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DONOVAN E. WALKER
Lead Counsel
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January 15, 2013

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 Response to
Petitions and Cross-Petition for Reconsideration

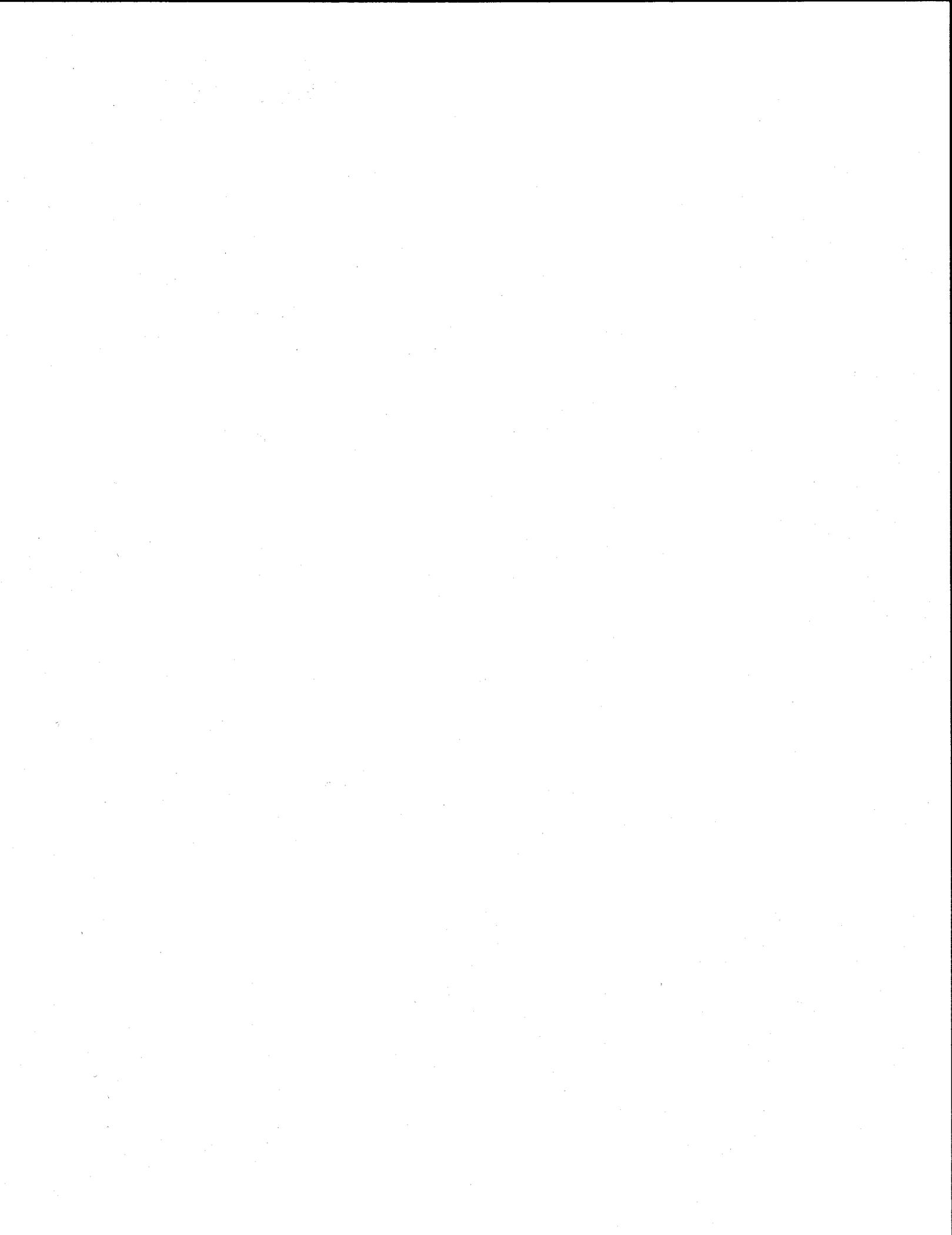
Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of Idaho Power Company's Response to Petitions for Reconsideration, Response to Petition for Clarification, and Cross-Petition for Reconsideration.

