

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF IDAHO POWER</b>	)	
<b>COMPANY'S PETITION TO MODIFY</b>	)	<b>CASE NO. IPC-E-15-01</b>
<b>TERMS AND CONDITIONS OF PURPA</b>	)	
<b>PURCHASE AGREEMENTS</b>	)	
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<b>IN THE MATTER OF AVISTA</b>	)	
<b>CORPORATION'S PETITION TO MODIFY</b>	)	<b>CASE NO. AVU-E-15-01</b>
<b>TERMS AND CONDITIONS OF PURPA</b>	)	
<b>PURCHASE AGREEMENTS</b>	)	<b>NOTICE OF PETITION</b>
	)	
	)	<b>NOTICE OF</b>
	)	<b>INTERVENTION DEADLINE</b>
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<b>IN THE MATTER OF ROCKY MOUNTAIN</b>	)	
<b>POWER COMPANY'S PETITION TO</b>	)	<b>CASE NO. PAC-E-15-03</b>
<b>MODIFY TERMS AND CONDITIONS OF</b>	)	
<b>PURPA PURCHASE AGREEMENTS</b>	)	<b>NOTICE OF PETITION</b>
	)	
	)	<b>NOTICE OF</b>
	)	<b>INTERVENTION DEADLINE</b>
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<hr/>		<b>ORDER NO. 33250</b>

On February 27, 2015, Rocky Mountain Power Company and Avista Corporation each filed Petitions with the Commission to reduce the length of their contracts under which electric utilities must purchase energy generated by qualifying facilities (QFs) pursuant to the Public Utility Regulatory Policies Act (PURPA). With its Petition, Rocky Mountain filed supporting testimony of Paul Clements and Brian S. Dickman. Avista filed supporting testimony of Clint Kalich with its Petition.

Rocky Mountain's and Avista's Petitions follow that of Idaho Power Company in Case No. IPC-E-15-01, filed January 30, 2015, which sought similar relief. In that case, the Commission granted Idaho Power immediate interim relief by temporarily reducing the contract term for Idaho Power's prospective PURPA contracts from 20 years to five years, pending further order of the Commission. Order No. 33222. Both Rocky Mountain and Avista petitioned to intervene in Idaho Power's case, which the Commission granted. Order Nos. 33233, 33239.

Rocky Mountain and Avista now request temporary and permanent reductions of their PURPA contract terms, as was granted to Idaho Power.

### BACKGROUND

PURPA was passed as part of the National Energy Act of 1978. PURPA was intended to lessen the country's dependence on foreign oil and to encourage the promotion of renewable energy technologies as alternatives to fossil fuels. Order No. 32697; *FERC v. Mississippi*, 456 U.S. 742, 745-46 (1992). Under the Act, the Federal Energy Regulatory Commission (FERC) prescribes rules for PURPA's implementation. 16 U.S.C. § 824a-3(a), (b). State regulatory authorities such as the Idaho Public Utilities Commission implement FERC rules, but have "discretion in determining the manner in which the rules will be implemented." *Idaho Power v. Idaho PUC*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013) (citing *FERC v. Mississippi*, 456 U.S. at 751).

To encourage the development of renewable facilities, PURPA requires electric utilities (unless otherwise exempted) to purchase the electric energy output from QFs. 16 U.S.C. § 824a-3; *see also* 18 C.F.R. §§ 292.101 (defining QFs), 292.303(a). "This mandatory purchase requirement is often referred to as the 'must purchase' provision of PURPA." *Id.*, 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.303(a). Under the must purchase provision, the rate paid by a utility for power produced by the QF is generally referred to as the "avoided cost" rate. "The avoided cost rate represents the 'incremental cost' to the purchasing utility of power which, but for the purchase of power from the QF, such utility would either generate itself or purchase from another source." Order No. 32697 at 7 citing *Rosebud Enterprises v. Idaho PUC*, 128 Idaho 624, 917 P.2d 781 (1996); 18 C.F.R. § 292.101(b)(6). The avoided cost rate for PURPA contracts must be "just and reasonable to the electric consumers . . . and in the public interest" and "shall not discriminate against [QFs]." 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304.

