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September 17, 2015

VIA HAND DELIVERY

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

Re: Case Nos. IPC-E-15-01, AVU-E-15-01, and PAC-E-15-03
Modify Terms and Conditions of PURPA Purchase Agreements
Joint Answer of Idaho Power Company, Avista Corporation, and Rocky Mountain Power to J.R. Simplot Company and Clearwater Paper Corporation's Petition for Reconsideration

Dear Ms. Jewell:

Enclosed for filing in the above matters please find an original and seven (7) copies of the Joint Answer of Idaho Power Company, Avista Corporation, and Rocky Mountain Power to J.R. Simplot Company and Clearwater Paper Corporation's Petition for Reconsideration.

Very truly yours,

Donovan E. Walker

DEW/kkt
Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER COMPANY'S PETITION TO MODIFY TERMS AND CONDITIONS OF PURPA PURCHASE AGREEMENTS	CASE NO. IPC-E-15-01
IN THE MATTER OF AVISTA CORPORATION'S PETITION TO MODIFY TERMS AND CONDITIONS OF PURPA PURCHASE AGREEMENTS	CASE NO. AVU-E-15-01
IN THE MATTER OF ROCKY MOUNTAIN POWER COMPANY'S PETITION TO MODIFY TERMS AND CONDITIONS OF PURPA PURCHASE AGREEMENTS	CASE NO. PAC-E-15-03 JOINT ANSWER OF IDAHO POWER COMPANY, AVISTA CORPORATION, AND ROCKY MOUNTAIN POWER TO J.R. SIMPLOT COMPANY AND CLEARWATER PAPER CORPORATION'S PETITION FOR RECONSIDERATION

Idaho Power Company ("Idaho Power"), Avista Corporation ("Avista"), and Rocky Mountain Power (jointly the "Utilities"), in accordance with *Idaho Code* § 61-626 and RP 331.05, hereby submit this answer to the Petition for Reconsideration of final Order No. 33357 ("Petition") issued August 20, 2015, filed by J.R. Simplot Company ("Simplot") and Clearwater Paper Corporation ("Clearwater").

Simplot and Clearwater fail to demonstrate that the Idaho Public Utilities Commission's ("Commission") Order No. 33357 is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331.01. The Commission's Order No. 33357 is based upon substantial and competent evidence in the record. The Commission regularly pursued its authority and acted within its discretion. Consequently, reconsideration should be denied.

I. INTRODUCTION

Simplot and Clearwater make conclusions and arguments that misrepresent the plain language of the regulations, read into the regulations requirements for long-term contracts that are not stated and do not exist, and misconstrue the differences in the mandatory purchase obligation of Public Utility Regulatory Policies Act of 1978 ("PURPA") and the approval of proper rates, terms, and conditions of that mandatory purchase to ensure that utility customers are not harmed thereby. The Commission's order properly balances the mandatory purchase obligation with the protection of utility customers. The Petition for Reconsideration should be denied.

II. SIMPLOT AND CLEARWATER'S ARGUMENTS ARE WITHOUT MERIT

Simplot and Clearwater[1] misrepresent the plain language of the regulations and confound the precedent and authorities related to a legally enforceable obligation in an unsuccessful effort to create a requirement for ***long-term*** contractual commitments. The entire analysis and line of reasoning put forth in Simplot and Clearwater's Petition is strained at best.

In their effort to reach their desired result, Simplot and Clearwater misrepresent that the "plain language" of 18 C.F.R. § 292.304(d)(2)(ii) allows a QF to specify the term of the contract. Petition at 9. Section 292.304(d)(2)(ii) simply does not say that. Both PURPA and the Federal Energy Regulatory Commission ("FERC") regulations are silent as to any specific contract length. While FERC's regulations require a specified term (unless the QF elects to provide its output on an as-available basis), FERC's regulations do not dictate how long that specified term must be. 18 C.F.R. § 292.304(d). More fundamentally, contrary to Simplot and Clearwater's assertion in their Petition, FERC's regulations do not state that the QF shall have the option "to elect to sell such energy and capacity *over a term specified by the QF*[.]" *Compare* 18 C.F.R. § 292.304(d) *with* Petition at 9 (emphasis added).