Very truly yours,

Donovan E. Walker

DEW:csb
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) RESPONSE TO PETITIONS FOR
PLANNING (IRP) METHODOLOGIES FOR) RECONSIDERATION,
CALCULATING AVOIDED COST RATES.) RESPONSE TO PETITION FOR
) CLARIFICATION, AND
) CROSS-PETITION FOR
) RECONSIDERATION
)

Idaho Power Company ("Idaho Power" or "Company"), in accordance with *Idaho Code* § 61-626 and RP 331, hereby: (1) responds to the Petition for Clarification filed by the Renewable Energy Coalition ("Coalition"); (2) responds to the Petitions for Reconsideration filed by Renewable Northwest Project ("RNP"), the Idaho Conservation League ("ICL"), and J.R. Simplot Company and Clearwater Paper Corporation ("Simplot/Clearwater")(RNP, ICL, and Simplot/Clearwater sometimes referred to hereafter as "Petitioners"); and (3) Cross-Petitions for Reconsideration of final Order No. 32697, dated December 18, 2012.

Petitioners have failed to demonstrate that the Idaho Public Utilities Commission's ("Commission") Order No. 32697 is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331.01. The Commission's Order No. 32697 is based upon substantial and competent evidence in the record. The Commission regularly pursued its authority and was acting within its discretion. Consequently, reconsideration should be denied.

Should the Commission determine to grant reconsideration as to the issues raised by Petitioners, Idaho Power respectfully hereby Cross-Petitions for Reconsideration and will present testimony, evidence, argument, and legal authority supporting its position as set forth and advocated in the proceedings before the Commission. RP 331.

I. BACKGROUND

This matter originated with a November 5, 2010, filing by Idaho Power, Avista Corporation, and Rocky Mountain Power requesting that the Commission investigate various Public Utility Regulatory Policies Act of 1978 ("PURPA") avoided cost rate and contracting issues. Phase I (GNR-E-10-04) considered a PURPA qualifying facility's ("QF") eligibility for published avoided cost rates. Phase II (GNR-E-11-01) investigated disaggregation and its effect on published avoided cost rates. This proceeding, Phase III, was initiated on September 1, 2011, to investigate the avoided cost methodologies, the contracting terms contained in PURPA power purchase agreements, and several other issues related to the implementation of PURPA in the state of Idaho.

Parties to this proceeding filed direct and rebuttal testimony, submitted legal briefs, and participated in a three-day technical hearing commenced on August 7, 2012. The Commission issued final Order No. 32697 on December 18, 2012, which modified

published avoided cost rates established with the SAR methodology and negotiated avoided cost rates established with an IRP methodology. The Commission also addressed, established, and adopted several other terms for power purchase agreements entered into between regulated utilities and PURPA QFs.

On January 8, 2013, Idaho Power filed a Petition for Clarification and/or Reconsideration seeking clarification regarding: (1) the methodology and inputs utilized to establish the published avoided cost rates that appear as Attachments A, B, and C to Order No. 32697; (2) the Commission's finding that curtailment under 18 C.F.R. § 304(f) "was not reasonably contemplated when the parties entered into their agreements"; (3) the Commission's use of the terms "contract extensions or renewals"; and (4) whether the June 1 date for the update of the surrogate avoided resource ("SAR") published rates and the integrated resource plan ("IRP") fuel price and load forecasts is the most appropriate date.

Also on January 8, 2013, the Coalition filed a Petition for Clarification seeking clarification regarding the published avoided cost rate schedules for existing projects and the definition of a "canal drop hydro" project for purposes of the published avoided cost rates. RNP and ICL each filed a Petition for Reconsideration regarding the issue of Renewable Energy Certificates ("RECs"). Simplot/Clearwater filed a Petition for Reconsideration regarding the Commission's adoption of revisions to the IRP methodology and regarding the issue of RECs.

II. STANDARD OF REVIEW

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission an opportunity to rectify any mistake or omission. *Washington Water*

Power Co. v. Kootenai Environmental Alliance, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). Petitions for reconsideration must set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law. RP 331.01.