The Idaho Supreme Court has held that the Commission has the authority to implement PURPA and set the avoided cost rates. *Idaho Power*, 155 Idaho at 789, 316 P.3d at 1287; *Rosebud*, 128 Idaho at 612, 917 P.2d at 769; *A.W. Brown v. Idaho Power Company*, 121 Idaho 812, 814, 828 P.2d 841, 843 (1992). In other words, PURPA requires that utilities buy the power output from QFs under a federal rate mechanism (i.e., avoided costs) that is determined and implemented by state utility commissions.

PURPA and FERC's implementing regulations are silent as to contract length; consequently, the issue is in the Commission's discretion. *See Afton Energy, Inc. v. Idaho Power*, 107 Idaho 781, 785-86, 693 P.2d 427, 431-32 (1984); *Idaho Power*, 155 Idaho at 782, 316 P.3d at 1280. Since PURPA was first implemented in Idaho, this Commission has periodically modified the length for PURPA contracts. *See* Order No. 29029. Initially, the Commission established a maximum contract term of 35 years, which it shortened to 20 years in 1987. Order Nos. 21018, 21630. The term was reduced to five years in 1996, and raised back to 20 years in 2002. Order Nos. 26576, 29029. Most recently, the Commission temporarily reduced PURPA contract length to five years but for Idaho Power only. Order No. 33222.

Idaho Power's January 30, 2015, petition requested a reduction in contract length from 20 years to two years, citing a dramatic increase in the number and size of PURPA projects seeking power purchase agreements with the utility. IPC Petition (in Case No. IPC-E-15-01) at 1-2. In particular, Idaho Power witness Randy Allphin stated that Idaho Power has "an additional 885 [megawatts] of PURPA solar capacity in the queue actively seeking PURPA energy sales agreements to be on-line in 2016." *Id.* at 18 *citing* Allphin Direct at 3-4; Exh. 3. Idaho Power asserted that the mandatory acquisition of this amount of power over a 20-year period exceeds the operational needs of the Company, places undue risk on customers when the Company has sufficient resources to meet demand, and is unreasonable and contrary to the public interest. IPC Petition at 2, 20, 27-34. The Commission found that a "temporary reduction of the maximum contract term for Idaho Power's QF contracts [shall be] five years while the Commission reviews the issue of contract length in greater detail." Order No. 33222 at 4.<sup>1</sup> Rocky Mountain and Avista now respond to the Order temporarily reducing Idaho Power's contract length with their own petitions.

### **NOTICE OF ROCKY MOUNTAIN'S PETITION**

YOU ARE HEREBY NOTIFIED that Rocky Mountain asks that the Commission order a temporary reduction of the maximum contract term for Rocky Mountain's PURPA contracts to five years – the same as the reduction ordered for Idaho Power – pending resolution

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<sup>1</sup> Several parties have filed petitions to clarify the scope of the five-year interim relief, i.e., whether it applies to only PURPA contracts that exceed the published rate eligibility cap (i.e., IRP-based contracts), or just intermittent wind and solar PURPA contracts. In a discovery response dated February 24, 2015, Idaho Power stated that its requested interim relief "is limited to transactions with proposed QF projects that exceed the published rate eligibility cap." Resp. No. 1 to Simplot in Case No. IPC-E-15-01, citing IPC Petition at 1-2.

of the issues raised in Idaho Power's and Rocky Mountain's cases. Rocky Mountain's Petition asserts that, within five days after the Commission entered Order No. 33222, the Company "received four pricing requests totaling 130 megawatts (MW)" from QF developers. Rocky Mountain Petition at 4, 16. These QF developers are in Idaho Power's service territory, but plan to transmit or "wheel" power to Rocky Mountain. *Id.* at 4-5, 16. Rocky Mountain states it "has reviewed Idaho Power's Open Access Same Time Information System and confirmed that transmission is available to enable these wheels." *Id.* at 5, n. 5.

