Williams · Bradbury

ATTORNEYS AT LAW

August 16, 2012

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

Re: IPC-E-10-56 through IPC-E-10-58

Dear Ms. Jewell:

Enclosed please find an original and seven copies of the following for filing in the above referenced dockets:

1. Petition for Reconsideration of Order No. 32255 and Request for Expedited Consideration, and

2. Motion for *Pro Hac Vice* Admission of Larry F. Eisenstat and Daniel A. Broderick of the firm Dickstein Shapiro LLP.

Please call should you have any questions.

Sincerely,

Ron Williams

Ronald L. Williams

RLW/jr
Enclosures
cc: Service List

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER AND MURPHY FLAT MESA, LLC	)	Case No. IPC-E-10-56
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER AND MURPHY FLAT ENERGY LLC	)	Case No. IPC-E-10-57
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A DETERMINATION REGARDING A FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER AND MURPHY FLAT WIND, LLC	)	Case No. IPC-E-10-58

PETITION FOR MODIFICATION OF ORDER NO. 32255
AND REQUEST FOR EXPEDITED TREATMENT

On June 8, 2011, the Commission rejected three Firm Energy Sales Agreements (the "Agreements") between Murphy Flat Mesa, LLC, Murphy Flat Energy, LLC and Murphy Flat Wind, LLC (collectively, "Murphy Flat") and Idaho Power Company ("Idaho Power"), all of which were executed by Murphy Flat on December 13, 2010. The basis for rejection was solely that Idaho Power did not execute those Agreements prior to December 14, 2010,[1] after which time Murphy Flat no longer was eligible to receive published avoided cost rates. However, in its *Cedar Creek Wind*[2] and *Rainbow Ranch Wind, LLC*[3] orders, the Federal Energy Regulatory Commission ("FERC") determined that in rejecting the Agreements, the *Murphy Flat Order* violated the Public Utility Regulatory Policies Act of 1978 ("PURPA").[4] In those orders, FERC held that QFs are entitled to receive avoided cost rates calculated as of the date a legally enforceable obligation is incurred, and that this date cannot simply be the date on which a contract is executed by the purchasing utility.

FERC's rulings in *Cedar Creek* and *Rainbow Ranch* were issued subsequent to the *Murphy Flat Order* and subsequent to the twenty-one day time period for filing a petition for reconsideration of the *Murphy Flat Order*. Consequently, those orders constitute new facts or information justifying modification of the *Murphy Flat Order*. Accordingly, pursuant to Idaho

[1] Idaho PUC Order No. 32255, Case No. IPC-E-10-56 *et al.* (June 8, 2011) ("*Murphy Flat Order*").

[2] *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006 (2011) ("*Cedar Creek*").

[3] *Rainbow Ranch Wind, LLC and Rainbow West Wind, LLC*, 139 FERC ¶ 61,077 (2012) ("*Rainbow Ranch*").

[4] 16 U.S.C. 824a–3(h).

Code § 61-624 and the Idaho PUC's rules of procedure,[5] Murphy Flat respectfully petitions the Commission to modify its *Murphy Flat Order* and approve the Agreements.[6]

I. Idaho Power Incurred Legally Enforceable Obligations at Least by December 13, 2010.

This case shares in all material respects the factual circumstances underlying FERC's rulings in *Cedar Creek* and *Rainbow Ranch*. In those matters, FERC concluded that two of this Commission's orders issued on the same date as the *Murphy Flat Order*[7] were inconsistent with PURPA and FERC's implementing regulations. In *Rainbow Ranch*, the more recent of the two rulings, FERC outlined the factual similarities upon which it reapplied its finding in *Cedar Creek*.[8] Each of those factual similarities likewise is present here:

- Murphy Flat has self-certified as a qualifying facility ("QF").[9]
- Murphy Flat entered into formal negotiations to enter into the Agreements with Idaho Power before the new rules concerning eligibility for published avoided cost rates went into effect, *i.e.*, before December 14, 2010.[10]
- Murphy Flat signed the Agreements prior to that date, *i.e.*, on December 13, 2010.