A party must seek reconsideration with the Commission prior to seeking judicial review with the Idaho Supreme Court. *Idaho Code* § 61-627. With regard to findings of fact, if the Commission's findings are supported by substantial, competent evidence, the Court must affirm those findings. *Industrial Customers of Idaho Power v. Idaho PUC*, 134 Idaho 285, 288, 1 P.3d 786, 789 (2000), even if the Court would have made a different choice had the matter been before it *de novo*. *Hulet v. Idaho PUC*, 138 Idaho 476, 478, 65 P.3d 498, 500 (2003). Substantial, competent evidence is defined as more than a mere scintilla, but something less than the weight of the evidence. *Industrial Customers*, 134 Idaho at 292-93, 1 P.3d at 793-94. On questions of law, review is limited to the determination of whether the Commission has regularly pursued its authority. *A.W. Brown Company v. Idaho Power Company*, 121 Idaho 812, 815, 828 P.2d 841, 844 (1992); *Hulet*, 138 Idaho at 478, 65 P.3d at 500. The Commission order or ruling will not be set aside unless it has failed to follow the law or has abused its discretion. *Application of Boise Water Corp.*, 82 Idaho 81, 86, 349 P.2d 711, 713 (1960)(citing cases).

III. REC'S PETITION FOR CLARIFICATION

The Coalition petitioned for clarification regarding two issues: (1) the published avoided cost rate schedules for existing projects that enter into new contracts and (2) the definition of a "canal drop hydro" project for purposes of its qualification for published avoided cost rates. Idaho Power agrees with the Coalition's request for the

Commission to publish additional SAR avoided cost rate tables applicable to existing projects that enter into new contracts and that, pursuant to Order No. 32697, would be exempt from the utility's capacity sufficiency determination. Idaho Power does not agree with the Coalition's proposed definitional changes to "canal drop hydro."

A. Published Rates for Existing Projects.

The Commission determined that existing QF projects that were receiving a capacity payment at the end of their current contract term would be entitled to receive a capacity payment during the entire term of a new contract they would enter into with the utility. Order No. 32697 at p. 21. In other words, an existing QF whose contract term expires and who chooses to enter into a new contract for its facility with the utility is exempt from Order No. 32697's requirement that QFs receiving the published rates do not receive a capacity payment when the utility is capacity sufficient.

The Coalition sought clarification and asked the Commission to provide a separate attachment, similar to Attachment A to Order No. 32697, showing published rates for existing QFs seeking a new contract which would include capacity payments in the initial years of capacity sufficiency. Idaho Power agrees that the requested additional published avoided cost rate tables should be provided. Consistent with the Coalition's filing, Idaho Power also agrees the additional published avoided cost rate tables should clearly state that these rates are only applicable to projects with existing agreements that expire and the same project elects to execute a new QF agreement with the same utility.

B. Definition of Canal Drop Hydro Project.

Idaho Power agrees with the Coalition that the definition of "canal drop hydro" is not the model of clarity; however, the Company disagrees with the Coalition's proposed

changes to the Commission's definition found in the first Note on the Canal Drop Hydro rate table provided in Attachment A to Order No. 32697.

First of all, the underlying concept of having a separate rate for a canal drop hydro project is not necessarily its source of water, but the fact that it produces power that is dependable, non-intermittent, and is delivered to Idaho Power during Idaho Power's peak power consumption summer months. The approved IRP incremental pricing methodology does a very good job of valuing these types of seasonal peak hour power deliveries as it values the energy based on the hour in which it is delivered to Idaho Power. However, with the Commission's directive to differentiate within the SAR published avoided cost rates among different generation types based upon their capacity factor, projects that both provide most or all of their power deliveries during a utility's peak power needs, and correspondingly does not provide a lot of power deliveries during the utility's non-peak hours, receive a higher avoided cost rate, corresponding to higher value of what they provide and, in concept, what they enable the utility to avoid. Consequently, the most important part of the definition of "canal drop hydro" is not necessarily its source of water, but when it generates and delivers energy to Idaho Power. The definition references the source of water because that is typically what determines when it generates power and, correspondingly, makes deliveries to the utility.

