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 IDAHO PUBLIC
 UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE)	
COMMISSION'S REVIEW OF PURPA QF)	CASE NO. GNR-E-11-03
CONTRACT PROVISIONS INCLUDING)	
THE SURROGATE AVOIDED)	MEMORANDUM IN SUPPORT OF
RESOURCE (SAR) AND INTEGRATED)	IDAHO POWER COMPANY'S
RESOURCE PLANNING (IRP))	MOTION FOR A TEMPORARY
METHODOLOGIES FOR CALCULATING)	STAY OF ITS OBLIGATION TO
PUBLISHED AVOIDED COST RATES.)	ENTER INTO NEW POWER
)	PURCHASE AGREEMENTS WITH
)	QUALIFYING FACILITIES
)	
)	EXPEDITED REVIEW REQUESTED
)	

Pursuant to Idaho Public Utilities Commission ("Commission") Rules of Procedure ("RP") 56 and 256, Idaho Power Company ("Idaho Power" or "Company") filed a motion ("Motion") requesting that the Commission issue an order placing a temporary stay on Idaho Power's obligation under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA") and various Commission Orders to enter into fixed-price PURPA contracts with Qualifying Facilities ("QF"), other than pursuant to Schedule 86. The Motion requests this stay take effect no later than March 15, 2012, and remain in effect for the remainder of the above-captioned general

proceeding investigating the Surrogate Avoided Resource (“SAR”) and Integrated Resource Planning (“IRP”) methodologies for calculating avoided cost rates.

Idaho Power requests this temporary stay to ensure that Idaho Power is not forced to acquire additional excessive amounts of QF output at prices that exceed Idaho Power’s avoided cost. The general proceeding has already revealed that: (1) current SAR and IRP methodologies result in prices significantly in excess of Idaho Power’s avoided cost; (2) these inaccurate price signals have caused a surge of new QF contract applications; (3) this surge has dramatically increased the amount of QF output under contract and threatens to grow even more before GNR-E-11-03 can be completed; and (4) this is very harmful to Idaho Power’s customers and leads to results contrary to PURPA. As of the date of its Motion, Idaho Power has received serious inquiries from developers of QF projects totaling nearly 600 megawatts (“MW”) of new capacity, which the developers may seek to force Idaho Power to purchase prior to the end of the Commission’s avoided cost rate investigation. Idaho Power expects a rush by those developers as well as new developers seeking power purchase agreements at current rates once they become aware of Idaho Power’s Motion.

Idaho Power’s direct testimony in this matter establishes that it currently has 119 Commission-approved QF power purchase agreements that represent nameplate capacity of 989 MW and with a contractual obligation of more than \$3.6 billion. Stokes, Direct, Ex. Nos. 1 and 2. The large increase in QF projects on-line and under contract since 2004 is expected to increase the power supply expense passed on to customers through the Company’s annual Power Cost Adjustment from approximately \$40 million in 2004 to approximately \$60 million in 2009, and will increase to more than \$120 million in 2012. Stokes, Direct, p. 9-10. The 27 QF projects that are currently seeking power

purchase agreements with Idaho Power represent *an additional* 595 MW of generation at a monetary obligation to customers of *an additional* \$2.7 billion over the numbers submitted in Idaho Power's direct testimony in this case. Affidavit of Randy C. Allphin, Attachment Nos. 1 and 2. A stay on Idaho Power's duty to enter into new fixed-price PURPA contracts (or one of the alternative forms of relief sought in the Motion) is necessary in order to protect customers and avoid further results which are contrary to PURPA during the pendency of this case.

I. APPLICABLE LAW

Sections 201 and 210 of PURPA require electric utilities to offer to purchase electric energy from qualifying cogeneration and small power production facilities.¹ PURPA also specifies that the purchase rates from QFs be set by state commissions and that those rates may not exceed the incremental cost to the electric utility of alternative electric energy.² PURPA defines incremental cost (avoided cost) as the cost to the electric utility of the electric energy which, but for the purchase from QFs, the utility would generate itself or purchase from another source.³ PURPA requires state commissions to ensure that the avoided cost rates paid by a utility for the purchase of electricity from a QF be just and reasonable to utility customers and in the public interest.⁴ State commissions are prohibited from setting a rate for purchases from a QF

¹ 16 U.S.C. § 796 (2011) and 16 U.S.C. § 824a-3 (2011), respectively.

² 16 U.S.C. § 824a-3(b).

³ 16 U.S.C. § 824a-3(d).

⁴ 16 U.S.C. § 824a-3(b)(1) & (2).

that is above a utility's avoided cost.⁵ The Commission is responsible for implementing PURPA in Idaho and determining the avoided cost rate for Idaho utilities.⁶

II. PROCEDURAL HISTORY

On November 5, 2010, Idaho Power, Avista Corporation, and PacifiCorp dba Rocky Mountain Power filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues related to the Commission's implementation of PURPA. At the same time, the utilities also moved for an immediate reduction in the published avoided cost rate eligibility cap, from 10 average megawatts ("aMW") down to 100 kilowatts ("kW"). A stated purpose of the Joint Petition was to provide interim relief (while the Commission carried out an investigation) from new PURPA contract requests from developers that were disaggregating large projects into 10 aMW projects in order to qualify for published avoided cost rates. Joint Petition, p. 5, Case No GNR-E-10-04.

On December 3, 2010, the Commission issued Order No. 32131, in which it declined to reduce the eligibility cap immediately, but instead gave notice that it would investigate issues related to avoided cost pricing, starting with the issue of disaggregation (Phase I), and that its final decision whether to reduce the eligibility cap would become effective on December 14, 2010. *Id.* at 5-6, 9.

On February 17, 2011, after soliciting comments from interested parties and hearing oral argument, the Commission ordered a temporary reduction in the published avoided cost rate eligibility cap, from 10 aMW down to 100 kW, for wind and solar projects only. Order No. 32176 at 1-2. The temporary cap reduction became effective

⁵ 18 CFR § 292.304(a)(2) (2011).

⁶ 16 U.S.C. § 824a-3(f)(1); *A.W. Brown Co., Inc. v. Idaho Power Co.*, 121 Idaho 812, 814, 828 P.2d 841, 843 (1992).

as of December 14, 2010, and was to remain in place pending the outcome of Phase II of the Commission's investigation. Shortly thereafter, on February 25, the Commission initiated Phase II of its investigation into disaggregation and PURPA published avoided cost rates. Order No. 32195. Phase II concluded on June 8, 2011, with the Commission's final order maintaining the 100 kW eligibility cap for wind and solar projects. Order No. 32262, Case No. GNR-E-11-01.

On September 1, 2011, the Commission commenced Phase III—an investigation of both the SAR methodology and the IRP methodology used by the utilities to calculate avoided cost rates in order to ensure that avoided cost rates are just and reasonable. Order No. 32352, Case No. GNR-E-11-03. On December 15, 2011, the Commission hosted a workshop wherein the utilities presented to the Commission and other parties how it develops avoided cost prices using its IRP methodology. On January 31, 2012, the utilities filed direct testimony in Phase III. Formal proceedings in Phase III are scheduled to adjourn August 9, 2012. Order No. 32388.