The Commission recognized and acknowledged that FERC's regulations do not dictate the length of the term of a PURPA contract: "Even Mr. Wenner acknowledged

[1] Simplot and Clearwater's interest and impact from this proceeding is tenuous and at best hypothetical. Simplot's qualified facility ("QF") has most recently voluntarily contracted for a one-year term, and has historically selected short-term PURPA contracts. The previous contract was for a term of two years, effective February 2013; the contract before that was for a term of seven years, effective February 2006; before that, the contract was for a term of one year, effective March 2004; and prior to that, a contract for five years, effective January 1991; and from 1986 to 1991 the facility was under contract for non-firm, as-delivered prices under Schedule 86. Clearwater currently has a non-PURPA contract for its generation facility with Avista. Additionally, all of PacifiCorp's cogeneration contracts are for a term of one year. *See also,* Order No. 33357 at 25.

that FERC regulations do not dictate a specific number of years or establish a time period for PURPA contracts. Tr. at 589. It is not contested that PURPA, and its implementing regulations, are silent as to a specific contract length." Order No. 33357 at 12. The Commission recognized the issue of determination of contract length to be within its authority and discretion. *Id.* The Commission relied upon the precedent of Idaho Supreme Court cases in its determination, as well as cases offering guidance from the federal courts and FERC. Order No. 33357 at 2-3, 10, 12, 16, 21-22. The Commission referred to several sections of the record upon which it relied in reaching its determination. *Id.* at 3-5, 7-11, 13-28. The Commission's Order No. 33357 is based upon substantial and competent evidence in the record. The Commission regularly pursued its authority and was acting within its discretion. Consequently, reconsideration should be denied.

Simplot and Clearwater insist throughout the Petition that FERC has directed, through its regulations, its comments regarding those regulations, and through several legally enforceable obligation cases that QFs are entitled to ***long-term*** contracts. However, nothing cited by Simplot and Clearwater states any such requirement. In fact, nearly all of this authority is limited to discussing the distinction set forth in 18 C.F.R. § 292.304(d) – which allows a QF to choose to have avoided cost rates for the purchase of its power calculated either: (1) at the time of delivery or (2) at the time of contracting or legally enforceable obligation for ***a specified term***. The Commission acknowledged such provision. Order No. 33357 at 22. In fact the actual language of the regulation is as follows:

> (d) *Purchases "as available" or pursuant to a legally enforceable obligation*. Each qualifying facility shall have the option either:
>
> (1) To provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided costs calculated at the time of delivery; or
>
> (2) To provide energy or capacity pursuant to a legally enforceable obligation for the delivery of energy or capacity **over a specified term**, in which case the rates for such purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on either:
>
> (i) The avoided costs calculated at the time of delivery; or
>
> (ii) The avoided costs calculated at the time the obligation is incurred.

18 C.F.R. § 292.304(d) (italics in original) (bold emphasis added). In fact, Simplot and Clearwater quote these same provisions in the Petition; however, they state immediately thereafter with reference to, "The plain language of 18 C.F.R. § 292.304(d)(2)(ii) .... It provides that each QF 'shall' be provided with the following options: (1) to elect to sell energy and capacity; (2) to elect to sell such energy and capacity ***over a term specified by the QF***; and (3) to elect that the obligation contain rates for energy and capacity calculated at the time the QF incurs that obligation." Petition at 9 (emphasis added). This is not the plain language of the regulation. Clearly, the regulation states, "over a specified term." It does not state, "over a term specified by the QF." The phrase "over a specified term" means that there is ***a term***, not that the QF specifies the term. The Commission correctly concludes that PURPA and FERC are silent as to the length of the specified term which, as referenced above,

was not contested by the parties. Order No. 33357 at 12. Citing to its "review of federal court and state Supreme Court precedent, the testimony of the parties, PURPA, and FERC's implementing regulations" the Commission correctly found "the issue of contract length is left to this Commission's discretion." *Id.*

Next, as demonstrated by its arguments on page 12 of the Petition, Simplot and Clearwater confuse a two-year maximum contract term with the pricing methodology that establishes compensation for avoided capacity. Simplot and Clearwater argue:

> The QF is deprived of a "fixed contract price for its energy *and* capacity at the outset of its obligation" because, as the Order expressly acknowledges, a two-year contract **will not provide a price for capacity** that is fixed at this time. ... It will **provide no price at all for capacity** and thereby deprive the QF of the right to sell capacity. The utility will thus evade the requirement to provide a capacity credit to the QF "merely **by refusing to enter into a contract**" of sufficient length to provide such credit to the QF.