A "true" canal drop hydro project is a project that only delivers energy during the irrigation season (during Idaho Power's peak energy needs), which is when water is in the canal system and produces no generation during winter months as there is no water in the canal system. However, the Company does recognize, as the Coalition has discussed, that some hydro projects that are not on manmade canals do provide similar

peaking generation profiles as canal drop hydro projects. One example of this may be due to a common irrigation practice of some irrigation companies using natural waterways as canals during irrigation seasons. The irrigation company releases additional water from upstream reservoirs into the river system that is then subsequently pumped out of the river at a downstream location for irrigation purposes. As some QF generation facilities are located between these points of irrigation water releases and pumping locations, they see an increased level of generation during the summer irrigation season, and then run of river generation patterns during non-irrigation seasons.

Idaho Power's main concern with the definition of "canal drop hydro" is the phrase "produces a majority of its generation during the irrigation season" and, more specifically, the use of the words "majority" and "irrigation season" in that phrase. "Irrigation season" is only relevant because it happens to coincide with Idaho Power's peak power demands on its system. "Majority" is problematic because what is really contemplated is that it would provide "all" of its generation during peak demands, and, correspondingly, not provide deliveries when the power is not needed in off-peak hours and seasons. For example, "majority" could mean that the project provides 51 percent of its deliveries during the peak summer season, but also that it delivers 49 percent during non-peak times, when the power is not needed, and the utility's avoided cost is much less, or even negative. In contrast to a "true" canal drop hydro that *only* provides generation during the peak summer season, the project with a simple "majority" of 51 percent will have a significantly different capacity factor and avoided cost. While recognizing that some projects may fall somewhere in between where they do actually provide most of their generation during the irrigation season, but still have some amount

of year round off-peak generation, Idaho Power proposes that only those canal drop hydro projects whose off-season, off-peak generation is *de minimis* when compared to their in-season, on-peak generation be qualified to receive the higher capacity factor, "canal drop hydro" published avoided rate.

That being said, Idaho Power recognizes that this definition has not been a source of disagreement or conflict in the past, and since the record before the Commission did not directly address or confront this particular definition, that perhaps the best course of action is to leave the definition as it exists and address any issues that may arise with a particular project's qualification as a "canal drop hydro" facility on a case-by-case basis according to the project's actual generation profile and capacity factor.

IV. IDAHO POWER'S PETITION FOR CLARIFICATION

Idaho Power filed a Petition for Clarification and/or Reconsideration seeking clarification regarding: (1) the methodology and inputs utilized to establish the published avoided cost rates that appear as Attachments A, B, and C to Order No. 32697; (2) the Commission's finding that curtailment under 18 C.F.R. § 304(f) "was not reasonably contemplated when the parties entered into their agreements"; (3) the Commission's use of the terms "contract extensions or renewals"; and (4) whether the June 1 date for the update of the SAR published rates and the IRP fuel price and load forecasts is the most appropriate date.

Since filing its Petition for Clarification and/or Reconsideration on January 8, 2013, Idaho Power has obtained from Commission Staff additional information regarding the methodology and inputs utilized in the published rate avoided cost rate calculations as referenced above, and in its Petition as item (1). It appears that, with

the exception of the natural gas prices and the Levelized Carrying Cost (\$/MWh), the inputs are identical to the inputs established in Commission Order No. 32337 dated August 30, 2011, which established the previous published avoided costs values. The natural gas forecast utilized in the published avoided cost calculations appears to be the Mountain Region Natural Gas forecast as published in the Energy Information Administration's (EIA) 2012 Annual Energy Outlook report as directed by Order No. 32697. The Levelized Carrying Cost (\$/MWh) input is a calculation based upon the capacity factor applied to each resource type. As Order No. 32697 specified that a unique capacity factor be applied to each resource type, it is appropriate that this input component be different than the previous established value. In reviewing calculations within the provided model, it appears these revised inputs are working correctly. Idaho Power agrees this is the appropriate application of Commission Order No. 32697, as this Order instructed the continued use of the SAR model for creation of published avoided cost for eligible projects with only modifications to the natural gas forecast and the use of resource specific capacity factors. Idaho Power asks for this clarification/confirmation from the Commission.