III. BACKGROUND AND RELEVANT FACTS

A. Recent PURPA Acquisitions by Idaho Power Surpass Its Energy and Capacity Needs.

PURPA requires that utilities offer to purchase output from QFs.⁷ Although Idaho Power has been subject to PURPA for more than 30 years, Idaho Power's QF purchases under long-term, fixed price, contracts have mushroomed in the last seven years. From 2004 through January 31, 2012, Idaho Power's contracted PURPA generation grew from 157 MW to 989 MW⁸, which is far more QF generation than any

⁷ PURPA § 210(d), 16 U.S.C. § 824a-3(d).

⁸ Idaho Power Co. Direct Test. M. Mark Stokes at 12 (Jan. 31, 2012) ("Direct Test. Stokes") in IPUC Case No. GNR-E-11-03 (Idaho Power's ratio of PURPA nameplate capacity to annual average load is 53.2 percent; PacifiCorp's is 12.9 percent, and Avista's is 9.3 percent.)

other electric utility in the Pacific Northwest. Idaho Power's 989 MW of current and contracted QF generation nearly surpasses the total minimum loads on Idaho Power's entire system and represents approximately 53 percent of Idaho Power's 1,859 MW average load. This ratio is more than four times higher than that of Idaho's two other investor-owned utilities—PacifiCorp and Avista.⁹ The large majority of Idaho Power's existing QF power purchase agreements do not expire before 2026.¹⁰

Idaho Power has no projected need for new capacity until 2015 (except for peak hours in July) and has a current annual average energy surplus of 526 aMW.¹¹ Consequently, much of the QF output delivered to Idaho Power will never serve Idaho Power's native load. Idaho Power's QF contracts require it to buy QF output whether it is needed or not. When Idaho Power cannot displace its own resources to make room for QF generation, it must sell power to the market—often at a substantial loss. Idaho Power estimates that it costs \$18 million annually in transmission related and firming costs to dispose of surplus QF output that is not needed to serve Idaho Power's load.¹² These costs are not reflected in the avoided cost payments made to QFs under the current SAR and IRP methodologies.

Idaho Power's recent QF purchases also conflict with published resource acquisition goals. The IRP Advisory Council and members of the public participating in the IRP process have agreed for some time that wind generation is not a good choice for Idaho Power because it cannot be counted on to meet the Company's peak

⁹ *Id.*

¹⁰ *Id.* at 9-10.

¹¹ *Id.* at 17.

¹² *Id.* at 19. The \$18 million represents the cost of transmission expenses necessary to resell excess QF energy.

demands, cannot be reduced during times of system surplus, and increasingly taxes the utility's regulating resources as the total amount of wind on the system increases. Accordingly, the preferred portfolio in Idaho Power's 2011 IRP does not include any new wind resources during the next 20 years. In spite of the general consensus that Idaho Power does not need more wind generation at this time, wind generation accounts for the vast majority of new QF generation coming on-line by 2014.¹³ Continued purchases of wind generation, and other must-buy intermittent QF generation, may force Idaho Power to acquire additional dispatchable resources solely to regulate QF generation.¹⁴

B. QF Development in Idaho Since the Commission's June 8, 2011, Order No. 32262 and During the Pendency of this Case Has Continued at an Alarming Rate.

In the November 5, 2010, Joint Petition, Idaho Power informed the Commission that its electrical system was becoming inundated with a large volume of unneeded QF energy that was being acquired at rates that exceed the cost of other available sources of generation available to the Company, causing operational and system reliability problems, and ultimately harming customers by greatly increasing the Company's overall power supply costs. To combat the practice of disaggregation, where large projects would configure into 10 aMW increments in order to qualify for published avoided cost rates and to avoid application of the negotiated avoided cost rate methodology applicable to projects larger than 10 aMW, the Commission lowered the eligibility cap for published avoided cost rates for wind and solar QFs from 10 aMW to 100 kW.¹⁵ It was believed that by reducing the cap for wind and solar projects that the

¹³ *Id.* at 23-24.

¹⁴ Idaho Power Co. Direct Test. Park at 8 (Jan. 31, 2012) in IPUC Case No. GNR-E-11-03.

¹⁵ Order No. 32262, Case No. GNR-E-11-01.

rapid proliferation and development of excess and unneeded QF generation sold to utilities at rates above the cost at which utilities could generate or otherwise acquire that same amount of energy while the Commission conducted its investigation of the SAR and IRP methodologies would stop. However, this has not turned out to be the case for Idaho Power. Between Order No. 32262 on June 8, 2011, and March 9, 2012, Idaho Power has submitted for Commission approval four QF power purchase agreements comprising 83.27 MW of new capacity.¹⁶ Those projects are:

- **Interconnect Solar - 20 MW Solar - \$94.59/megawatt-hour ("MWh")**. On June 17, 2011, Idaho Power submitted a 25-year power purchase agreement with Interconnect Solar Development, LLC ("Interconnect Solar") on a new 20-MW photovoltaic QF.¹⁷ The purchase price determined using Idaho Power's IRP methodology is equivalent to a 25-year levelized price of \$94.59 per MWh.¹⁸ The Commission approved this application October 26, 2011.¹⁹
- **High Mesa Wind - 40 MW Wind - \$56.43/MWh**. On November 22, 2011, Idaho Power submitted a 20-year power purchase agreement with High Mesa Energy Project, LLC ("High Mesa") on a new 40 MW wind generating facility.²⁰ The purchase price determined using Idaho Power's IRP methodology is equivalent to a 20-year levelized price of \$56.43 per MWh.²¹ The Commission approved this application February 17, 2012.²²

¹⁶ Direct Test. Stokes at 13.

¹⁷ *In the Matter of the Application of Idaho Power Co. for Firm Energy Sales Agreement with Interconnect Solar Dev. LLC*, IPUC Case No. IPC-E-11-10, Order No. 32384, 1 (2011) ("*Interconnect Solar Dev.*").

¹⁸ *Id.*, at 3.

¹⁹ *Id.* Idaho Power provided notice to the Commission on February 23, 2012, in Case No. IPC-E-11-10 that it terminated the Firm Energy Sales Agreement with Interconnect Solar Development, LLC, for failure to post required delay security. Interconnect Solar has since filed a complaint with the Commission seeking reinstatement of the Agreement.

²⁰ *In the Matter of the Application of Idaho Power Co. for Firm Energy Sales Agreement with High Mesa, LLC*, IPUC Case No. IPC-E-11-26, Order No. 32462 (2012) ("*High Mesa*").

²¹ *Id.*

²² *Id.*

- **Dynamis Energy - 22 MW Landfill Waste-to-Energy - \$92.35/MWh.** On November 22, 2011, Idaho Power submitted a 20-year power purchase agreement between Idaho Power and Dynamis Energy, LLC (“Dynamis”) on a new 22 MW landfill waste-to-energy generating facility.²³ The purchase price determined using Idaho Power’s IRP methodology is equivalent to a 20-year levelized price of \$92.35 per MWh.²⁴ The Commission approved the Dynamis application on February 24, 2012.²⁵
- **Riverside Investments - 1.27 MW Hydro - \$73.44/MWh.** On December 6, 2011, Idaho Power submitted a 20-year power purchase agreement with Riverside Investments, LLC (“Riverside”) on a new 1.27 MW canal drop hydroelectric generating facility.²⁶ The purchase price determined using Idaho Power’s SAR methodology and prices adopted on August 30, 2011, is equivalent to a 20-year levelized price of \$73.44 per MWh.²⁷ The Commission approved this application February 1, 2012.