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[5] Idaho Public Utilities Commission Rules of Procedure, Rule 53.

[6] While Murphy Flat did not seek reconsideration of or attempt to appeal the *Murphy Flat Order*, this in no way diminishes the Commission's authority to modify this order and to approve the Murphy Flat Agreements based on new facts or information not available at the time the order was issued. Nor does Murphy Flat's failure to challenge the *Murphy Flat Order* in any way preclude it from petitioning the Commission to exercise its authority here.

[7] Idaho PUC Order No. 32260, Case No. IPC-E-11-01 *et al.* (June 8, 2011) (denying the firm energy sales agreements between Rocky Mountain Power and the Cedar Creek projects); Idaho PUC Order No. 32256, Case No. IPC-E-10-59 *et al.* (June 8, 2011) (denying the firm energy sales agreements between Idaho Power and the Rainbow projects).

[8] *Rainbow Ranch* at P 24.

[9] Docket Nos. QF11-46-000, QF11-47-000, and QF11-48-000.

[10] *Murphy Flat Order* at 6-7 (noting that Idaho Power sent Murphy Flat initial contracting information in August, 2010, provided first draft contracts on November 23, 2010, and delivered executable agreements on December 13, 2010); Murphy Flat Comments, Dockets Nos. IPC-E-10-56, IPC-E-10-57, IPC-E-10-58 (Mar. 17, 2011) (describing in detail the negotiation process).

- The Commission rejected the Agreements because they failed the Commission's newly adopted bright line rule, *i.e.*, that Idaho Power would incur legally enforceable obligations to purchase power from Murphy Flat only at such time as both parties had executed the Agreements.[11]

- Murphy Flat did not seek rehearing of or appeal the Commission's rulings.

Consequently, as in *Cedar Creek* and *Rainbow Ranch*, the *Murphy Flat Order* likewise is inconsistent with PURPA and FERC's regulations implementing PURPA.[12] There simply is no legal basis upon which to distinguish the *Murphy Flat Order* from those orders addressed in *Cedar Creek* and *Rainbow Ranch.* In both, FERC found that this Commission's "fully executed contract" standard violated federal law; and in *Rainbow Ranch*, it found that a petitioner's failure to seek judicial review of a state commission's order was irrelevant.[13] Hence, the fact that Murphy Flat did not seek reconsideration of or appeal the *Murphy Flat Order* in state court likewise is immaterial as to whether and, if so, when Idaho Power became legally obligated to purchase from Murphy Flat. Accordingly, Murphy Flat respectfully submits that FERC's issuance of the *Cedar Creek* and *Rainbow Ranch* orders constitutes sufficient grounds for modifying its *Murphy Flat Order* and approving the Agreements.

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[11] *Id.* at 9.

[12] *Rainbow Ranch* at P 24 (describing the similarities that "cause [FERC] to apply *Cedar Creek* in this [the *Rainbow Ranch*] proceeding" and finding that "the Idaho Commission's *June 8 Order* is inconsistent with PURPA, and [FERC's] regulation implementing PURPA, and [its] findings in *Cedar Creek* for the reasons given in *Cedar Creek*"); *Cedar Creek* at P 30 (finding that "the Idaho PUC decision denying Cedar Creek a legally enforceable obligation, specifically the requirement in the *June 8 Order* that a Firm Energy Sales Agreement/Power Purchase Agreement must be executed by both parties to the agreement before a legally enforceable obligation arises, is inconsistent with PURPA and our regulations implementing PURPA, particularly Section 292.304(d)(2)").

[13] *Rainbow Ranch* at PP 27-29 (holding that a state's implementation of PURPA and FERC's rules implementing PURPA may be challenged in either the state courts under Section 210(g) of PURPA, or at FERC under Section 210(h) of PURPA, and concluding that, regardless of the procedural posture of a petition brought in a proceeding under Section 210(g) of PURPA, and, regardless even of a decision not to proceed under Section 210(g), a petitioner may seek relief under Section 210(h)).

