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UTILITIES COMMISSION

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October 25, 2012

**VIA HAND DELIVERY**

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

Re: Case No. GNR-E-11-03  
PURPA SAR and IRP Methodologies – Idaho Power Company's Comments  
on Partial Settlement Stipulation

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of Idaho Power Company's Comments on Partial Settlement Stipulation.

Very truly yours,

Donovan E. Walker

DEW:evp  
Enclosures

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S )	
REVIEW OF PURPA QF CONTRACT )	CASE NO. GNR-E-11-03
PROVISIONS INCLUDING THE )	
SURROGATE AVOIDED RESOURCE )	IDAHO POWER COMPANY'S
(SAR) AND INTEGRATED RESOURCE )	COMMENTS ON PARTIAL
PLANNING (IRP) METHODOLOGIES FOR )	SETTLEMENT STIPULATION
CALCULATING PUBLISHED AVOIDED )	
COST RATES. )	
_____ )	

COMES NOW, Idaho Power Company ("Idaho Power" or "Company"), and comments on the Partial Settlement Stipulation filed in the above matter on October 2, 2012, by the Idaho Public Utilities Commission Staff ("Commission").

Idaho Power did not sign the proposed Settlement Stipulation primarily because significant qualifying facility ("QF") parties did not agree, and did not sign onto the stipulation. Without complete agreement from all of the QF parties, Idaho Power saw little to no value in entering into some kind of compromise of its position that it has set forth in the record before the Commission in this proceeding. Frankly many of the non utility parties that did sign onto the Stipulation are not directly affected by the terms of

the stipulation, and are not the parties likely to bring some kind of challenge or objection to the provisions that are the subject of the proposed stipulation.

Consequently, Idaho Power maintains its position that it has put forth on the record in this proceeding: **The Commission should maintain its presently required Delay Damages and Delay Damage Security provisions in PURPA QF contracts.**

The provisions regarding Delay Damages and Delay Damage Security contained in the Commission-approved PURPA Firm Energy Sales Agreements ("FESA") are necessary, reasonable, non-punitive, and in the public interest. Moreover, each party that entered into a FESA is precluded from challenging such provisions under the well-established doctrines of res judicata and collateral estoppel. See, *Stokes Rebuttal*, p. 46-47; *Idaho Power's Legal Brief*, section II.A.8, p. 27-32.

An actual damages model, such as that contemplated in the Partial Stipulation, does not adequately compensate customers for the risks assumed by customers and the damages incurred by a QF breach of the FESA. Delay liquidated damages provisions have been included in PURPA FESA contracts approved by the Commission since at least 2007. See, Case No. IPC-E-06-36. In addition, one of the first Commission approved FESAs to contain terms requiring the project to post liquid security was the FESA for Cassia Gulch Wind Park and Tuana Springs Energy, Case No. IPC-E-09-24. In that case the Commission approved provisions requiring the posting of liquid security in the amount of \$20 per kW of project capacity.

The Commission considered and approved provisions providing for the posting of liquid security in the amount of \$20 per kW of project capacity in at least four other PURPA FESAs. See, Case No. IPC-E-09-18, IPC-E-09-19, IPC-E-09-20, and IPC-E-

09-25. The Commission has since analyzed and approved provisions requiring the posting of liquid security in the amount of \$45 per kW of nameplate capacity in at least twenty-seven different PURPA FESAs. See, Case No. IPC-E-10-02, IPC-E-10-05, IPC-E-10-15, IPC-E-10-16, IPC-E-10-17, IPC-E-10-18, IPC-E-10-19, IPC-E-10-22, IPC-E-10-26, IPC-E-10-37, IPC-E-10-38, IPC-E-10-39, IPC-E-10-40, IPC-E-10-41, IPC-E-10-42, IPC-E-10-43, IPC-E-10-44, IPC-E-10-45, IPC-E-10-47, IPC-E-10-48, IPC-E-10-49, IPC-E-10-50, IPC-E-11-09, IPC-E-11-10, IPC-E-11-25, IPC-E-11-26, and IPC-E-11-27. In approving the change in the amount of delay damage security that is acceptable for such contracts from \$20 to \$45 per kW of nameplate capacity, the Commission specifically found such delay security to be reasonable, necessary, and not to be punitive. Order No. 31034, p. 3-4, Case No. IPC-E-10-02 (2010).