These Interconnect Solar, High Mesa, and Dynamis contracts were some of the first contracts Idaho Power priced using the IRP methodology since the Commission ordered the published rate cap reduction.²⁸ In each of those cases, Commission Staff (“Staff”) recommended that the Commission not approve the contracts because it believed the application of the IRP avoided cost pricing methodology was resulting in

²³ Comments Commn. Staff at 3 (Feb. 2, 2012) in *In the Matter of the Application of Idaho Power for Firm Energy Sales Agreement with Dynamis Energy, LLC*, IPUC Case No. IPC-E-11-25 (“Staff Comments in Dynamis”).

²⁴ *Id.*

²⁵ *In the Matter of the Application of Idaho Power for Firm Energy Sales Agreement with Dynamis Energy, LLC*, IPUC Case No. IPC-E-11-25, Order No. 32470 (2012).

²⁶ *In the Matter of the Application of Idaho Power Co. for Firm Energy Sales Agreement with Riverside Investments, LLC*, IPUC Case No. IPC-E-11-27, Order No. 32451 (2012).

²⁷ *In the Matter of the Adjustment of Avoided Cost Rates for New PURPA Contracts for Avista Corp., Idaho Power Co. and PacifiCorp*, IPUC Case No. GNR-E-11-04, Order No. 32337 (2011) (“Adjustment of Avoided Cost GNR-E-11-04”); Staff Comments in Dynamis at 3 (reporting the levelized price).

²⁸ Comments Commn. Staff at 2 (Sept. 9, 2011) in *In the Matter of the Application of Idaho Power Co. for Firm Energy Sales Agreement with Interconnect Solar Dev. LLC*, IPUC Case No. IPC-E-11-10 (“Staff Comments in Interconnect Solar”).

prices that were excessive.²⁹ Staff identified numerous problems with the IRP methodology used by Idaho Power to calculate the Interconnect Solar prices. Adoption of Idaho Power's proposals in Case No. GNR-E-11-03 for modifications to the SAR and IRP methodologies would satisfactorily address Staff's concerns, on a going-forward basis. But this proceeding will take approximately six more months or more to complete.

In the meantime, many new QFs (from Idaho and elsewhere) continue to apply for overpriced QF contracts with Idaho Power. As of March 7, 2012, Idaho Power has open inquiries from 27 potential new QF projects.³⁰ These requests represent an additional 595 MW of generation for a potential total on Idaho Power's system of 1584 MW. Seventeen of these additional QF projects are proposed for the Company's Idaho jurisdiction and represent an additional **\$2.5 billion dollars** worth of additional contractual commitments on behalf of Idaho Power's customers over the next 20 years.³¹ When QF developers receive notice of Idaho Power's Motion, it is expected that many more QFs will attempt to obtain power purchase agreements before the Commission grants interim relief. Each extra day the Commission takes to grant interim relief increases the risk of harm (in the form of overpriced 20-year power purchase agreements) to Idaho Power's customers.

IV. ARGUMENT

If Idaho Power must continue to negotiate and enter into power purchase agreements during the pendency of this case without the relief requested herein, the

²⁹ Staff Comments in Interconnect Solar, at 10; Comments Commn. Staff at 10 (Jan. 26, 2012) in *In the Matter of the Application of Idaho Power Co. for Firm Energy Sales Agreement with High Mesa, LLC*, IPUC Case No. IPC-E-11-26; Staff Comments in Dynamis at 10.

³⁰ Affidavit of Randy C. Allphin ("Allphin Affidavit"), ¶ 3.

³¹ *Id.*

contract prices derived under current SAR and IRP methodologies will exceed Idaho Power's avoided cost. The resulting contracts will cause substantial harm to customers, will be contrary to the public interest, and will violate PURPA.

A. The Rates Generated by Idaho Power's Current IRP Methodology Are Not Accurate.

The evidence set forth in GNR-E-11-03 (including this Memorandum) demonstrates to a high probability that Idaho Power's rates under both its SAR and IRP methodologies exceed the cost at which it would procure such energy from another source and that the high rates have caused an overabundance of new QF projects selling to Idaho Power resulting in direct and substantial harm to Idaho Power's customers.

1. Idaho Power Does Not Need New QF Output to Serve Load.

As of June 2011, Idaho Power had an annual energy surplus of 526 aMW and projected it would not need any capacity until 2015, except during peak hours in July. Since June 2011, and during the pendency of this case, Idaho Power has executed contracts with four different QF projects for an additional 83.27 MW of QF generation, further increasing this generation surplus.³² The fact that Idaho Power has been required to enter into long-term, fixed-price contracts for quantities of QF output well in excess of what Idaho Power can use is a strong indication, in and of itself, that Idaho Power's avoided cost rates are too high and need to be reformed.³³

³² *Supra* nn. 12-17 and accompanying text (discussing recently executed contracts).

³³ Idaho Power Co. Direct Test. William H. Hieronymus at 13 (Jan. 31, 2012) in IPUC Case No. GNR-E-11-03.

2. Staff Found Numerous Defects in the Idaho Power IRP Methodology.

Staff has identified numerous issues causing upward bias in prices calculated using Idaho Power's IRP methodology. Staff's objections to Idaho Power's current IRP methodology include the following:

- **Imputed Capacity Value.** Staff believes that Idaho Power's hourly energy prices generated from its AURORA simulation model have an imputed capacity component, meaning that the AURORA energy prices exceed the true value of energy.³⁴ Staff reasons that the marginal energy prices generated by AURORA permit resources to recover at least some fixed costs whenever they are not operating on the margin and, therefore, the difference between the marginal energy prices and the incremental production costs may appropriately be classified as capacity costs.³⁵ Staff concludes, however, that it does not know at this time how to accurately determine the magnitude of the capacity component imputed to the AURORA energy values.³⁶
- **Timing of Capacity Payments.** Idaho Power credits a new QF resource with capacity benefits during the entire term of the power purchase agreement. Staff believes that Idaho Power should not pay for capacity until it is capacity deficient, as shown in its IRP. If the 2011 IRP applied, for example, Staff recommends zero payment for capacity until 2015—the first year the IRP projects a capacity deficit.
- **Weighted Cost of Capital.** When computing rates in the above agreements, Idaho Power used a seven percent weighted cost of capital—the same number it used in preparing its 2009 IRP. Staff believes it would be more appropriate to use the weighted cost of capital from Idaho Power's last rate case—7.86 percent. Staff's proposed change would cause a slight decrease in calculated avoided cost rates.
- **Type of Avoided Resource.** Idaho Power assumes that the avoided resource used to calculate capacity value is a combined cycle combustion turbine (CCCT). Staff believes that, in the case of solar photovoltaic QFs, a simple cycle combustion turbine (SCCT) is a

³⁴ Staff Comments in Dynamis at 6.

³⁵ Staff Comments in Interconnect Solar at 6.

