

MONICA MOEN, ISB # 5734  
 BARTON L. KLINE, ISB # 1526  
 Idaho Power Company  
 1221 West Idaho Street  
 P. O. Box 70  
 Boise, Idaho 83707  
 Telephone: (208) 388-2692  
 FAX Telephone: (208) 388-6936

RECEIVED   
 FILED   
 2004 FEB 13 PM 4:56  
 IDAHO PUBLIC  
 UTILITIES COMMISSION

Attorneys for Idaho Power Company

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

) ) <b>IN THE MATTER OF A PETITION FILED BY )</b> <b>IDAHO POWER COMPANY FOR APPROVAL )</b> <b>OF MODIFICATIONS TO THE SECURITY )</b> <b>PROVISIONS REQUIRED TO BE INCLUDED )</b> <b>IN AGREEMENTS BETWEEN IDAHO )</b> <b>POWER AND CO-GENERATORS AND )</b> <b>SMALL POWER PRODUCERS )</b> _____ )	<b>CASE NOS. IPC-E-03-16</b> <b>AVU-E-03-9</b> <b>PAC E-03-13</b>  <b>REPLY OF IDAHO POWER</b> <b>COMPANY TO THE</b> <b>COMMENTS OF THE,</b> <b>COMMISSION STAFF,</b> <b>PACIFICORP AND AVISTA</b>
---	--

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") and hereby submits the following reply to the comments of the Staff of the Idaho Public Utilities Commission ("IPUC" or the "Commission"), PacifiCorp and Avista Corporation ("Avista") regarding Idaho Power's Petition for an Order from the Commission authorizing Idaho Power to accept modified insurance and lien rights as satisfactory risk mitigation measures in agreements between Idaho Power and co-generators and small power producers ("CSPPs") that contain levelized avoided cost rates.

**BACKGROUND**

Without Commission-approved risk mitigation, CSPPs desiring levelized avoided cost rates must post liquid funds as security for the overpayments inherent in the

levelized purchase rates. At one time, certain CSPPs purchased valued loss of income insurance as a means of mitigating the risk that is intrinsic to levelized rate contracts. However, over time, the cost of that type of insurance was no longer commercially reasonable for CSPP facilities. Two of the mitigation methods permitted by Commission Order No. 21692,<sup>1</sup> as amended,<sup>2</sup> are the purchase of certain basic insurance policies and the establishment of certain lien rights.

However, due to changes in the insurance industry, several of the CSPP projects with whom the Company contracts are not in specific compliance with the insurance requirements of their agreements with Idaho Power despite implementation of the measures set out in Order No. 21692, as amended. Furthermore, the Company has concluded that, in some circumstances, either second liens cannot be placed on an existing CSPP project or the value of security obtained by placement of a second lien on a project is tenuous at best. In its Petition, Idaho Power proposes to conform its CSPP contract requirements to contemporary insurance industry standards and realistic lien rights by modifying the insurance prerequisites and eliminating the second lien provision.

On January 15, 2004, in conformance with the Commission's Notice of Petition, Notice of Modified Procedure and Notice of Comment/deadline issued on December 5, 2003, the Commission Staff responded to Idaho Power's Petition and recommended that the IPUC approve the modified insurance requirements for levelized CSPP contracts as amended by the Staff and that the Company's request to eliminate the second lien requirement as a mitigation option for CSPPs be denied. In its comments to the Commission dated January 15, 2004, PacifiCorp generally supported the position of

---

1 Order No. 21692 was issued by the IPUC in Case No. U-1006-292 on January 11, 1988.

2 Order No. 21692 was amended by IPUC Order No. 25240 that was issued in Case No. IPC-E-93-22 on November 2, 1993.

Idaho Power but recommended that other classes of insurance coverage, in addition to those set forth in Idaho Power's Petition, be required of CSPP developers as they contract with the utilities for the sale of power.

On January 23, 2004, Avista submitted its reply comments to the Commission in response to PacifiCorp's January 15, 2004 comments. As noted by Avista, "[t]he insurance requirements to which Idaho Power's Petition . . . relate are those that secure the financial capacity of a PURPA project to discharge its contract obligations to the purchasing utility [levelized rate] purchase contract." Reply Comments of Avista at 2. Avista notes that the Commission has not required uniform and standardized liability insurance requirements for PURPA developers and it "would not be appropriate to deal with personal injury and property damage liability insurance in this docket which only address the security requirements for PURPA projects that receive payments at levelized avoided cost rates." *Id.* at 4.

