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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

FRANKLIN ENERGY STORAGE ONE,  
LLC, FRANKLIN ENERGY STORAGE  
TWO, LLC, FRANKLIN ENERGY  
STORAGE THREE, LLC, FRANKLIN  
ENERGY STORAGE FOUR, LLC,

Plaintiffs,

vs.

PAUL KJELLANDER, KRISTINE RAPER  
and ERIC ANDERSON, in their official  
capacity as Commissioners of the IDAHO  
PUBLIC UTILITIES COMMISSION,

Defendants,

and,

IDAHO POWER COMPANY,

Defendant-Intervenor.

Case No.: 1:18-cv-00236-REB

**DEFENDANT-INTERVENOR'S  
RESPONSE TO PLAINTIFFS' CONCISE  
STATEMENT OF MATERIAL FACTS IN  
SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT [DKT. 29-4]**

Pursuant to Local Civil Rule 7.1(c)(2), Defendant-Intervenor Idaho Power Company (“Idaho Power”), by and through its counsel of record, hereby submits this Response to Plaintiffs’ Concise Statement of Material Facts in Support of Motion for Summary Judgment [Dkt. 29-4].

### **I. PRELIMINARY STATEMENT**

Under Local Civil Rule 7.1(c)(2), Idaho Power is required to file with its opposition to Plaintiffs’ Motion for Summary Judgment [Dkt. 29] a separate statement, not to exceed ten (10) pages, of all material facts which Idaho Power contends are in dispute. In accordance with this requirement, Idaho Power hereby provides this statement solely for the purpose of responding to Plaintiffs’ Concise Statement of Material Facts by identifying which of those facts, as alleged by Plaintiffs to support their motion and the arguments made therein, are disputed. In light of Idaho Power’s separate Motion for Summary Judgment, the use of the word “disputed” or similar references should not be construed to mean that Idaho Power believes that there are genuine issues of material fact that would necessitate a trial. Instead, such language simply means that Idaho Power disputes Plaintiffs’ identified fact as alleged and/or as it relates to the arguments made in their Motion for Summary Judgment. Idaho Power maintains its position that there are not any genuine issues of material fact with respect to the grounds entitling it to summary judgment.

### **II. RESPONSIVE STATEMENT**

With respect to each of Plaintiffs’ listed facts, Idaho Power responds as follows:

**QF FACT 1:** Undisputed that each Plaintiff filed a Form 556 with the Federal Energy Regulatory Commission (“FERC”) and that each Plaintiff’s respective Form 556, among many other things, did the following: (1) identified its “primary energy input” as “[o]ther renewable resource” in paragraph 6a; and (2) described itself as “an energy storage system Qualifying Facility” in paragraph 7h. Each Plaintiff’s respective Form 556 at paragraph 7h also stated the

following: “The current initial design utilizes solar photovoltaic (PV) modules mounted to single-axis trackers to provide the electric energy input to the Qualifying Facility’s battery storage system. The PV modules are planned to be connected in series/parallel combinations to solar inverters, rated approximately 2.5 MWac each, (subject to change).”

**QF FACT 2:** Undisputed.

**QF FACT 3:** Undisputed that each Plaintiff’s respective Form 556 at paragraph 7h stated that its energy storage system “is designed to, and will, receive 100% of its energy input from a combination of renewable energy sources such as wind, solar, biogas, biomass, etc.” It is also undisputed that each Plaintiff’s respective Form 556 at paragraph 7h stated that “The current initial design utilizes solar photovoltaic (PV) modules mounted to single-axis trackers to provide the electric energy input to the Qualifying Facility’s battery storage system. The PV modules are planned to be connected in series/parallel combinations to solar inverters, rated approximately 2.5 MWac each, (subject to change).”

**QF FACT 4:** Undisputed.

**CONTRACT FACT 1:** Undisputed.

**CONTRACT FACT 2:** Disputed, but the dispute is not material. Specifically, while Idaho Power did respond to each Plaintiff’s Schedule 73 application with a letter dated January 9, 2017, in which it, among other things, requested that Plaintiffs “supplement [their] Applications with additional information that verifies eligibility for the requested rates and terms,” more than three “deficiencies” were identified in that letter.

**CONTRACT FACT 3:** Undisputed that, on January 10, 2017, Plaintiffs’ counsel responded to Idaho Power’s January 9, 2017 letter and that, in that letter, Plaintiffs’ counsel, among other things, stated that “[e]ach deficiency you identify is addressed....”

**CONTRACT FACT 4:** Undisputed.

**IPUC PROCEEDING FACT 1:** Undisputed.

**IPUC PROCEEDING FACT 2:** Undisputed.

**IPUC PROCEEDING FACT 3:** Undisputed.

**FERC PROCEEDING FACT 1:** Disputed, but neither the dispute nor the disputed fact is material. While it is undisputed that on December 14, 2017, Plaintiffs filed a Petition for Declaratory Order and Petition for Enforcement Pursuant to Section 210(h) of the Public Utility Regulatory Policies Act of 1978 with FERC, which was assigned Docket No. EL 18-50-000, and that on February 15, 2018, FERC issued a “Notice of Intent Not to Act,” Plaintiffs misquote that Notice. Specifically, in FERC’s February 15, 2018 Notice, the sentence that Plaintiffs purport to quote does not state what they claim it states and, instead, it states the following: “Our decision not to initiate an enforcement action means that Petitioners may themselves bring an enforcement action against the Idaho Commission in the appropriate court.”

DATED this 26th day of October, 2018.

ANDERSEN SCHWARTZMAN  
WOODARD BRAILSFORD, PLLC

/s/ Steven B. Andersen  
Steven B. Andersen  
*Attorneys for Defendant-Intervenor Idaho Power Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of October, 2018, I caused a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following persons:

Peter J. Richardson	<a href="mailto:peter@richardsonadams.com">peter@richardsonadams.com</a>
Robert C. Huntley	<a href="mailto:rhuntely@huntleylaw.com">rhuntely@huntleylaw.com</a>
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/s/ Steven B. Andersen

Steven B. Andersen