³⁶ Staff Comments in Dynamis at 6.

more appropriate choice of avoided resource.³⁷ Staff estimates that changing the avoided resource from a CCCT to an SCCT would reduce the levelized price for solar projects by more than \$20/MWh.³⁸

- **Exceedence Value for Peak Capacity Credit.** Idaho Power determines the capacity value of an energy resource based upon its expected generation during its annual peak load hour. Idaho Power uses a 90 percent exceedence factor—meaning that it credits as added capacity the amount of generation from a resource that will be available at least 90 percent of the time during its peak load hour. This is the same method Idaho Power uses to calculate capacity in its IRP. Staff questions whether the 90 percent exceedence criterion used in the IRP for planning purposes is appropriate for use in QF rate determinations.³⁹ A higher exceedence criterion would reduce the calculated capacity value of QF output.
- **Integration Costs.** In Order No. 30488, the Commission authorized Idaho Power to deduct \$6.50 from the calculated avoided cost rate for wind projects to account for regulation and other integration costs. Idaho Power does not assess integration costs to non-wind QFs. Staff asserts that the true integration costs associated with solar QFs are closer to \$6.50/MWh than zero, and believes that the wind integration charge should be applied to solar QF rate calculations.⁴⁰
- **Frequency of Input Updates.** For all IRP inputs derived from the IRP, Idaho Power used the IRP most recently acknowledged by the Commission. Staff, noting that Idaho Power had relied on the 2009 IRP to calculate prices in the above agreements, recommended that the 2011 IRP values be used because they are undeniably more current and could significantly affect prices in the Agreement.⁴¹

In all three recent QF applications containing IRP-based pricing, Staff has recommended disapproval because the resulting prices appear to be excessive.⁴²

³⁷ *Interconnect Solar Dev.*, Order No. 32384 at 4-5.

³⁸ Staff Comments in *Interconnect Solar* at 4.

³⁹ *Id.* at 5.

⁴⁰ *Id.* at 8-9.

⁴¹ *Id.* at 8.

⁴² *Interconnect Solar Dev.*, Order No. 32384; Staff Comments in *Dynamis*; *High Mesa*, Order No. 32462.

Idaho Power generally agrees that there are a number of assumptions in the current IRP methodology that result in calculated rates that are a poor approximation of Idaho Power's avoided cost.

3. Idaho Power's IRP-Generated Prices Are High Relative to PacifiCorp's.

Idaho Power's IRP-derived rates are significantly above the corresponding rates offered by the next largest investor owned utility ("IOU") in Idaho—PacifiCorp. On December 15, 2011, Idaho Power and PacifiCorp gave a workshop presentation to the Commission demonstrating how they apply the IRP methodology to QF requests in Idaho, and the resulting prices calculated for four hypothetical QFs using four different motive forces.⁴³ Table 1, below, summarizes the utilities' calculated rates.⁴⁴

Table 1. Comparison of 20-year prices using current IRP methodologies.

Resource Type ⁴⁵	IRP Price (20-yr, levelized) \$/MWh		Difference	% ⁴⁸
	PacifiCorp ⁴⁶	Idaho Power ⁴⁷		
Baseload	\$55.23	\$65.00	\$9.77	18%
Canal-drop hydro	\$72.75	\$80.31	\$7.56	10%
Fixed PV	\$55.99	\$75.60	\$19.61	35%
Wind	\$33.17	\$43.08	\$9.91	30%

⁴³ Direct Test. Stokes at 32 (discussing presentation). Idaho Power's "Workshop Presentation, Avoided Cost – IRP Methodology" is reproduced as Exhibit No. 3 to Direct Testimony of Stokes.

⁴⁴ Avista did not provide examples of IRP-derived avoided costs in its December 15, 2011, presentation.

⁴⁵ The characteristics of each Resource Type are described at pages 18-47 of Exhibit 3 to Direct Testimony of Stokes.

⁴⁶ Idaho Power Co. Direct Test. Kelcey Brown at 7 (Jan. 31, 2012) in IPUC Case No. GNR-E-11-03.

⁴⁷ Direct Test. Stokes at 32.

⁴⁸ Calculated by dividing the Difference by the PacifiCorp price.

The December 15 presentations, which provide the most current snapshot of IRP-generated prices from Idaho Power and PacifiCorp, illustrate that Idaho Power's prices are between 10 percent and 35 percent higher than those offered by PacifiCorp.

4. Idaho Power's IRP-Generated Prices Are High Relative to Prices Generated After Making Idaho Power's Recommended Modifications.

Idaho Power's current IRP prices also are well above the rates it would offer if the Commission approves the modified methodology it recommends in the Company's testimony in this proceeding. In its direct testimony filed January 31, Idaho Power repeated the simulation of IRP-calculated rates for four different QFs, using the modified approach it is asking the Commission to approve in this proceeding. Table 2, below, summarizes rates for typical resource types using Idaho Power's proposed modified approach.

Table 2. Comparison of Idaho Power IRP prices using current and proposed methodologies.

Resource Type	IRP Price (20-yr, levelized) \$/MWh		Difference	% ⁵⁰
	Current IRP	Modified ⁴⁹		
Baseload	\$65.00	\$47.40	-\$17.60	-27%
Canal-drop hydro	\$80.31	\$59.34	-\$20.97	-26%
Fixed PV	\$75.60	\$51.24	-\$24.36	-32%
Wind	\$43.08	\$32.18	-\$10.90	-25%

The January 31, 2012, testimony illustrates the differences in Idaho Power's IRP-calculated rates using the inputs it believes it is constrained to use today and using the inputs it believes most accurately reflect its true avoided cost. They show that Idaho Power's current IRP-derived rates are between 25 percent and 32 percent greater than rates calculated using Idaho Power's current IRP methodology and current inputs.

⁴⁹ Idaho Power Co. Direct Test. Karl Bokenkamp, Exh. 8 (Jan. 31, 2012) in IPUC Case No. GNR-E-11-03.

⁵⁰ Calculated by dividing the difference by the current IRP price.

5. All of the Reasons Above Make a *Prima Facie* Showing that Idaho Power's Current Avoided Cost Rates Are Not Just and Reasonable.

A great deal of evidence regarding Idaho Power's avoided costs has already been presented in this proceeding—much of which cannot reasonably be disputed. While further investigation may be needed to fashion the best long-term fix, no further investigation is needed to conclude that Idaho Power's current avoided cost rates are excessive. Even if the evidence is viewed in the light least favorable to Idaho Power, there can be little room for doubt that Idaho Power's current application of avoided cost methodologies is inaccurate and generates prices that are above actual avoided costs and are resulting in continuing and substantial harm to customers.

B. The Likelihood of Harm to Idaho Power's Customers Justifies a Stay on New PURPA Contracts Pending Resolution of GNR-E-11-03.

If the Commission does not take action prior to final resolution of this proceeding, the substantial harm already demonstrated to Idaho Power's customers is likely to increase and continue into the future for possibly the next 20 years. The current situation—where it is widely believed that Idaho Power's avoided cost rates are above market and stand to potentially be reduced substantially when the Commission completes its investigation—has created a rush of new projects seeking long-term, fixed-price power purchase agreements from Idaho Power before the Commission changes its rate. The Commission has stated previously that such a rush of new QF applications is not in the public interest.⁵¹ Idaho Power believes a stay on purchases by Idaho Power of new QF generation is necessary to prevent this likely, imminent, and substantial harm to customers.