Idaho Power supports and recommends the Commission's continued requirements to provide for delay liquidated damages, and well as delay damage security in its approved PURPA FESAs. As referenced above this requirement has been specifically addressed in several cases, and found by the Commission to be a just, reasonable, and appropriate term for a PURPA QF contract that is in the public interest.

With regard to the reasonableness of liquidated damages, some witnesses, such as Dr. Reading, focus only upon the comparison to the cost of replacement power should the QF not bring its project on-line when it commits itself to a Scheduled Operation Date that it chooses in the contract. This highlights an important part of Idaho Power's case that it provided much evidence of in its direct testimony, and that is typically the Company can acquire replacement power from other available sources at a cost that is below the contract price in the PURPA contract. This, however, is not the only measure of harm and damages. In addition to the system operation and planning problems that failure to bring generation units on-line in a timely manner and when they are scheduled to come on-line, there is the substantial value

that the QF gets by locking in a price, and a pricing stream with its contract. If a QF is allowed to come on-line, or not, at its choosing with no consequences and no liability for the value of that option, then customers are left in a financially disadvantaged position and uncompensated for the price lock and option they extended to the QF project. There are financial instruments that can be purchased that would allow a utility to lock in a 20-year, or long-term, stream of prices, and have the option to not execute on that option at a date certain in the future. Such products are very costly, and could be as much as \$5 per MWh of power. The \$45 per kW of nameplate capacity is very small in comparison, but at least provides an agreed upon valuation of an assessment of risk that the customers are bearing associated with whether a QF generator brings its project on-line when it commits that it will.

Stokes, Rebuttal, p. 46-47.

Regardless of whether market prices are higher or lower than prices contained in the QF contract, Idaho Power's customers end up assuming the risk associated with the uncertainty, and have no control over whether the QF energy will be there or not. There is value associated with reducing or eliminating risk even if the potential positive and negative outcomes are evenly split. A fixed rate QF contract eliminates this risk for the QF developer and pushes it entirely onto Idaho Power's customers. As stated in Mark Stokes' rebuttal testimony, "There are financial instruments that can be purchased that would allow a utility to lock in a 20-year, or long-term, stream of prices, **and have the option to not execute on that option at a date certain in the future.** Such products are very costly, and could be as much as \$5 per MWh of power. Stokes, Rebuttal, p. 47 (emphasis added). The financial instrument referenced above would be a "put" option. It is important to note the emphasized section of the passage above in that a put option allows a party to not execute on the option if conditions are not favorable for the option holder. It is exactly this option that is available to the QF, and the exercise of which the

QF may choose or not choose depending upon the favorableness, or unfavorableness of the prices contained in its FESA in relation to market prices or other factors. In this way, a QF has the ability to eliminate its own downside, to the direct and substantial harm and detriment of Idaho Power's customers, and take advantage of the upside. Consequently while in theory, one may argue that prices may vary either above or below those set in the FESA, it is the QF that has the ability to eliminate the downside, from its perspective, and it is the customers that take all of the risk, and shoulder a disproportionate amount of price deviation from that which is contracted for.

### CONCLUSION

The delay damage and delay damage security provisions that the Commission has evolved, approved, and implemented as part of its federally delegated responsibility to implement PURPA in the state of Idaho, represents a just, reasonable, necessary, and non-punitive provision of a PURPA QF contract with a utility. It is aimed at providing compensation for cost and risk allocations in the relationship between the utility and the QF that are difficult to quantify with precision, but are none-the-less very real to the utility and its customers. Idaho Power asks that the Commission continue to authorize and require the provisions in a PURPA QF contract that provide for delay damages and delay damage security.

DATED at Boise, Idaho, this 25<sup>th</sup> day of October 2012.



DONOVAN E. WALKER  
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25<sup>th</sup> day of October 2012 I served a true and correct copy of IDAHO POWER COMPANY'S COMMENTS ON PARTIAL SETTLEMENT STIPULATION upon the following named parties by the method indicated below, and addressed to the following:

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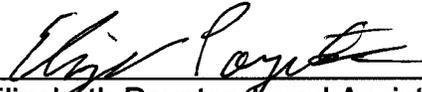
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