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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for J.R. Simplot Company

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
IDAHO POWER COMPANY FOR )  
APPROVAL OF AN AGREEMENT FOR SALE )  
AND PURCHASE OF ELECTRIC ENEGTY )  
BETWEEN IDAHO POWER COMPANY AND )  
THE J.R. SIMPLOT COMPANY )

CASE NO. IPC-E-04-0<sup>07</sup>  
REPLY COMMENTS OF THE J.R.  
SIMPLOT COMPANY

**COMES NOW** the J. R. Simplot Company, (Simplot), by and through its attorney of record, Peter J. Richardson, and in response to the Comments of the Commission Staff dated April 19, 2004, and submits the following Reply:

This matter is very similar to the facts facing the Commission when it approved the 17 MW contract between Idaho Power and Renewable Energy of Idaho. Idaho Power has asked the Commission to take administrative notice of its Reply Comments on the use of the AURORA model from that docket. Simplot will address Staff's AURORA model concerns here, but notes that its comments are similar to the comments filed by Renewable Energy, the developer of a 17 MW Emmett Project.

While there are similarities between both this case and the Renewable Energy case, there are also significant differences that provide additional support for the Commission's approval of the Simplot agreement. The most significant of those differences is that, unlike the developer of the 17 MW Emmett project, Simplot has no intention of generating more than 10 MW of power at Pocatello.

While it is true that the Simplot facility at Pocatello is capable of producing more than ten megawatts of power, Simplot only plans to operate at a rate of no more than 7 to 8 MWs. In order to generate more than the 7 to 8 MW it currently plans on generating, Simplot would have to acquire additional supplies of natural gas – which is prohibitively expensive when it is available. Simplot simply does not have access to economically available natural gas supplies that are necessary to generate above ten megawatts. In the improbable event that the facility does generate more than ten megawatts, the ratepayers will benefit because the price for such “Optional Energy” is the LESSER of the posted avoided cost rate or 85% of Mid-C.

It would have been imprudent for the parties to simply ignore the fact that the facility has a nameplate rating greater than ten megawatts. In the unlikely event that, at some time during the life of this agreement, Simplot does (for whatever reason) generate more than ten megawatts, it is simply prudent to have a vehicle in place for pricing that “Optional Energy.”

A second major difference between the Simplot agreement and the Renewable Energy agreement is that the Simplot agreement is only for a ten-year term. Any ratepayer risk of improperly set rates is therefore cut in half by the Simplot agreement.

Although Simplot is not able to split its project into two pieces and then ask for full avoided cost rates, as Renewable Energy could, the fact remains that it could not do that, even if

it could be done physically because Simplot does not have the fuel source to run more than ten megawatts.

Simplot understands Staff's concerns relative to Idaho Power's decision not to utilize the AURORA model in evaluating the reasonableness of the rates it offered Simplot for the output of its QF project. However, it appears that there is an ambiguity in whether the Settlement Stipulation referenced in Staff's comments is still applicable. Based on Staff's comments it appears that Idaho Power Company does not believe the settlement stipulation is still applicable given the many dramatic changes in both Idaho Power's resource position and the electric markets in general. For example, in its Order approving the Stipulation that calls for the use of the AURORA Model this Commission observed:

Significant changes have swept through the electric industry since we last examined the issue of contract length. The FERC has mandated open access to the transmission system, thermal technologies have improved, *gas prices are low, there is a considerable surplus of energy available in this region resulting in very low spot market prices for electricity* and, finally, even the continued existence of PURPA is being called into question.

Order No. 26576 at page 6, emphasis provided.

"Significant changes" appear to be more the norm than the exception in the electric industry. It seems that the electric industry has completely turned around since September 1996 when the Commission issued the above quoted order reducing the mandated contract period from twenty years to five years. Now the region is in deficit, and Idaho Power in particular is scrambling to acquire resources, particularly in the Treasure Valley. Idaho Power's apparent belief that Order No. 26576 is no longer applicable is reasonable in light of the dramatic changes the market has endured over the past two years. In addition, Idaho Power's belief that the settlement agreement and Order No. 26576 were unique to the situation at the time (one

megawatt threshold and five year contract term) was justifiable and reasonable. In addition, running the AURORA model based on the amount of power Simplot proposes to generate would produce meaningless results because the contracted-for amount of energy is based on less than ten MW of capacity

Order No. 26576 clearly has an inherent ambiguity – that is, whether it is applicable to the unique circumstances surrounding the creation of that Order or whether it is applicable in today’s radically different electric markets. Unfortunately for Simplot, the disagreement between Staff and Idaho Power caused by that ambiguity has caused Simplot to be caught in the cross-fire between the well-intentioned Staff and Idaho Power Company. Simplot and Idaho Power have been in negotiations over the rates and terms contained in the Agreement before the Commission for over a year at a cost of many thousands of dollars to Simplot. Many concessions were made on Simplot’s part to expedite the process. In fact, there are provisions in the agreement that Simplot’s counsel objects to, but Simplot choose to live with those provisions in order to avoid delay caused by seeking Commission guidance on those contract provisions. The reason for Simplot’s acquiescence is that time is critically important. As the Commission knows, this facility is on line and currently operating. It is being operated under two band aid letter agreements that Staff objects to. Simplot urges the Commission to approve this agreement based on the good faith efforts of both Idaho Power and Simplot. If the Commission believes the AURORA model and process adopted in Order No. 26576 remains applicable, it should declare it to be applicable for future contracts and not apply it retroactively to Simplot’s agreement with Idaho Power.

The Commission expressed its displeasure with Idaho Power’s failure to run and apply the AURORA model in the Renewable Energy order. This agreement was being negotiated and

executed at the same time as the agreement with Renewable Energy. The Commission approved the Renewable Energy agreement noting that the Staff had found the rates to be “not necessarily unreasonable.” The staff has reached that same conclusion here. The contract before the Commission is written such that if the Commission fails to approve it as written it becomes void. Idaho Power’s obligation to purchase is based on PURPA and it has advised Simplot that without full ratemaking treatment of the costs associated with this agreement, it will not purchase Simplot’s power.

Once again, the Commission is faced with the situation where an innocent developer is caught in the cross-fire between the Staff and Idaho Power.

#### CONCLUSION

Simplot appreciates Staff’s concerns. Staff has a difficult job to do and must fulfill its mandate to insure that the utilities operating under the Commission’s jurisdiction do so in full compliance with all of the Commissions rules and regulations. It is Simplot’s hope, however, that this Commission look to the spirit and intent of those orders as well. Staff noted in their comments that, “The contract prices developed by Idaho Power are not necessarily unreasonable.”

With all due respect to the Commission’s Staff, Simplot urges this Commission to once again exercise its discretion and approve the Contract before it. Should the Commission determine that additional clarification of its prior orders is called for, then that process may proceed – but without putting Simplot in the center of a dispute, not of its making, between Staff and the Idaho Power Company. The Commission’s wise decision in the Renewable Energy case provides ample guidance for approving the Simplot agreement and then allowing the Company and Staff to work out their differences relative to the AURORA model.

DATED this 11<sup>th</sup> day of May, 2004.

Richardson & O'Leary P.L.L.C.

By Peter J. Richardson  
Peter Richardson  
Attorneys for J. R. Simplot

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 11, 2004, I served the foregoing **Reply Comments of the J.R. Simplot Company** as indicated below:

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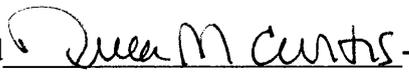
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