Petition at 12 (citations omitted)(italics in original)(bold emphasis added).

First of all, the reference and statement regarding "refusing to enter into a contract" is completely misplaced and misapplied. This case, and the Commission's Order No. 33357, is about the proper contract term of a mandatory PURPA QF purchase. This proceeding did not address the purpose of the existence of a legally enforceable obligation. There is no evidence in the record, nor any discussion, argument, or allegation regarding a utility's refusal to contract in this entire matter. The case is about the Commission determining the just and proper rates, terms, and conditions of the purchase of QF electric generation by a utility in such a manner that is not harmful to utility customers.

Next, Simplot and Clearwater are again mistaken in their arguments and understanding that Order No. 33357 somehow does not provide a price for capacity. Order No. 33357 does not establish the avoided cost price that a QF is entitled to. It is limited to addressing the maximum contract length. The avoided cost price, including a pricing component for both avoided energy and avoided capacity, is determined by the Commission's approved and previously existing pricing methodologies. For small projects, under the published rate eligibility cap, the avoided cost prices are set by use of the Surrogate Avoided Resource ("SAR") methodology calculated and published by Commission Staff. These rates are not relevant to this proceeding, as the Commission's Order is limited to only those QF projects that exceed the published rate eligibility cap. For such larger projects, avoided cost prices are determined by the Incremental Cost Integrated Resource Plan methodology authorized for use by Order No. 32697. The Commission has previously determined, in its final, non-appealable Order, that a QF is only entitled to payment for capacity at such time as the utility is capacity deficient. Order No. 32697 at 21.

> In calculating a QF's ability to contribute to a utility's need for capacity, we find it reasonable for the utilities to only begin payments for capacity at such time that the utility becomes capacity deficient. If a utility is capacity surplus, then capacity is not being avoided by the purchase of QF power. By including a capacity payment only when the utility becomes capacity deficient, the utilities are paying rates that are a more accurate reflection of a true avoided cost for the QF power.

Id. Consequently, the continual complaint in the Petition that the two-year contract term does not provide a price for capacity is both false and an impermissible collateral attack on the Commission's prior order. It is the fact that the utility is capacity sufficient that

results in the capacity component of the avoided cost price to be zero. The capacity price is not absent, as argued by Simplot and Clearwater, it is set at zero because the utility is capacity sufficient. If the utility were capacity deficient, then the methodology would calculate the appropriate avoided cost of capacity based upon the avoided cost of a simple-cycle combustion turbine. *Id.* at 22. In any event, the Commission's Order No. 32697 aside, as Rocky Mountain Power argued at closing, to the extent that a QF helps the utility reduce firm power purchases, the rate for such a purchase will include both avoided energy and capacity costs.[2]

The Commission's direction with regard to capacity in Order No. 33357 actually favors the QF in that it allows a QF to establish the utility's capacity deficiency at the time the initial IRP-based contract is signed. Order No. 33357 at 25. "As long as the QF renews its contract and continuously sells power to the utility, the QF is entitled to capacity based on the capacity deficiency date established at the time of its initial contract." *Id.* at 25-26. Under the previously authorized 20-year contract term, a QF would have no capacity payment (capacity component of avoided cost rate would be zero) until the utility reached the identified first capacity deficit. This is the same for QF contracts under the two-year term: the capacity component is zero until the utility reaches the same identified first capacity deficit. The main difference being that avoided cost rates are refreshed at each two-year contracting interval, rather than being erroneously estimated and locked-in over 20 years. The Commission in its order acknowledges and discusses this intended result of achieving a more accurate estimation of the utility's avoided cost for the protection of utility customers.

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[2] Tr. at 762-1027.