⁵¹ *Infra* n. 61 and accompanying text.

1. A Stay Is a Proper Exercise of the Commission's Authority.

State commissions, including this Commission, have imposed temporary suspensions, moratoriums, or stays on the PURPA purchase obligation in order to prevent the likelihood of harm to customers while the commissions investigate rates and prescribe solutions. In Colorado, the Public Service Commission imposed a two-month moratorium on purchases from QFs in order to give the Public Service Company of Colorado time to complete a comprehensive study of its future capacity needs and propose revised avoided costs.⁵² The Colorado Commission found that it had legal authority under PURPA and Colorado law to impose a short-term moratorium if evidence showed it was necessary in order to ensure that rates for purchases are just and reasonable.⁵³ The Colorado Commission then found that the evidence established that 795 MW of new QF capacity might come on-line in the next five years and that this would cause excess capacity with resulting additional, unnecessary ratepayer expense approaching \$200 million.⁵⁴ The Colorado Commission concluded that such a result would be unjust and unreasonable to the ratepayers of the Public Service Company of Colorado and therefore the moratorium was warranted. Further, it noted that even viewing the evidence in the light least favorable to granting a moratorium, the high probability that additional costs would be imposed on ratepayers of the Public Service Company of Colorado warranted the moratorium.⁵⁵

⁵² *Application of the Pub. Serv. Co. of Colo. for a Moratorium Regarding Indep. Power Prod. Facilities*, Colo. PUC Dec. No. C87-1690 (Dec. 16, 1987).

⁵³ *Id.* at 11 (Note that the Colorado Commission acted under statute, but that Idaho Commission had used its inherent authority to order a moratorium in the past.).

⁵⁴ *Id.* at 11.

⁵⁵ *Id.*

The California Public Utilities Commission (“California PUC”) approved a temporary moratorium on purchases from new QFs while it decided how to fit QF purchases into utility procurement plans on a long-term basis.⁵⁶ The California PUC found that the utilities’ planning reserve margins for 2004 are significantly above the prescribed amount.⁵⁷ After noting evidence on the record that the avoided cost energy pricing methodology exceeded the spot market and the utilities’ avoided cost, the California PUC concluded that “there is a pressing need to revisit the [avoided cost] pricing system, which will accurately and fairly set utility avoided cost prices both under current and expected future market conditions”⁵⁸ To provide breathing room to reevaluate QF procurement, the California PUC directed utilities not to enter into any new contracts during the “short interim” before it issued a long-term decision.⁵⁹

In 1987, the Idaho Commission suspended the obligation to execute new PURPA contracts for approximately six months while it investigated the reasonableness of the avoided cost methodology in Idaho. Order No. 21249⁶⁰ at 5, Case No. U-150U-1500-170 (1987) (Because of doubts about assumptions made regarding the surrogate resource in computing avoided cost rates, the Commission was unconvinced that the approved methodology produced rates that were accurate and in the public interest.).

⁵⁶ *Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Dev.*, Cal. PUC Rulemaking 01-10-024, Decision 03-12-062, 2001 Cal. PUC LEXIS 1276, *77-78 (2003) (initiating moratorium effective December 18, 2003); see Cal. PUC Rulemaking 01-10-024, Decision 04-01-050, 2004 Cal. PUC LEXIS 28, *201 (2004) (ending moratorium effective January 22, 2004, and noting that “[Decision] 03-12-062 did not allow for any new PURPA contracts with new QFs during the short interim period between the issuance of that decision and the issuance of this decision.”)

⁵⁷ *Id.* at *111, finding of fact 2-3.

⁵⁸ *Id.* at *79.

⁵⁹ *Id.* at *116, finding of fact 32.

⁶⁰ Order No. 21249 is available in the Commission’s database of its prior Orders accessible through its website.

The Commission found that interim relief from the approved avoided cost methodology was in the public interest due to the anticipated rush of new QF applications seeking the current avoided cost rates:

Prior experience of the Commission teaches us that whenever potential qualifying facilities sense a pending change in the Commission's policy with respect to prices, there is a flood of applications seeking to obtain contracts at the existing rates. * * * Accordingly, during the period of this investigation, we find it to be in the public interest to suspend the compelled execution of new contracts and approval of contracts not executed before the service date of this Order so that we may approach these serious issues in a deliberate manner, free from litigation and disputes with respect to proposed contracts.

Id. at 4 (internal footnotes omitted).⁶¹

On February 14, 2012, the Public Utility Commission of Oregon ordered a temporary suspension of Idaho Power's obligation to enter into standard rate QF contracts in its Oregon jurisdiction until such time as the Commission placed updated avoided cost into effect pursuant to the Company's update of avoided cost rates post IRP acknowledgment. This temporary stay is currently still in place. The stay was put in place as a result of Idaho Power receiving 9 requests from QFs for standard rate (SAR methodology) contracts over the course of three days (January 26, 26, and 27, 2012) representing approximately 73 MW of new QF generation in the Company's Oregon jurisdiction. The Company currently has a total of 27.89 MW of QF generation in Oregon.

⁶¹ Initially, Order No. 21249 applied to all QFs, but the Commission later exempted some QFs that made a strong case for grandfathered treatment. *In the Matter of the Review of the Idaho Pub. Util. Commn.'s Policies Establishing Avoided Costs under PURPA*, IPUC Case No. U-1500-170, Order No. 21332, 1 (1987). The Commission's stay did not apply to energy-only tariff rates, nor did it bar the utility from voluntarily entering into long-term purchase contracts. *Id.*

Each of the moratoria approved by state Commissions discussed above are distinguishable from a Federal Energy Regulatory Commission (“FERC”)-authorized suspension of PURPA purchase obligations under FERC’s rules.⁶² Suspensions under the FERC rules are indefinite and must be authorized by FERC. A FERC-ordered suspension is a terminal event, effectively ending the utility’s PURPA obligation. A moratorium of the type used by the Commissions of Colorado, California, Idaho, and Oregon is a temporary event that does not end the PURPA obligation but rather puts it on hold while the Commission determines how that obligation should be fulfilled.

FERC grants states wide latitude in implementing the regulation of sales and purchases between QFs and electric utilities.⁶³ A temporary stay of a utility’s obligation to contract under PURPA, undertaken to give the Commission time to complete its investigation of avoided cost prices, is a proper exercise of the Commission’s authority to preserve the *status quo*, manage its docket, and most importantly to protect customers from harm. The Federal Power Act gives FERC authority to suspend any proposed tariff or tariff change for up to five months while it investigates whether the proposal is just and reasonable.⁶⁴ This statute recognizes that a stay may be an appropriate device to aid the regulator in its investigation. Idaho Code § 61-623 gives the Commission authority to suspend rates up to six months while it investigates proposed rate changes. It would be counter-intuitive to conclude that PURPA prohibits the Commission from using a tool that both Congress and the state legislature have determined a Commission should have. Done carefully, a stay does not trample the

⁶² See 18 CFR §§ 292.309, 292.402 (2011).