The Commission ordered that QFs only receive payment for capacity at such time as the utility becomes capacity deficient. Order No. 32697 at p. 21. Idaho Power's currently approved 2011 IRP shows the first capacity deficiency of approximately 1 megawatt ("MW") occurs for 1 hour in July 2014. The *de minimis* nature of this deficit dictated that it be ignored in the IRP because a utility would not plan to bring a new resource on-line to cover such a small projected deficit. In 2015, the July deficit is 80 MW, which is covered by an assumed market purchase on the east side of Idaho Power's system. In the IRP, Idaho Power typically only assumes purchases from the

Pacific Northwest market are used to serve load. Although a purchase from the east would likely be more expensive on a \$/MWh basis, the small number of hours required to cover the 2015 deficit would have little impact on total cost and, again, it would not make sense for a utility to bring a new resource on-line for such a small deficit that could be covered by other means. The first resource addition in the 2011 IRP is the Boardman to Hemingway project in 2016. In reviewing the published avoided cost calculations provided by staff, it appears that the Commission has included capacity payment in the published rate tables, Attachment A, starting in 2014. Idaho Power asks for clarification as to how the capacity sufficient period was established for the computation of the published avoided cost rates directed by Order No. 32697.

Additionally, Order No. 32697 directs that published rates will be differentiated based upon resource type stating, "We find that implementation of a separate resource-specific capacity factor is an appropriate way to value when a QF is able to generate and deliver energy to a utility." Order No. 32697 at p. 15. Commission Staff utilized resource specific capacity factors derived from a combination of capacity factors provided in the Northwest Power & Conservation Council's 6th Power Plan and on-peak capacity factors provided in testimony to this case. The capacity factors used by Staff are:

Wind	5%
Solar	35%
Hydro	25%
Canal Drop Hydro	100%
Other	100%

Idaho Power provided the following resource specific capacity factors in testimony:

Wind	3.9%
Solar	33.2%
Canal Drop Hydro	67.1%
Base load	92%

Stokes Direct, Ex. No. 3, p. 18. Idaho Power's capacity factors, above, for wind, solar, and canal drop hydro were calculated based upon actual data from existing and proposed projects. *Id.* at pp. 24, 30, and 42. The base load capacity factor was calculated assuming a resource that could control operations and fuel supply to enable the project to plan to operate at 100 percent during peak-hours. An 8 percent forced outage rate for a base load resource as identified in the Northwest Power and Conservation Council's 6th Power Plan was deducted from the 100 percent capacity factor to establish an expected capacity factor of 92 percent for a base load project. *Id.* at p. 18.

Idaho Power respectfully asks the Commission to clarify/reconsider the resource-specific capacity factors utilized in the SAR published avoided cost rate calculation for the "canal drop hydro" and for "other" project category. The record indicates that based upon data from projects on Idaho Power's system, the capacity factor for canal drop hydro is 67.1 percent, as opposed to the 100 percent capacity factor utilized in the present calculation. Idaho Power is unsure of the basis for utilizing a 100 percent capacity factor, especially since Idaho Power's data suggests 67 percent for canal drop hydro projects. Idaho Power asks that the Commission direct the use of a 67 percent capacity factor for canal drop hydro projects in the SAR published avoided cost rate model rather than the 100 percent presently being used.

Idaho Power equates the "other" category established by the Commission to be the resources that Idaho Power has identified as "base load." These projects are generation resources that tend to deliver the same level of energy on an hourly basis in

all hours, all days, and for the full-term of the contract. For example, wood waste, anaerobic digesters, landfill gas, waste to energy, and geothermal projects. Idaho Power does not disagree that these resource types tend to be continuous, flat running, base load generation resources. However, it is not reasonable to assume that no project will achieve a perfect 100 percent capacity factor and will never have any outages during Idaho Power's peak energy need period during the 20-year contract term as is implied by the suggested use of a 100 percent capacity factor. Additionally, the Northwest Power Planning Council's 8 percent forced outage rate is a fair and reasonable source to provide the appropriate adjustment. Idaho Power asks that the Commission direct the use of a 92 percent capacity factor for "other," or base load, projects in the SAR published avoided cost rate model rather than the 100 percent presently being used.

V. REVISIONS TO THE IRP METHODOLOGY

Simplot/Clearwater seeks reconsideration of the Commission's adoption of Idaho Power's proposed modifications to the IRP methodology. Simplot/Clearwater has failed to demonstrate that the Commission's findings are unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331. The Commission's findings are based upon substantial and competent evidence in the record. The Commission regularly pursued its authority and acted well within its discretion to set a methodology aimed at determining an accurate avoided cost rate. Reconsideration should be denied.

