision of Order No. 05-584 to justify changing avoided costs now rather than early in 2012, after Idaho Power's next IRP acknowledgement. The current gas price forecast is lower than the forecast that provides the base for Idaho Power's current Schedule 85 rates. Idaho Power's current avoided cost rates are based on the gas price forecast in its December 2009 IRP. This IRP forecast is a composite of forecasts made by three sources in March and April of 2009. The rates requested in Advice No. 11-12 are based on the August 2011 Fuel Price Update to the Council's Sixth Plan. The Council's updated gas price forecast is

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much lower than the 2009 IRP basis for current Schedule 85 rates. Therefore, the proposed new rates for small power producers are also substantially lower. The net present value of a 15-year payment stream for the years 2012 through 2026 under the newly filed rates is approximately 22 percent lower than under current rates. In other words, the gas price forecast, and hence the filed avoided cost rates for small power producers, have decreased substantially.<sup>1</sup>

Idaho Power's SAR methodology relies on two principal components – capital cost and gas price. The filing proposes updating only the gas price component at this time. Therefore, it is not clear how much more accurate the proposed new avoided cost rates might be on an overall basis.

Disadvantages:

There are several disadvantages to Idaho Power's Advice 11-12 request. These include:

- 1) The filing is based on "administrative efficiencies," which "justify authorizing Idaho Power to continue using the SAR methodology to calculate avoided costs ..." [Order No. 05-584, Page 26] These administrative efficiencies justify Idaho Power's use of the SAR methodology in Oregon, not the filing of new rates out of the usual approximately two-year cycle (simply because new rates were recently approved in Idaho). Also, Idaho Power cites OAR 860-029-0080(3), which supports a filing after the next IRP acknowledgement, i.e. not at this time. For these reasons, the timing of Advice No. 11-12 is not appropriate.
- 2) Idaho Power's current Schedule 85 rates for small power producers took effect on December 15, 2010. The usual process will result in a filing for new rates within 30 days of IRP acknowledgement, expected in February of 2012. Therefore, the usual cycle will soon "catch up" with the changing gas price forecast. In addition, Idaho Power already plans to update the non-gas inputs to its Schedule 85 calculations soon after IRP acknowledgement, rather than now. It would be inefficient to update gas now, but other inputs early in 2012.

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<sup>1</sup> In discussion with Staff, Idaho Power acknowledged that its reference to Idaho Public Utilities Commission Final Order No. 32279 was an error. The reference should be to Order No. 32377, dated August 30, 2011, which states that "the [Idaho] Commission also found that the release of a new fuel price forecast by the Council or the Council's general advisory committees automatically 'triggers' a recalculation of the published avoided cost rates."

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- 3) PacifiCorp is in a similar position, in that its current rates for small power producers have been in effect since April of 2010. They are based on a higher than current gas price forecast (for example, \$7.26/MMbtu in 2015 compared with \$4.94/MMbtu in Idaho Power's Advice No. 11-12 filing). If the Commission were to allow Idaho Power to change its rates out of the usual cycle, PacifiCorp might request similar treatment. [Note that PacifiCorp expects its next IRP acknowledgement very late in 2011 or early in 2012.]
- 4) Gas price forecasts change every day. They have been lower than the basis for Idaho Power's current rates for some time. It is arbitrary to say that they are now low enough to justify changing rates, but that this was not the case earlier in the year. The usual approximately two-year cycle is sufficient to track changes in gas price forecasts.
- 5) Small developers need some certainty about the rates, including when they will change, for planning and financing purposes. Approving Idaho Power's request would increase uncertainty for developers who plan to secure Schedule 85 contracts.
- 6) There are two ongoing proceedings, UM 1552 and UM 1553, which involve complaints against Idaho Power by two project developers (Tumbleweed Energy II LLC and Western Desert Energy LLC). The developers will complete construction of facilities located in Idaho, but they want to wheel the output to Oregon and sell it to Idaho Power under a Schedule 85 contract. The developers contend that Idaho Power is improperly denying them Schedule 85 contracts. PacifiCorp also has similar ongoing disputes with project developers. The appropriate way to deal with such disputes is directly, not through changing rates out of cycle.

These disadvantages of Idaho Power's Advice 11-12 filing outweigh any benefits that might result from an updated gas price component during the next few months.

**PROPOSED COMMISSION MOTION:**

Idaho Power Company's Advice 11-12, updating Schedule 85, Cogeneration and Small Power Production Standard Contract Rates, be suspended for investigation.