⁶³ See *Federal Energy Regulatory Commission v. Mississippi*, 456 U.S. 742, 102 S.Ct. 2126, 72 L.Ed.2d 532 (1982).

⁶⁴ 16 U.S.C. § 824d(e) (2011).

rights of QFs, but strikes a proper balance between those rights and the rights of utility customers to not purchase QF power at unjust and unreasonable rates.

FERC has itself suggested that a state commission can stay a utility's PURPA purchase obligation while the state commission completes its administrative process to establish a QF price methodology that accurately models the utility's avoided cost. In *Southern California Edison Company*, two California utilities petitioned FERC to enforce PURPA. The utilities asked FERC to declare that the California PUC's approach to calculating PURPA rates violated PURPA.⁶⁵ FERC agreed with the utilities and concluded that the California methodology violated PURPA because it generated QF prices in excess of avoided cost. As a result, the California PUC needed to engage in further administrative process to establish a rate methodology that did not violate PURPA. FERC recognized that QFs might seek contracts before the new methodology could be established and that such contracts, if based on the old methodology, would contain pricing that violated PURPA. FERC therefore suggested to the California PUC that "it would be appropriate for the California Commission to stay its requirements directing [the utilities] to purchase [QF output] pending the outcome of further [California] administrative procedures in accordance with PURPA."⁶⁶ Based on this recommendation, it is clear FERC believes a state commission can stay the PURPA purchase obligation when the state needs time to complete an administrative proceeding intended to correct an inaccurate avoided cost pricing methodology.

A stay need not affect QF sales in specific instances where prices are known to be just and reasonable. The Colorado and Idaho Commissions did not prohibit the

⁶⁵ 70 FERC ¶ 61,215 (1995).

⁶⁶ *Id.* at 61,677-61,678.

utility and the QF from reaching bilateral agreement on fixed-price contracts. Nor did they suspend the sale and purchase of non-firm, as-available QF output during the stay. Idaho Power supports this principle. Idaho Power's Schedule 86 permits QFs to sell energy to Idaho Power at the market energy price, as determined by the weighted average of the daily on-peak and off-peak Dow Jones Mid-Columbia Electricity Price Index.⁶⁷ Idaho Power does not propose that a stay on Schedule 86 is necessary.

Finally, a stay should not unduly discriminate against QFs competing with non-QFs to satisfy a utility's identified resource needs. The proposed stay would impose no greater burden on QFs seeking to sell generation to Idaho Power than do other state programs in Washington and California that require QFs seeking to sell capacity to do so through a Request for Proposal ("RFP") process. RFP programs are used in Washington and California and have been affirmed by FERC as compliant with PURPA.⁶⁸ Under the RFP process, a utility solicits proposals for new capacity on a periodic basis. Applicants seeking to sell between auctions may do so pursuant to negotiation with the utility or else may sell to the utility under an energy-only tariff.

⁶⁷ Idaho Power IPUC No. 29, Tariff No. 101, Schedule 86 *Cogeneration and Small Power Production Non-Firm Energy* (eff. March 1, 2008) available via the following link: <http://www.idahopower.com/AboutUs/RatesRegulatory/Tariffs/tariffPDF.cfm?id=55>.

⁶⁸ See *Administrative Determination of Full Avoided Costs, Sales of Power to Qualifying Facilities, and Interconnection Facilities*, 84 FERC ¶ 61,265, 62,301 (1998) (FERC has "acknowledged the difficulty of administratively setting avoided cost rates, and particularly recognized that competitive bidding was a viable alternative to determining avoided cost" and found that "well over half the states now use competitive bidding to one degree or another in setting avoided cost rates."); see also *Pub. Serv. Co. of N.H. v. N.H. Elec. Coop., Inc.*, 83 FERC ¶ 61,224, 62,000 (1998) (approving New Hampshire's RFP competitive bidding process, stating "parties to QF purchases are free to negotiate purchase rates"); *Doswell LP*, 50 FERC ¶ 61,251 (1990) (involving a solicitation for capacity and QF competitive bidding process); see *In the Matter of Pacific Power & Light Co. Pet. for Waiver from Certain Req. for Proposals Requirements*, Wash. Util. & Transp. Commn. Docket UE-111418, Order 01 (2011); *Order Instituting Rulemaking*, Cal. PUC Decision 04-01-050; see also *S. Cal. Edison Co.*, 71 FERC ¶ 61,269, 62,080 (1995) ("[T]he California Commission must include all sources in determining avoided cost rates, either administratively, through an auction, or a process that combines both..." (emphasis added)); see also *Cal. Pub. Util. Commn.*, 133 FERC ¶ 61,059, P 28 (2010) (clarifying meaning of *S. Cal. Edison Co.*, 71 FERC ¶ 61,269, reiterating bidding as means for determining avoided cost).

Idaho Power's proposed stay, which causes QFs who want to sell generation to Idaho Power to wait until new rate methodologies are approved by the Commission, imposes no greater burden on QFs than the does the periodic bid process utilized in Washington, California, and other states. Furthermore, because Idaho Power has no plans to obligate itself to purchase any new capacity, from QFs or otherwise, in 2012, QFs cannot reasonably claim that the stay favors non-QF generation sources.

2. The Balance of Hardships Favors Granting a Stay.

The interim relief requested may cause delay in timelines for QF developers. Idaho Power does not minimize this potential adverse consequence. However, a QF developer may reasonably expect that, at the end of this proceeding, the proper avoided cost rates will be available to it, whether or not it signed an agreement in the interim. Developers' harm, therefore, is limited to the costs associated with a delay in determining the correct rate. On the other hand, Idaho Power has alleged that its current IRP-based avoided cost rates are between 25 percent and 32 percent higher than the rates calculated using its proposed revised methodology. If this is true, then the \$2.5 billion in QF contracts identified in Section III.B above that Idaho Power may become obligated to execute equates to between \$625 million and \$800 million in excess costs to Idaho Power's customers over the next 20 years. On balance, the risk of harm to Idaho Power's customers is much greater than the risk of harm to QF developers.

C. If the Commission Does Not Grant a Stay as Requested, Other Interim Relief is Warranted.

If the Commission does not stay Idaho Power's requirement to enter into new and additional QF purchases during the pendency of this proceeding, other action is urgently needed to prevent the likelihood of substantial harm to customers until the

Commission renders its decision in the general proceeding. Three alternative remedies are discussed below.