YOU ARE FURTHER NOTIFIED that, according to the Company, the amount of proposed Idaho PURPA projects seeking contracts with Rocky Mountain, including the four new requests, totals 275.5 MW. *Id.* at 5, 20. The Company states it has 189.6 MW of Idaho PURPA contracts already executed. *Id.* Rocky Mountain asserts that its parent company, PacifiCorp, "currently manages 141 PURPA contracts totaling 1,732 MW of nameplate capacity across its six-state system." *Id.* at 19. Of those, 97 projects totaling 1,553 MW – or 90 percent of PacifiCorp's total PURPA generation – have on-line dates of 2007 or later. *Id.* Across its multi-state system, PacifiCorp has requests from 89 projects, totaling 3,641 MW. *Id.* at 20.

YOU ARE FURTHER NOTIFIED that Rocky Mountain asserts that it, like Idaho Power, has experienced a "striking increase in new QF activity." *Id.* at 19. Rocky Mountain contends that the Commission's Order No. 33222, affording relief to Idaho Power from a flood of QF activity, has resulted in an immediate spike in QF requests to Rocky Mountain. The Company contends that the relief granted to Idaho Power in Order No. 33222 results in the disparate treatment of and a competitive disadvantage to Rocky Mountain. The Company thus asserts the Commission should grant it the same interim relief as that granted Idaho Power.

YOU ARE FURTHER NOTIFIED that in addition to the temporary immediate relief requested, the Company asks the Commission to permanently reduce its contract length to three years. *Id.* at 23-31. In support, Rocky Mountain cites the need to mitigate risk and protect its customers. The Company notes that a three-year contract limit would better-reflect its trading and hedging horizon, used as internal risk management, but inapplicable to PURPA contracts due to the 20-year contract term. *Id.*

YOU ARE FURTHER NOTIFIED that Rocky Mountain seeks permission to update its indicative pricing practice to reflect "all active QF projects in the pricing queue ahead of any newly proposed QF project that requests indicative avoided cost rates." Rocky Mountain

Petition at 4. In essence, the Company seeks relief from a prior Commission Order that, according to the Company, restricts the updating of indicative avoided cost rates provided to proposed QF projects based only upon signed QF contracts. *Id.* at 32, 35 n. 101, *citing* Order No. 32697 at 22. Rocky Mountain asserts that this restriction – coupled with the dramatic increase in the number of QF projects and the cumulative amount of QF generation – results in providing QF projects with indicative pricing that does not reflect the most accurate and up-to-date avoided cost rates. Elimination of the signed contract requirement would allow the Company to provide indicative pricing that reflects higher avoided cost rates to QF projects located earlier in the queue, and later QF projects would be re-priced to more accurately reflect current avoided costs. Rocky Mountain Petition at 38. If indicative pricing were more robust, the Company asserts that avoided cost rates would be \$18 per MWh less on a 20-year levelized basis. *Id.* at 37.

#### **NOTICE OF AVISTA’S PETITION**

YOU ARE FURTHER NOTIFIED that Avista seeks the same interim relief granted Idaho Power in Order No. 33222. Avista expresses concern that “PURPA developers that previously planned to sell the output from their [projects] to Idaho Power may seek to sell such output to Avista. Thus, as a direct result of the Commission’s action affording one utility interim relief, Avista could be required to enter into a significant number of PURPA contracts.” Avista Petition at 3. To prevent a rush of PURPA projects being delivered to Avista’s door, it “requests immediate Commission action ordering that the maximum required contractual term for Avista’s new PURPA contracts shall, pending further order of the Commission, be five years.” *Id.* at 4.

YOU ARE FURTHER NOTIFIED that, in addition to the interim relief, Avista requests that it be afforded the same permanent relief that the Commission may provide to other utilities regarding the length of PURPA contracts. *Id.*

#### **STAFF RECOMMENDATION**

Staff reviewed Rocky Mountain’s and Avista’s Petitions and supporting documents. Staff believes that consolidating Rocky Mountain’s and Avista’s Petitions with the Idaho Power case will allow the Commission to efficiently and expeditiously examine the issue of PURPA contract lengths.