II. In the Alternative, the Commission Should Exercise its Discretion to Establish the Date on Which a Legally Enforceable PURPA Obligation is Created, Revert to the Standard it Had Employed Prior to June 8, 2011 to Assess Whether to Grandfather QF Contracts, and Find that Idaho Power Had Incurred a Legally Enforceable Obligation at Least as of December 13, 2010.

A. The Commission Should Use its Grandfathering Criteria to Determine When Idaho Power Incurred a Legally Enforceable Obligation.

No doubt, it is left to the discretion of state commissions to establish the date on which a legally enforceable PURPA obligation is created; and as this Commission has long recognized, it is the existence of a legally enforceable obligation that first secures and protects the rights of QFs under PURPA. Thus, the Commission defined what constituted a *legally enforceable obligation* in its 2005 orders – Order Nos. 29839, 29851, and 29872[14] – which lowered the posted rate eligibility cap from 10 aMW to 100 kW. But there, instead of requiring wind projects seeking to be grandfathered under the prior 10 aMW cap to have fully executed contracts, the Commission looked to its precedents in various complaint and grandfathering cases, and to the factors it had deemed pertinent in determining whether, as of the grandfathering date, a QF had a "legally enforceable obligation for published rate entitlement."[15] Specifically, the Commission identified indicative criteria to determine whether such a legally enforceable obligation existed prior to the effective date of its decision on the eligibility cap; and if a QF met these criteria, it was entitled to the published rates even if it exceeded the new eligibility cap.

According to the Commission, a QF was entitled to the posted QF rates if, as of the applicable deadline, the QF had (i) submitted a signed power purchase agreement to the utility[16] and (ii) demonstrated "other indicia of substantial progress and project maturity," such as "(1) a

[14] *E.g.*, Order No. 29839 at 9-10 (2005).

[15] Order Nos. 29839 at 9-10 (2005); 29851 at 1-2 (2005); and 29872 at 9 (quotations omitted).

[16] As an alternative to submitting an executed power purchase agreement, a QF also could qualify for grandfathered treatment by submitting "to the utility [] a completed Application for Interconnection Study and payment of fee," and satisfying the other criteria described herein. Order No. 29872 at 9.

wind study demonstrating a viable site for the project, (2) a signed contract for wind turbines, (3) arranged financing for the project, and/or (4) related progress on the facility permitting and licensing path."[17] The purpose of the indicative criteria was not to create a rigid checklist but to demonstrate that the QF had expended sufficient time and resources on contract negotiations and project development so as to achieve a level of project maturity on the basis of which it reasonably could be expected to be brought on line within a reasonable period following contract execution.[18] Idaho Power itself stated it well:

> In Order No. 29839, the Commission identified several criteria that the Commission would consider to determine whether a particular QF wind generation facility was sufficiently mature so as to justify "grandfathering" the project to entitlement to the published rates.[19]

Similarly, in July 2010, the Commission approved a QF contract between Idaho Power Company and Cargill, which, although fully negotiated prior to the March 16, 2010 effective date for new published avoided cost rates, had not actually been signed until May 4, 2010, for the same reason that the Agreements here were not fully executed by December 14, 2010: namely, the utility's "routine internal approval had not been completed . . . ."[20] The Commission nonetheless approved the contract based on the utility's representation – as was also true here – that all outstanding contract issues had been resolved by that date and that, but for the utility's internal review process, the contract would or could have been signed prior to the March 16,

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[17] *Id.* at 8 (quoting Order No. 29839 at 9-10).

[18] *Id.* at 10-11. The Commission did not require that the QF satisfy each of these indicia, but had intended only to provide example "criteria that could be looked to to assess project maturity." Order No. 29951 at 5.

[19] *In the Matter of the Application of Idaho Power Company for Approval of a Firm Energy Sales Agreement for the Sale and Purchase of Electric Energy Between Idaho Power Company and Salmon Falls Wind Park LLC* at 3, Case No. IPC-E-05-33 (Oct. 21, 2005).

[20] Order No. 32024 at 3.