1. **Make the Rates Contained in Power Purchases with QFs Subject to the Commission's Final Determination in This Case.**

As an alternative to a stay, the Commission could declare that the avoided cost of any fixed-term contract executed after the date of Idaho Power's Motion shall be the price determined using the applicable methodology ultimately approved in this proceeding. There is Commission precedent for this alternative. While the Commission investigated the reasonableness of the utilities' avoided cost rates in 1994, the IOUs asked the Commission to make temporary adjustment to the published avoided cost rates or otherwise limit the utilities' financial exposure during the Commission's investigation.⁶⁹ The Commission found that interim relief from the approved avoided cost methodology was in the public interest, and opted to make published rates subject to the final outcome of its investigation:

We find that it is reasonable to offer the utilities, and their ratepayers, some form of interim protection against rates that may be excessive. We find that a reasonable way of providing such protection is to allow the utilities to include a provision in contracts executed after the date of this Order that makes the rates of purchase subject to our final rate determinations in these cases.⁷⁰

Although Idaho Power prefers that the requested stay be granted because it would be more effective at focusing the parties' energy on resolving this proceeding, making new power purchase agreements subject to revision to conform with the

⁶⁹ *In the Matter of the Application of the Wash. Water Power Co. for an Order Revising Avoided Costs Rates*, IPUC Case Nos. WWP-E-93-10, PPL-E-93-3, UPL-E-93-3, PPL-E-93-5, UPL-E-93-7, IPC-E-93-28, Order No. 25361 (1994). The hearing consolidated the Commission's investigation of common elements of the separate applications for avoided cost rate revisions filed by Washington Water Power (Avista), PacifiCorp, and Idaho Power and their related requests for interim relief.

⁷⁰ *Id.* at 5.

Commission's ultimate decision regarding the avoided cost methodology and pricing would be an alternative way to protect customers during the interim. When the Commission has suspended rates in the past, it has required the IOUs to continue to negotiate in good faith with QFs. Given the critical importance of quickly and correctly resolving the many outstanding questions about Idaho's avoided cost methodologies in this proceeding, Idaho Power submits that all parties would be better served if they ceased negotiations and focused instead on this proceeding. Notwithstanding this preference, Idaho Power believes that a temporary suspension of the IRP and SAR methodologies can provide substantial interim relief. Previously, some parties expressed concerns about whether making new power purchase agreements subject to revision to conform with the Commission's ultimate decision regarding the avoided cost methodology and pricing violated the filed rate doctrine or was otherwise illegal. However, the Commission's ruling on this issue, in Order No. 32176, has put that issue to rest.⁷¹

2. Interim Avoided Cost Rates During the Commission's Investigation.

Another alternative is to authorize Idaho Power to pay new QFs the avoided cost rate calculated by Idaho Power using the modified IRP methodology recommended and described in its direct testimony. Under this approach, Idaho Power, as an alternative to a stay, would enter into contracts at the applicable avoided cost rate (depending upon

⁷¹ In Order 32176, the Commission considered and rejected arguments that making its order effective on December 14, 2010, violated the filed rate doctrine or was otherwise unlawful. On November 5, 2010, the IOUs filed a joint Petition and Motion asking the Commission to reduce the eligibility cap for published avoided cost rates from 10 aMW down to 100 kW on a temporary basis while the Commission investigated various matters related to published avoided costs. The Commission published its Notice of the Joint Petition on December 3, 2010, established a schedule for comments, and declared that its final decision on whether to lower the rate cap would be effective as of December 14, 2010. On February 7, 2011, the Commission found that petitioners had made a "convincing case" to lower temporarily the eligibility cap for wind and solar projects, from 10 aMW, down to 100 kW, effective December 14, 2010. *In the Matter of the Jt. Pet. Of Idaho Power Co., Avista Corp., and PacifiCorp to Address Avoided Cost Issues*, IPUC Case No. GNR-E-10-04, Order No. 32176 at 1 (2011) ("Eligibility Cap 2011").

the resource) shown in Table 2 of this Memorandum. The Idaho Supreme Court has determined that the Commission has authority to impose interim rates pending the outcome of an investigation.⁷² There is ample evidence in the record to demonstrate that existing avoided cost rates exceed Idaho Power's avoided cost and are harming customers. Idaho Power's modified methodology incorporates some changes that have already been recommended by Staff and Idaho Power's proposed modifications are likely to generate rates that are much closer to Idaho Power's avoided cost than the current methodologies. In addition, the Commission has recently recognized the desirability of changing QF rates on short or no notice where "a delay in changing the present avoided cost rates would result in PURPA rates that are higher than avoided costs and therefore unreasonable."⁷³ To further diminish any risk of prejudice to QFs, Idaho Power could include a provision in any power purchase agreement with interim prices giving the QF an option, within 90 days of the Commission's final determination of Idaho Power's avoided cost methodology, to opt into a power purchase agreement under the terms, conditions, and prices ultimately approved by the Commission in this matter.

3. Limit New QF Contracts to One-Year Terms During the Investigation.

A third alternative is for the Commission to order Idaho Power to immediately reduce the maximum term of new QF contracts over 100 kW to one year pending the

⁷² *Grindstone Butte Mut. Canal Co. v. Idaho Power Co.*, 98 Idaho 860, 862 (1978) ("All Commission orders as to rates are subject to change, given the mandate of I.C. § 61-502 that the Commission continue to evaluate the rates charged and make changes as necessary. It is true that no statute gives explicit authority to the Commission to enter "interim" or "temporary" orders; however, implied in the directive of on-going investigation is the power to make orders effecting rates that are temporary in nature." *Id.*)

⁷³ *In the Matter of the Adjustment of Avoided Cost*, IPUC Case No. GNR-E-11-04, Order No. 32337 (finding good cause under Idaho Code § 61-307 to issue new rates without further notice) (*citing* Order No. 31092 at 11; *citing* PURPA § 210(b), 16 U.S.C. § 824a-3(b); *citing* Idaho Code § 61-622; *citing* Order No. 31057 at 6).

Commission's final resolution of its investigation. The California PUC has shortened the term of standard offer contracts in a similar manner on several occasions when it needed time to investigate and revise its comprehensive QF pricing and procurement strategy.⁷⁴ Idaho Power disfavors this approach compared to the requested stay because of the extra administrative cost and burden of renegotiating contracts after one year, and because the prices in the hypothetical one-year contract based upon Idaho Power's current SAR or IRP methodology are greater than Idaho Power's avoided cost.

4. Proposed QF Projects Can Avail Themselves of a Schedule 86, Non-Firm Power Sales Agreement During the Pendency of This Case.

A fourth alternative to allow QF development to move forward, while allowing for the protection of Idaho Power's customers from rates that exceed avoided costs during the pendency of this proceeding, would be for QFs to enter in standard, Schedule 86, non-firm power purchase agreements. Following such a procedure would allow a proposed QF to continue development, complete its interconnection, and come on-line during the interim, and ultimately conform its power purchase agreement to the Commission's final determination in this matter, once made.

D. Urgent Facts Warrant Immediate Relief; the Commission Holds Requisite Authority.

The Commission has long recognized that actions, such as Idaho Power's Motion for a stay, or actions by which the Commission may institute changes to avoided cost rates, will instigate a flood of QF power purchase agreement requests to Idaho Power.⁷⁵ In fact, earlier in this very proceeding when the Commission denied the

⁷⁴ See *Application of San Diego & Electric Company (U 902-E) for an Ex Parte Order Approving Modifications to Uniform Standard Offer No. 1 and Standard Offer No. 3*, Cal. PUC Application 96-01-014, Decision 96-10-036, 25-27 (1996).