> Based upon our record, we find that 20-year contracts exacerbate overestimations to a point that avoided cost rates over the long-term period are unreasonable and inconsistent with the public interest. We find shorter contracts reasonable and consistent with federal and state law for multiple reasons. First shorter contracts have the potential to benefit both the QF and the ratepayer. By adjusting avoided cost rates more frequently, avoided costs become a truer reflection of the actual costs avoided by the utility and allow QFs and ratepayers to benefit from normal fluctuations in the market.

Order No. 33357 at 23 (emphasis in original). Further, the Commission recognized, and appropriately distinguished between the PURPA must purchase obligation and the proper price, terms, and conditions of that purchase in order to balance the interests of promoting QF development but still protecting customers.

> Second, shorter contract lengths do not ultimately prevent a QF from selling energy to a utility over the course of 20 years – or longer. PURPA's "must purchase" provision requires the utility to continue to purchase the QF's power. As long as projects continue to offer power to utilities, utilities must continue to purchase such power under PURPA. A shorter contract length merely functions as a reset for calculation of the avoided costs in order to maintain a more accurate reflection of the actual costs avoided by the utility over the long term. ... A change in the length of IRP-based contracts is not intended to be punitive to QFs. For several years this Commission has been adjusting terms and conditions of PURPA contracts in order to establish avoided cost rates that are just and reasonable to electric consumers, in the public interest, and not discriminatory against QFs. We find that a change in contract length aligns with the intent of PURPA, is consistent with FERC regulations and achieves an appropriate balance between the competing interests of protecting ratepayers and developing QF generation.

Id. at 23-25.

Lastly, Simplot and Clearwater argue at the end of their Petition that the Commission's direction with regard to capacity sufficiency was not "advocated by any

party" and therefore is "'not supported by substantial competent evidence on the record as a whole;' in fact it is not supported by any evidence on the record whatsoever." Petition at 16-17. This allegation is incorrect. The same and similar arguments set forth by Simplot and Clearwater in its Petition were argued before the Commission and in the record for this proceeding. Particularly with regard to the arguments raised regarding compensation for capacity that were thoroughly discussed by Mr. Wenner, a witness on behalf of the Idaho Conservation League and the Sierra Club. Tr. at 583-601. Mr. Wenner's positions were supported by Simplot and Clearwater's witness, Dr. Reading. Tr. at 773-779. The Commission expressly recognized, considered, and acknowledged these arguments in its final order. Order No. 33357 at 9-10.

Even if Simplot and Clearwater were correct that the capacity sufficiency issue was not advocated by any party (which the Utilities do not concede), the Commission acted within its discretion. No court or regulatory body such as the Commission is strictly limited to directing relief in a matter before it only to the extent that such relief was exactly proposed or suggested by the parties. The Commission is free to act within its authority and discretion, based upon the evidence before it. Here, the Commission's direction as to capacity sufficiency is clearly within its authority and discretion to determine the proper avoided cost price for the implementation of PURPA in the state of Idaho.

Simplot and Clearwater fail to demonstrate that Order No. 33357 is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331.01. There is substantial and competent evidence in the record to support such decision. The Petition for Reconsideration should be denied.

III. CONCLUSION

The Commission properly found 20-year contracts inconsistent with the public interest and reduced the maximum contract term to maintain a more accurate avoided cost estimate. The Commission properly found that the change in contract length aligns with the intent of PURPA, is consistent with FERC regulations, and achieves an appropriate balance between the competing interests of protecting utility customers and developing QF generation. Simplot and Clearwater have failed to demonstrate that the Commission's Order No. 33357 is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331.01. The Commission's Order No. 33357 is based upon substantial and competent evidence in the record. The Commission regularly pursued its authority and was acting within its discretion. Consequently, the Utilities respectfully request that the Commission deny Simplot and Clearwater's Petition for Reconsideration.

DATED at Boise, Idaho, this 17th day of September 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17th day of September 2015 I served a true and correct copy of JOINT ANSWER OF IDAHO POWER COMPANY, AVISTA CORPORATION, AND ROCKY MOUNTAIN POWER TO J.R. SIMPLOT COMPANY AND CLEARWATER PAPER CORPORATION'S PETITION FOR RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

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