### **INSURANCE REQUIREMENTS**

Avista correctly characterizes the limited purpose of Idaho Power's Petition and Idaho Power supports the comments set forth by Avista. Idaho Power only seeks to revise certain security components of its agreements with the CSPPs who have levelized avoided cost contracts with the Company. Except to the extent that certain insurance is required by the CSPPs to conform with Commission-required risk mitigation provisions, Idaho Power is not seeking Commission direction with respect to general insurance requirements for CSPP projects in this docket. Idaho Power concurs with the Commission's Staff's recommended clarifications and modifications to the insurance requirements as proposed by the Company and respectfully requests that Staff's proposed insurance requirements as illustrated in Attachment No. 4 to the Commission Staff's

comments be approved by the Commission.

## **SECOND LIEN RIGHTS**

**Future CSPP Agreements:** On the basis that there does not appear to be a “good alternative to second liens as a security measure,” the Commission Staff recommends that the IPUC deny the Company’s request to eliminate the second lien requirements on CSPP projects. Comments of the Commission Staff at 6. Idaho Power admits to mixed feelings on the subject of second liens. On the one hand, the Company’s experience in enforcing second liens has not been good. On the other hand, the prospect of “loaning” CSPP developers millions of dollars via levelized rates without any security is not consistent with good business practice.

If the Commission accepts Staff’s recommendation and continues to require second lien security rights, the Company will retain outside counsel to complete the paperwork required to establish those lien rights. The estimated legal fee for establishing a second lien on a CSPP project is \$1,000.00 to \$1,500.00. Idaho Power hereby requests that the Commission permit the Company to collect its cost of establishing the second liens directly from the CSPPs electing to be paid levelized rates. Alternatively, the Company requests that it be authorized to include those legal expenses as a part of the cost of Qualifying Facility purchases in the PCA.

**Pre-existing CSPP Projects:** If the Commission accepts Staff’s recommendation, the Company expects that the pre-existing CSPP projects with levelized contracts that are currently required to meet the 292 Case security requirements will continue to conform to those requirements. The only change in these requirements would be any Commission-approved modifications to the 292 Case, “basic insurance” provisions. CSPPs with levelized avoided rate contracts who have not been able to obtain

Commission-required valued loss of income insurance at commercially reasonable rates would be expected to comply with the 292 Case “basic insurance” component as requested by Idaho Power in this Petition and as adjusted by the Staff but would not be obligated to either continue to seek valued loss of income insurance or to grant a second lien in favor of Idaho Power on their projects.

### **CONCLUSION**

NOW WHEREFORE, based on the foregoing, Idaho Power Company hereby requests that the Commission issue its Order:

(1) finding that the modified insurance requirements shown in Attachment 4 to the Commission Staff’s comments be accepted as the “basic business insurance” coverages for purposes of risk mitigation as established in Order No. 21690, as amended, for future CSPP agreements and for preexisting CSPP projects as their current insurance is renewed;

(2) finding, for preexisting CSPP projects with levelized contracts who have not been able to obtain Commission-required valued loss of income insurance and who have not granted a second lien in favor of Idaho Power, that those projects be required to comply with the 292 Case “basic insurance” component as shown in Attachment 4 to the Commission Staff’s comments but that those projects not be obligated to either continue to seek valued loss of income insurance or to grant a second lien in favor of the Company; and

(3) finding that, if the Commission determines that Idaho Power shall obtain a second lien on all new CSPP projects with whom it enters into levelized rate agreements, then the Company is authorized to collect the reasonable attorneys fees and costs of establishing the second lien directly from the CSPPs or, in the alternative, that the

Company is authorized to include those legal expenses as a part of the cost of Qualifying Facility purchases in the PCA.

Respectfully submitted this 13<sup>th</sup> day of February 2004.



MONICA B. MOEN  
Attorney for Idaho Power Company

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of February 2004, I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

Scott Woodbury	<u>  x  </u>	Hand Delivered
Deputy Attorney General	<u>      </u>	U.S. Mail
Idaho Public Utility Commission	<u>      </u>	Overnight Mail
472 West Washington Street	<u>      </u>	FAX
P.O. Box 83720		
Boise, ID 83720-0074		

Dale G. Rasmussen	<u>      </u>	Hand Delivered
PacifiCorp	<u>  x  </u>	U.S. Mail
825 NE Multnomah	<u>      </u>	Overnight Mail
Suite 1800	<u>      </u>	FAX
Portland, OR 97232		

R. Blair Strong	<u>      </u>	Hand Delivered
Paine, Hamblen, Coffin, Brooke	<u>  x  </u>	U.S. Mail
& Miller LLP	<u>      </u>	Overnight Mail
717 W. Sprague Ave., Suite 1200	<u>      </u>	FAX
Spokane, WA 99201-3505		



MONICA B. MOEN