⁷⁵ *Supra* n. 60 and accompanying text (discussing Order No. 21249).

utilities' request for immediate action in its November 5, 2010, Joint Petition, Idaho Power saw a flood of QF contracts attempt to obligate Idaho Power customers to previously effective avoided cost rates. Between the November 5, 2010, filing and the end of 2012, 25 QF power purchase agreements representing 518 MW were demanded from Idaho Power, and ultimately filed with the Commission for its review. A stay must be made effective as soon as possible. Every day of delay in granting a stay will result in more QFs attempting to lock-in current rates. Idaho Power respectfully requests that the Commission make a stay effective as soon as possible, but in no event more than four business days from the date of Idaho Power's Motion.⁷⁶

The Idaho Supreme Court recognizes that the Commission has authority to grant immediate interim relief "expeditiously" when avoided costs are excessive.⁷⁷ The Court stated that a *prima facie* showing by the utility that rates are inaccurate is sufficient grounds for immediate interim relief.⁷⁸ This brief and evidence previously submitted by Idaho Power in this Case No. GNR-E-11-03 inarguably demonstrate a *prima facie* showing.

To the extent Idaho Code § 61-307 applies to relief granted by the Commission, for "good cause shown" the Commission may waive the notice requirement in that

⁷⁶ Idaho Power requests ruling on the third or fourth business day. If the Commission rules before two full days have elapsed, its order will expire after only 7 days. If the Commission rules beyond four days after the motion is filed, Idaho Power anticipates that it will see a sharp spike in new QF contract requests as a result of its Motion.

⁷⁷ *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 233 (1988) (The Court suggested the utility should have filed for immediate interim rate relief with the Commission, and that if the Commission found it appropriate, a new interim avoided cost could be set expeditiously. The court noted that in 1985 the Commission set an interim rate for within 10 days of the utility's motion.).

⁷⁸ *Id.*

statute.⁷⁹ Such good cause clearly exists. In addition, QFs that would be affected by a suspension do not have a due process right to current avoided cost rates.⁸⁰

QFs will not be irreparably harmed by an immediate stay. If, weeks from now, the Commission's careful consideration of Idaho Power's Motion and opposing arguments causes the Commission to lift the interim stay, QFs can be kept whole. The opposite is not true. If the Commission delays for weeks granting a stay, in the interim Idaho Power will be met by a flood QFs locking in 20-year contracts.

V. CONCLUSION

For the reasons above, Idaho Power respectfully requests that the Commission grant the relief requested in its Motion.

DATED this 12th day of March 2012.



Donovan E. Walker

⁷⁹ *Supra*, n. 76.

⁸⁰ *In the Matter of the Adjustment of Avoided Cost Rates for New PURPA Contracts*, IPUC Case No. GNR-E-10-01, Order No. 31092, 12 (2010) (QFs without a legally enforceable obligation do not have a property interest in prior rates) (citing *Rosebud Enters. v. Idaho PUC*, 131 Idaho 1, 7 (1997)).

1.1.1. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of March 2012, pursuant to RP 256.02, that Idaho Power Company contacted one representative from each party listed below by telephone, as indicated below, and informed said party of the filing of IDAHO POWER COMPANY'S MOTION FOR, MEMORANDUM IN SUPPORT OF, AND AFFIDAVIT OF RANDY C. ALLPHIN IN SUPPORT OF IDAHO POWER COMPANY'S MOTION FOR A TEMPORARY STAY OF ITS OBLIGATION TO ENTER INTO NEW POWER PURCHASE AGREEMENTS WITH QUALIFYING FACILITIES.

Each party's representative, as indicated below, was informed by telephone of the filing requesting expedited, immediate relief, and of the procedure set forth in RP 256.02 to inform the Commission Secretary, either in writing personally delivered to the Secretary or by telephone, within the next two business days, whether they support or oppose the Motion and whether they desire to be heard on the Motion in person, in writing, or by telephone.

Additionally, I HEREBY CERTIFY that on the 12th day of March 2012 I served a true and correct copy of:

1. Idaho Power Company's Motion for a Temporary Stay of its Obligation to Enter Into New Power Purchase Agreements with Qualifying Facilities;
2. Memorandum in Support of Idaho Power Company's Motion for a Temporary Stay of its Obligation to Enter Into New Power Purchase Agreements with Qualifying Facilities; and
3. Affidavit of Randy C. Allphin in Support of Idaho Power Company's Motion for a Temporary Stay of its Obligation to Enter Into New Power Purchase Agreements with Qualifying Facilities.

upon the following named parties by the method indicated below, and addressed to the following:

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 Overnight Mail
 FAX
 Email glenni@envisionwind.com
margaret@envisionwind.com
 Telephonic Notice to Dean J. Miller at
(208) 343-7500, at 1:03 p.m.

Twin Falls Canal Company and North Side Canal Company

C. Thomas Arkoosh
CAPITOL LAW GROUP, PLLC
205 North 10th Street, 4th Floor
P.O. Box 2598
Boise, Idaho 83701-2598

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email glenni@envisionwind.com
margaret@envisionwind.com
 Telephonic Voice Mail to C. Thomas
Arkoosh at (208) 424-8872, at 2:55 p.m.

Twin Falls Canal Company

Brian Olmstead, General Manager
Twin Falls Canal Company
P.O. Box 326
Twin Falls, Idaho 83303

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email olmstead@tfcanal.com
 Telephonic Voice Mail to C. Thomas
Arkoosh at (208) 424-8872, at 2:55 p.m.

North Side Canal Company

Ted Diehl, General Manager
North Side Canal Company
921 North Lincoln Street
Jerome, Idaho 83338

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email nscanal@cablone.net
- Telephonic Voice Mail to C. Thomas Arkoosh at (208) 424-8872, at 2:55 p.m.

Birch Power Company

Ted S. Sorenson, P.E.
Birch Power Company
5203 South 11th East
Idaho Falls, Idaho 83404

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email ted@tsorenson.net
- Telephonic Notice to Ted S. Sorenson at (208) 522-8069, at 3:04 p.m.

Blue Ribbon Energy LLC

M.J. Humphries
Blue Ribbon Energy LLC
4515 South Ammon Road
Ammon, Idaho 83406

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email blueribbonenergy@gmail.com
- Telephonic Notice to M.J. Humphries at (208) 524-2414, at 1:34 p.m.

Arron F. Jepson
Blue Ribbon Energy LLC
10660 South 540 East
Sandy, Utah 84070

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email arronesq@aol.com
- Telephonic Notice to M.J. Humphries at (208) 524-2414, at 1:34 p.m.

Idaho Conservation League

Benjamin J. Otto
Idaho Conservation League
710 North Sixth Street (83702)
P.O. Box 844
Boise, Idaho 83701

- Hand Delivered
- U.S. Mail
- Overnight Mail
- FAX
- Email botto@idahoconservation.org
- Telephonic Notice to Benjamin J. Otto at (208) 345-6933 ext. 12, at 1:12 p.m.

Snake River Alliance

Ken Miller, Clean Energy Program Director

Liz Woodruff, Executive Director

Lisa Young, Clean Energy Organizer

Snake River Alliance

350 North 9th Street #B610

P.O. Box 1731

Boise, Idaho 83701

Hand Delivered

U.S. Mail

Overnight Mail

FAX

Email kmiller@snakeriveralliance.org

lwoodruff@snakeriveralliance.org

lyoung@snakeriveralliance.org

Telephonic Notice to Lisa Young at
(208) 344-9161, at 2:03 p.m.



Donovan E. Walker

Attorney for Idaho Power Company