If the Commission's findings are supported by substantial, competent evidence, the Court must affirm those findings. *Industrial Customers of Idaho Power v. Idaho PUC*, 134 Idaho 285, 288, 1 P.3d 786, 789 (2000), even if the Court would have made a different choice had the matter been before it *de novo*. *Hulet v. Idaho PUC*, 138 Idaho

476, 478, 65 P.3d 498, 500 (2003). Substantial, competent evidence is defined as more than a mere scintilla, but something less than the weight of the evidence. *Industrial Customers*, 134 Idaho at 292-93, 1 P.3d at 793-94.

Simplot/Clearwater has done little more than point to their own (Mr. Reading) and another party's witnesses' (Mr. Schoenbeck) conflicting testimony that was rejected by the Commission in favor of the testimony offered by Idaho Power and Commission Staff. Simplot/Clearwater further has mischaracterized Idaho Power witness Karl Bokenkamp's testimony apparently in the hope that inflammatory references to his testimony will somehow discredit it. However, at hearing, Simplot/Clearwater had no cross-examination of any substance regarding these issues for Mr. Bokenkamp, and had no questions whatsoever for Idaho Power witness William H. Hieronymus, who also testified in favor of Idaho Power's methodology.

Simplot/Clearwater's argument for reconsideration is a *non sequitor*. It argues that somehow because the Commission found the previously approved IRP methodology to be reasonable ("... we find that the IRP models used by each individual utility produce reasonable avoided cost rates consistent with PURPA and FERC regulations." Order No. 32697 at p. 20) and determined to retain a SAR-based published rate methodology for projects below the published rate eligibility cap (Order No. 32697 at p. 14) that ordering Idaho Power's proposed changes to the IRP methodology "is perplexing." Simplot/Clearwater Petition at p. 7 ("The inconsistency is perplexing."). Simplot/Clearwater carries this flawed reasoning further by both misstating Mr. Bokenkamp's testimony and insinuating that Federal Energy Regulatory Commission ("FERC") requires a two-run comparative methodology. Simplot/Clearwater Petition at pp. 8-9.

Mr. Bokenkamp's testimony did not state that the previously approved (two-run) IRP methodology was inconsistent with FERC's avoided cost rule, as stated in Simplot/Clearwater's Petition at p. 8. In Mr. Bokenkamp's testimony, he stated that Idaho Power's proposed changes to the IRP methodology is better aligned with FERC's definition of avoided cost because it focuses upon the incremental cost the utility would incur but for the purchase from the QF to either generate the power itself or purchase it elsewhere. Bokenkamp Direct at pp. 9-10. Mr. Bokenkamp testified that the previously approved IRP methodology relies too heavily upon forecasts of future market prices and because the two-run method, as implemented by Idaho Power, holds Idaho Power's other resources at the same output levels, it forces QF pricing to either displace a market purchase or supply a market sale. *Id.* at pp. 7, 19-20. In contrast, the single-run methodology more properly focuses the methodology on what FERC directs it to be, the incremental cost of utility generation or purchases that would occur but for the QF purchase. *Id.* at pp. 8-10, 33.

Similarly, the quoted passage from FERC Order 69 (Simplot/Clearwater Petition at pp. 8-9) does not require the use of a two-run methodology, nor prohibit the use of the approved single-run methodology. The quoted FERC language discusses, "One way of determining the avoided cost" FERC Order No. 69, Simplot/Clearwater Petition at 8-9. FERC then describes a generic two-run type of methodology similar to the previously approved IRP methodology in Idaho, but not specific to it. In fact, Idaho Power witness Dr. Hieronymus also testified about this comparative type of avoided cost methodology, along with approximately four other groups of different avoided cost methodologies employed by the various states. Simplot/Clearwater's inference that the previously approved methodology must be wholly inconsistent with FERC regulations,

or illegal, in order to authorize this Commission to make changes to the methodology is wrong.