2010 deadline.[21] Likewise, in November 2010, the Commission again approved requests for grandfathering published avoided cost contracts, again recognizing that a QF without a fully executed contract could demonstrate its entitlement to the previously-effective published avoided cost rates by satisfying other criteria.[22]

In short, wholly without reference to the FERC's recent orders, if the Commission were to choose to exercise its discretion and discontinue using a fully executed contract standard, then it would be entirely appropriate for the Commission to apply its prior precedent to the circumstances here, and to employ the aforementioned criteria to determine whether a "legally enforceable obligation" had been incurred. Simply put, it is well within the Commission's discretion to now order that any QF that met those criteria prior to December 14, 2010 should similarly have been grandfathered and been eligible to receive the previously published rates.[23]

B. A Legally Enforceable Obligation Under Applicable Commission Precedent Existed Between Murphy Flat and Idaho Power at least as of December 13, 2010, and the Commission Should Exercise its Authority to Modify the *Murphy Flat Order* Accordingly.

The Commission's precedents for determining a QF's eligibility to receive published avoided cost rates, together with the relevant undisputed record of this proceeding, would more than justify the Commission's deciding to modify the *Murphy Flat Order* by applying the previously utilized criteria and concluding that (a) the Parties were under a legally enforceable

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[21] *Id.* at 4.

[22] Order No. 32104 at 11-12.

[23] Changing the eligibility cap, and thus the rates that a QF is entitled to be paid for its power, constitutes a "rate change," and any grandfathering criteria that would appropriately be applied to "rate changes" should also be applied here, just as the Commission has done in the past. A contrary assertion would ignore the reality of what the Commission, and the utilities, are doing to affected QFs. Were QFs that are deemed ineligible for the published avoided cost rates able to obtain those same rates under the Commission's Integrated Resource Planning avoided cost determinations, there would be no issue here. By changing the eligibility cap rules, the Commission is by definition changing the rates that QFs are paid.

obligation prior to the December 14, 2010 deadline, and (b) the Agreements, therefore, appropriately contained the published rates that had been available to QFs up to 10 aMW prior to that date.

As Idaho Power acknowledged by the very fact that it had tendered executable agreements on December 13, 2010, and as Murphy Flat acknowledged by having executed those agreements on December 13, 2010, and then having offered those signed originals to Idaho Power – first that same day, and then again on December 14, 2010 – the Parties clearly had completed negotiation of all terms of the Agreements prior to December 14, 2010.[24] It is also undisputed that when Murphy Flat executed the Agreements on December 13, 2010, the only remaining task for Idaho Power was to complete its administrative processing.[25] Hence the fact that Idaho Power did not execute the Agreements until December 15, 2010 is of no moment, and therefore, the first criterion previously articulated by the Commission in Order Nos. 29839, 29851, and 29872, namely that the QF had *submitted* a signed power purchase agreement to the utility as of the announced effective date, was satisfied.[26]

In addition to having delivered signed Agreements to Idaho Power establishing its intent to be legally bound by such Agreements, by December 14, 2010 the Projects also had demonstrated other "indicia of substantial progress and project maturity."[27] Specifically, by December 13, 2010 Murphy Flat had completed, or made substantial progress toward

[24] *June 8 Order* at 8. Indeed, Murphy Flat delivered final drafts to Idaho Power on December 8, 2010, at which time Idaho Power began its internal SOX review process. Idaho Power concedes that by the time it begins its SOX review, the PPA is essentially final. Idaho Power Comments at 5-6, Dockets Nos. IPC-E-10-56, IPC-E-10-57, IPC-E-10-58 (Mar. 17, 2011) ("Very rarely does this [Sarbanes-Oxley] review result in any material changes to the draft PPA. Instead, the review process provides confirmation . . . .").

[25] *See* Order No. 32024 at 3-4 (approving grandfathered avoided cost rates for a QF where only the utility's administrative processing of its contract prevented that contract from being executed prior to the change in rate eligibility).

[26] *E.g., see* Order No. 29839 at 9-10.

[27] Order No. 29872 at 8.

completing, virtually all of the critical path development milestones for each of the Projects, including those specifically identified by the Commission as demonstrating sufficient "substantial progress and project maturity" to establish a legally enforceable obligation.