## DISCUSSION AND FINDINGS

On review of Idaho Power's Petition, and now Rocky Mountain's and Avista's Petitions, we find that all three companies raise similar concerns regarding term length for PURPA contracts. Therefore, we find it appropriate to consolidate the three matters in the interest of resource-economy and to ensure optimal efficiency for the parties and this Commission. Rule 247, IDAPA 31.01.01.247 (the Commission may consolidate two or more proceedings when it finds that the cases present related issues). All parties in the Idaho Power case shall be designated to the Rocky Mountain and Avista cases. We also find it reasonable based on the evidence submitted to date, to temporarily reduce Rocky Mountain's and Avista's PURPA contract terms to five years, to align with the relief granted Idaho Power in Order No. 33222.

We further find that Rocky Mountain's request to change its indicative pricing practice for QF projects in the negotiation queue shall be included in this case. *See Idaho Code* § 61-624. Finally, we note that there are petitions for clarification pending before the Commission in Idaho Power's case. Those petitions will be addressed in a scheduling order that will apply to Idaho Power, Rocky Mountain, and Avista.

## NOTICE REGARDING INTERVENTIONS AND PARTIES

YOU ARE FURTHER NOTIFIED that **persons desiring to intervene** in this matter **must file a Petition to Intervene** with the Commission pursuant to this Commission's Rules of Procedure 72 and 73, IAPA 31.01.01.072 and -.073. **All Petitions to Intervene must be filed no later than March 27, 2015.** Persons desiring to present their views without parties' rights of participation and cross-examination are not required to intervene and may present their comments without prior notification to the Commission or the parties.

YOU ARE FURTHER NOTIFIED that all parties granted intervention in the Idaho Power case (IPC-E-15-01) shall be designated as parties in Rocky Mountain's and Avista's cases here.

YOU ARE FURTHER NOTIFIED that the following people are designated as Rocky Mountain's representatives in this matter:

Yvonne Hogle  
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Salt Lake City, UT 84111  
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YOU ARE FURTHER NOTIFIED that the following people are designated as Avista's representatives in this matter:

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YOU ARE FURTHER NOTIFIED that, once the deadline for intervention has passed, the Commission Secretary shall prepare an updated a Notice of Parties to reflect the consolidation and any additional intervenors.

#### **NOTICE OF PROCEDURE**

YOU ARE FURTHER NOTIFIED that the Petitions, exhibits, and testimonies have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices. The Petitions, exhibits, and testimonies are also available on the Commission's web site at [www.puc.idaho.gov](http://www.puc.idaho.gov). Click on the "File Room" tab at the top of the page, scroll down to "Open Electric Cases," then click on either case number as shown on the front of this document.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities, to set the length of PURPA contracts, and to implement FERC rules. The Commission may enter any final Order consistent with its authority under Title 61 and PURPA.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000, *et seq.*

## ORDER

IT IS HEREBY ORDERED that, effective March 9, 2015, and pending further order of the Commission, the maximum contractual term for Rocky Mountain's and Avista's new PURPA contracts shall be five years, subject to any clarifying order resolving pending petitions to clarify in the Idaho Power case.

IT IS FURTHER ORDERED that Rocky Mountain's and Avista's cases shall be consolidated with Idaho Power's case, IPC-E-15-01. All parties granted intervenor status in Idaho Power's case shall be designated as parties in Rocky Mountain's and Avista's cases. Further, the Protective Agreements entered in the Idaho Power case shall have full force and effect for Rocky Mountain's and Avista's cases.

IT IS FURTHER ORDERED that any other persons desiring to intervene in the Rocky Mountain or Avista matters shall file a Petition to Intervene by March 27, 2015. Once the deadline for Petitions to Intervene has passed, the Commission Secretary shall prepare and issue an amended Notice of Parties.




DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13<sup>th</sup>  
day of March 2015.

  
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PAUL KJELLANDER, PRESIDENT

  
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MACK A. REDFORD, COMMISSIONER

  
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KRISTINE RAPER, COMMISSIONER

ATTEST:

  
\_\_\_\_\_  
Jean D. Jewell  
Commission Secretary

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