Simplot/Clearwater further misstates the record by referring to “surplus sales *made possible* by QF purchases.” Simplot/Clearwater Petition at p. 7 (emphasis in original). Simplot/Clearwater’s statement that QF purchases make possible surplus sales that actually benefit customers is unsupported in the record. In fact, the evidence in the record shows the opposite, that required QF purchases do not enable surplus sales, but cause sales—necessary because of the must take provisions of PURPA regardless of need or price—at a loss, not a gain, and harms customers contrary to PURPA’s requirement to hold customers indifferent in the QF purchase. Stokes Direct at p. 18. Idaho Power provided substantial evidence of this that was un-rebutted in the record. See Stokes Direct at pp. 14-26; Park Direct at pp. 3-14.

Finally, Simplot/Clearwater insinuated that the Commission’s findings approving Idaho Power’s proposed changes to the IRP methodology were sparse and somehow failed to fully consider the entirety of the “highly complex and multi-faceted issue.” Simplot/Clearwater Petition at pp. 5-6. The Commission’s findings do not need to be voluminous and contain an all-inclusive, exhaustive, and specific discussion adopting and/or rejecting each position put forth to it at hearing and in the proceeding in order to be valid and proper findings, supported by substantial competent evidence. In fact, the Commission’s findings here with regard to this issue are quite clear:

The IRP Methodology recognizes the individual generation characteristics of each project by assessing when the QF is capable of delivering its resources against when the utility is most in need of such resources. We find the resultant pricing is reflective of the value of the QF energy being delivered to the utility [W]e find that the IRP models used by each individual utility produce reasonable avoided

cost rates consistent with PURPA and FERC regulations. Idaho Power proposed revisions to the IRP Methodology that focus on identifying the incremental costs that its system would incur, i.e., a single-run simulation, rather than its current methodology that is primarily predicated on making surplus sales at the future market prices developed within the AURORA model, i.e., a two-run simulation The Commission finds Idaho Power's proposed modifications to the IRP Methodology reasonable. We agree that the Company's revisions properly focus the determination of avoided costs on incremental costs, not solely on the value of potential market sales. The result, we find, is a more accurate avoided cost. Moreover, we find that the modified methodology comports with the definition of avoided cost contained in FERC regulations.

Order No. 32697 at pp. 20-21.

The above-referenced findings are supported by substantial competent evidence in the record, and are squarely within the Commission's authority and expertise to make. Simplot/Clearwater has failed to show that these findings are unreasonable, unlawful, erroneous, or not in conformity with the law. Reconsideration should be denied.

VI. RENEWABLE ENERGY CREDITS

RNP, ICL, and Simplot/Clearwater each seek reconsideration regarding the Commission's determination regarding utility ownership of RECs. RNP and Simplot/Clearwater challenge the Commission's determination as to the utility's 50 percent ownership of RECs for projects that are priced pursuant to the IRP avoided cost pricing methodology. ICL additionally argues that the Commission is without the jurisdiction or authority to make a determination of REC ownership. The Commission clearly has subject matter jurisdiction to make determinations regarding the ownership of RECs in the federally required purchase of power by a regulated utility from a PURPA QF. Once jurisdiction is clear, the Commission is allowed all power that is either

expressly granted by statute or which may fairly be implied to effectuate its purpose. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 418, 690 P.2d 350, 353 (1984). The Commission regularly pursued its authority and acted within its discretion to allocate ownership of RECs pursuant to the avoided cost methodology applicable to each QF project. Reconsideration should be denied.

A. The Commission Has Subject Matter Jurisdiction.

The Commission clearly has subject matter jurisdiction to make determinations regarding the ownership of RECs in the federally required purchase of power by a regulated utility from a PURPA QF. The only party to raise issue with the Commission's determination that it has the jurisdiction and authority to decide the ownership of RECs as it pertains to the required purchase of power by a regulated utility from a PURPA QF is ICL.

Idaho Power provided numerous legal authorities that support the Commission's subject matter jurisdiction. Idaho Power's Legal Brief at pp. 69-79. Without unnecessarily repeating those arguments and recitation of authorities contained in the record here, in sum, FERC, numerous state commissions, the U.S. Court of Appeals for the Second Circuit, the Connecticut Supreme Court, the West Virginia Supreme Court, the Court of Appeals in Pennsylvania, the Court of Appeals in New Jersey, and the Idaho Commission all agree that ownership of RECs is decided by states even in the context of a PURPA power sale. Idaho Power is not aware of any decision in any jurisdiction suggesting that states do not have the authority to determine ownership of RECs as an initial matter.