1. Murphy Flat had collected more than one year of wind data: In the fall of 2009, having already been selected to receive a $50,000 feasibility study grant from the United States Department of Agriculture, Murphy Flat erected an anemometer tower to begin collecting site-specific wind data. Additionally, to further increase the accuracy of the wind data collection program, it deployed in September, 2010 a SODAR unit provided by Boise State University. By late November, 2010, it had collected more than a year of wind data and completed a formal wind study for the Projects with long-term energy correlations.

2. Murphy Flat had obtained its required Conditional Use Permit: On October 18, 2010, Murphy Flat obtained from the Owyhee County Planning and Zoning Board the Conditional Use Permit ("CUP") required to build and operate the Projects.[28]

3. Murphy Flat had full site control: By December 2, 2010, Murphy Flat had executed seven (7) different wind leases and either by lease agreement or outright ownership exercised full control of the sites for the Projects.[29] It purchased the 247 acres that it now owns in fee for about $280,000, and it has spent at least $30,000 on project-related improvements since then.

4. Murphy Flat had submitted interconnection requests, executed binding agreements and made five-figure deposits to maintain the required interconnect in-service date: Murphy Flat submitted to Idaho Power its interconnection applications in August, 2010.[30] In November, 2010, it requested a Large Generator System Impact Study, for which it tendered a $30,000 deposit.

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[28] Subsequently, having decided to expand the project across more acreage, it sought and received a second CUP on June 2, 2011.

[29] FERC defines "site control" by reference to the definition of that term in the Standard Large Generator Interconnection Procedures, which is as follows:

> documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purposes; or (3) an exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease or grant the Interconnection Customer the right to possess or occupy a site for such purpose.

[30] On August 5, 2010, Murphy Flat filed interconnection applications for the Murphy Flat Wind and Murphy Flat Energy projects. Subsequently, on August 16, 2010, it filed an interconnection application for the Murphy Flat Mesa project.

5. Murphy Flat easily could have arranged a term sheet with a major turbine provider: By December 9, 2010, having already submitted final draft power purchase agreements to Idaho Power, Murphy Flat had engaged several turbine manufacturers, including Clipper and Nordex, in formal discussions, with the goal of making turbine deposits by the end of 2010. (Unlike 2005, when wind turbines were in short supply and early reservations were the norm, in late 2010 the practice was not to consummate turbine sale agreements and incur substantial reservation fees until the developer had an approved power purchase agreement in hand.)

6. Murphy Flat had qualifying facility status: On November 12, 2010, the Murphy Flat Projects self-certified with FERC as qualifying facilities.[31]

Lastly, as of December 14, 2010, Murphy Flat had in total invested about half a million dollars to support its obligations to deliver the Projects – fully permitted, constructed and operating – by the commercial operation dates specified in the Agreements. Certainly, had the Agreements not been rejected, to meet a December 31, 2012 commercial operation date, that investment would have increased much more. Collectively, then, by December 13, 2010, the Projects reflected considerable and mature development efforts, significant financial investments, and irrevocable commitments.

There is no question, then, that as of December 13, 2010 the Projects were more than sufficiently mature so as to require Idaho Power to negotiate and eventually execute a contract pursuant to PURPA. Indeed that is just what Idaho Power thought when it tendered to Murphy Flat an executable contract on December 13, 2010.[32] It is also clear that, prior to its having adopted its bright line rule, the Commission's only relevant precedent defining a legally enforceable obligation required that such obligation be recognized here at least as of December 13, 2010, and that Idaho Power proceed formally to execute the Agreements. Murphy

[31] Docket Nos. QF11-46-000, QF11-47-000, and QF11-48-000.

[32] *See Cedar Creek* at P 32 (noting that the utility's delivery to the QF of a final, fully negotiated and mutually agreed upon unexecuted version of the contract and the QF's execution of that contract before the rate change provided persuasive evidence that QF committed itself to sell, and therefore the utility committed itself to buy, power).