Additionally, the Commission through its organic, or enabling, statutes—including the power to investigate and fix rates and regulations (I.C. § 61-503), the responsibility

to determine the reasonableness of rates (I.C. § 61-502), the responsibility to determine rules and regulations affecting the performance of public utilities (I.C. § 61-507), the responsibility to approve transfers of utility property (I.C. § 61-328), and the responsibility to approve the terms and conditions of PURPA contracts—has organic authority to consider and decide the ownership of RECs, as similar states have found for their respective commissions. (West Virginia, Connecticut, and Wyoming).

The Commission clearly has subject matter jurisdiction to make determinations regarding the ownership of RECs in the federally required purchase of power by a regulated utility from a PURPA QF and, as such, it is allowed all power that is either expressly granted by statute or which may fairly be implied to effectuate its purpose.

B. The Commission's Allocation of RECs.

Simplot/Clearwater, ICL, and RNP all seek reconsideration of the Commission's determination that QF projects that obtain avoided cost rates determined by the IRP methodology half of the RECs are owned by the utility. Once jurisdiction is clear, the Commission is allowed all power that is either expressly granted by statute or which may fairly be implied to effectuate its purpose. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 418, 690 P.2d 350, 353 (1984). On questions of law, review is limited to the determination of whether the Commission has regularly pursued its authority. *A.W. Brown Company v. Idaho Power Company*, 121 Idaho 812, 815, 828 P.2d 841, 844 (1992); *Hulet*, 138 Idaho at 478, 65 P.3d at 500. The Commission Order or ruling will not be set aside unless it has failed to follow the law or has abused its discretion. *Application of Boise Water Corp.*, 82 Idaho 81, 86, 349 P.2d 711, 713 (1960)(citing cases).

Again, Idaho Power provided voluminous citation to authority and argument in its legal brief addressing the Petitioners' claims relative to RECs put forth in the Petitions for Reconsideration. Idaho Power's Legal Brief at pp. 79-97. Just as the Petitioner's advocated that the Commission determine the QF the owner of RECs, Idaho Power advocated that the utility be determined the owner of RECs in the initial instance. Simplot/Clearwater asks on reconsideration that the Commission declare that QFs own all RECs. ICL and RNP ask the Commission to establish an additional briefing schedule on reconsideration regarding the Commission's decision that the utility owns half of the RECs when contracting with QFs pursuant to the IRP methodology.

The Commission should deny reconsideration. However, should the Commission determine to grant reconsideration as to the issues raised by Petitioners, Idaho Power respectfully hereby Cross-Petitions for Reconsideration and will present testimony, evidence, argument, and legal authority supporting its position as set forth and advocated in the proceedings before the Commission. RP 331.

VII. CONCLUSION

Idaho Power agrees that the Commission should clarify Order No. 32697 by issuing SAR-based avoided cost rate tables, similar to those that appear in Attachment A to Order No. 32697, that show the full payment without the capacity sufficient period applicable to existing QF projects that enter into new contracts with the same utility, and were receiving capacity payments in their previous contracts, as discussed in Order No. 32697. Additionally, Idaho Power asks that the Commission clarify/reconsider the resource-specific capacity factors utilized in the SAR published avoided cost rate calculation for the "canal drop hydro" and for "other" project categories to be 67 percent for canal drop hydro and 92 percent for other.

Petitioner's have failed to demonstrate that the Commission's Order No. 32697, or any issue decided in that Order, is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331. The Commission's Order No. 32257 is based upon substantial and competent evidence in the record. The Commission regularly pursued its authority and was acting within its discretion to protect the public interest. Reconsideration should be denied.

Should the Commission determine to grant reconsideration as to the issues raised by Petitioners, Idaho Power respectfully hereby Cross-Petitions for Reconsideration and will present testimony, evidence, argument, and legal authority supporting its position as set forth and advocated in the proceedings before the Commission. RP 331.

Respectfully submitted this 15th day of January 2013.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of January 2013 I served a true and correct copy of the IDAHO POWER COMPANY'S RESPONSE TO PETITIONS FOR RECONSIDERATION, RESPONSE TO PETITION FOR CLARIFICATION, AND CROSS-PETITION FOR RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

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