Flat, therefore, respectfully requests that the Commission exercise its discretion and modify the *Murphy Flat Order* so as to find (a) that a legally enforceable obligation existed as of December 13, 2010; (b) that Murphy Flat is entitled to receive the then published avoided cost rates for projects up to 10 aMW; and (c) that the Agreements therefore should be accepted and approved by the Commission without further hearings or other proceedings.

III. Statement of Legal Authority.

Murphy Flat acknowledges that it did not seek reconsideration of the *Murphy Flat Order* and that, accordingly, that order became final. Nevertheless, the Commission may modify an order that has not been challenged on reconsideration pursuant to authority granted by Code § 61-624, which provides:

> Rescission or change of orders.–The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend order or decision made by it. Any order rescinding, altering or amended a prior order or decisions shall, when served upon the public utility affected have the same effect as is herein provided for original orders or decisions.

This Commission has itself recognized its authority to modify an order that is otherwise final.[33] Because the holdings in *Cedar Creek* and *Rainbow Ranch* apply equally here, the Commission should exercise its authority under Idaho Code § 61-624 and modify the *Murphy Flat Order* so as to approve the Agreements.

[33] *See* Idaho Public Utilities Commission, *In Re Idaho Power Company*, Order No. 32212, Case No. GNR-E-10-04 at 14 (Mar. 28, 2011) (citing with approval *Assoc. Pac. Movers, Housemovers, Inc. v. Rowley*, 551 P.2d 618, 620 (1976), for the proposition that "an application requesting that the Commission rescind, alter or amend an order pursuant to Idaho Code § 61-624 does not constitute a collateral attack of a Commission order").

IV. Request for Expedited Action.

The issue raised by this Petition is strictly one of law, there being no relevant factual disputes and no need for further factual support. Murphy Flat, therefore, requests that the Commission grant the Petition and approve the Agreements without an evidentiary hearing or further proceedings, as it has on other occasions when QFs sought and received grandfathered published avoided cost rates in recognition of their PURPA rights.[34]

Murphy Flat also requests that the Commission issue its order on this Petition on an expedited basis but not later than August 31, 2012. Assuming as we must that Congress will extend the federal financial incentives another year, Murphy Flat must have the Projects on line by December 31, 2013. Otherwise, it will not receive those incentives, which are critical to financing the project. To meet that deadline, the Projects must be able to accept back-feed power by mid-Fall 2013 at the latest. And Murphy Flat has been informed by Idaho Power that for this to occur, Idaho Power must begin almost immediately to order various critical path equipment and materials required for the Projects' interconnection. Hence, it certainly can be said that time is now of the essence and that, absent the Commission's expeditious approval of the Agreements, the continued viability of the Projects will be in very considerable jeopardy.

The process leading up to the Commission's issuance of the *Murphy Flat Order* already was lengthy, and the matters presented in this Petition are straight-forward; they do not require a similar extended process. Again though, and most importantly, for Murphy Flat to meet its operational dates, the Commission must move promptly to modify its *Murphy Flat Order*. Accordingly, Murphy Flat respectfully submits that expedited Commission action by August 31, 2012 would be appropriate under the instant circumstances.

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[34] *E.g.*, Order No. 29951; Order No. 30246; Order No. 30268.

Lastly, should the Commission decide not to modify the *Murphy Flat Order*, we respectfully request that it issue an order to this effect at the earliest possible time, and in no event later than August 31, 2012. Otherwise, while Murphy Flat technically still could continue to pursue its legal rights to further process and appeal, as a practical matter, the Projects likely no longer could be developed even if ultimately shown to have been in the right.

V. Conclusion and Prayer for Relief.

Based on the reasons and authority cited herein, Murphy Flat respectfully requests that, in compliance with PURPA and consistent with the Commission's precedent, or, alternatively, as a matter of its discretion and wholly without reference to *Cedar Creek* and *Rainbow Ranch*, that the Commission modify its *Murphy Flat Order* and approve the Agreements by no later than August 31, 2012 without further briefing, hearing or other proceedings.

DATED this 16 day of August, 2012. By: Ronald L Williams

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16 day of August, 2012, I caused to be served a true and correct copy of the foregoing document upon the following individuals in the manner indicated below:

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