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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

U.S. GEOTHERMAL, INC., an Idaho
corporation,

Complainant,

vs.

IDAHO POWER COMPANY, an Idaho
corporation,

Respondent.

Case No. IPC-E-04-08

BOB LEWANDOWSKI and MARK
SCHROEDER,

Complainants,

vs.

IDAHO POWER COMPANY, an Idaho
corporation,

Respondent.

Case No. IPC-E-04-10

DIRECT TESTIMONY OF KIP W. RUNYAN

ON BEHALF OF U.S. GEOTHERMAL, INC.

June 9, 2004

ORIGINAL

1 Q. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

2 A. My name is Kip W. Runyan. My business address is 2233 Spring Mountain Drive,
3 Boise, Idaho.

4 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

5 A. I am a self-employed consultant in the independent energy business. My services include
6 assistance in the development, contracting, financing, and operation of independent
7 power facilities.

8 Q. PLEASE PROVIDE YOUR BACKGROUND AND EXPERIENCE.

9 A. I am a licensed Professional Civil Engineer in the state of Idaho and have twenty six
10 years of experience in the electrical energy industry. I have held a variety of positions
11 within the industry, including President and CEO of Ida-West Energy Company, an
12 independent power producer, and Senior Vice President of the Delivery Business Unit of
13 Idaho Power Company. A complete resume, including my educational background and
14 employment history, is presented as Exhibit No. 3.

15 Q. MR. RUNYAN, ON WHOSE BEHALF ARE YOU APPEARING IN THIS
16 PROCEEDING?

17 A. My testimony is presented on behalf of U. S. Geothermal, Inc. U. S. Geothermal retained
18 me on October 8, 2003 to assist in the negotiation of a Firm Energy Sales Agreement
19 (“Agreement”) with Idaho Power Company. The Agreement was to be consistent with
20 contracts approved by the Commission pursuant to the State of Idaho’s PURPA program
21 for qualifying facilities. Recently, as a result of the inability of Idaho Power and U.S.
22 Geothermal to reach agreement on the terms and conditions of the Agreement, I was
23 asked to provide testimony discussing those disagreements in this case.

1 Q. MR. RUNYAN, WHAT IS THE PURPOSE OF YOUR TESTIMONY?

2 A. My testimony will describe the negotiations leading up to the filing of the Complaint in
3 this case and the proposed terms and conditions in three areas in the Agreement that the
4 parties have been unable to resolve. Finally, I will explain what I believe to be the
5 appropriate resolution of each of the three disputed issues.

6 Q. PLEASE DESCRIBE HOW YOUR TESTIMONY IS ORGANIZED.

7 A. My testimony will discuss, in the following order, (i) the factual background of the
8 negotiations, (ii) the definition of a 10 MW facility and how it affects the provisions
9 contained in the Agreement, (iii) Idaho Power's attempt to include provisions that
10 penalize U.S. Geothermal if the output of the Project in any month falls below 90% or
11 above 110% of the Project's estimated monthly output, (iv) Idaho Power's demand to
12 include a provision that allows Idaho Power to terminate the Contract if certain
13 deregulation activities and regulatory actions occur in the State of Idaho, and (v) what I
14 believe to be the appropriate resolution of the contested issues.

15 Q. PLEASE PROVIDE A HISTORY OF THE NEGOTIATIONS BETWEEN U.S.
16 GEOTHERMAL INC. AND IDAHO POWER LEADING UP TO THE FILING OF THE
17 COMPLAINT IN THIS CASE.

18 A. Prior to my employment by U.S. Geothermal, U.S. Geothermal contacted Idaho Power in
19 early 2003 and was sent several standard form PURPA agreements by Idaho Power
20 Company. The form agreements differed primarily depending upon whether the
21 payments under the agreement were levelized over the contract period or non-levelized
22 (escalating over the contract term). As I stated previously, I was retained by U.S.
23 Geothermal on October 8, 2003, to assist in the negotiation and finalization of a Firm

1 Energy Sales Agreement with Idaho Power Company. The following is a brief history of
2 the major negotiation events:

3 (1) On October 24, 2003, U.S. Geothermal submitted to Idaho Power Company a
4 “mark-up” of the previously provided agreement for a non-levelized contract.

5 The “mark-up” was generally consistent with Firm Energy Sales Agreements that
6 Idaho Power had entered into over the last decade and which were approved by
7 the Idaho Public Utilities Commission. The major changes from the draft
8 agreement provided by Idaho Power Company specifically addressed the three
9 contract provisions contested in this case.

10 (2) On November 20, 2003, Idaho Power submitted to U.S. Geothermal a new draft
11 of the Firm Energy Sales Agreement. The draft did not include any of the
12 changes proposed by U.S. Geothermal in its “mark-up” of October 24, 2003.

13 (3) On November 21, 2003, Idaho Power and U.S. Geothermal met to discuss each of
14 the proposed agreements. Although significant progress was made in “tidying-
15 up” a number of non-controversial issues, no progress was made on resolution of
16 the three major contested issues.

17 (4) On December 5, 2003, Idaho Power submitted a new draft of the Agreement,
18 incorporating many of the changes the parties had previously agreed to, but still
19 containing the three contested issues, albeit in a slightly modified form.

20 (5) On February 20, 2004, U.S. Geothermal submitted a new draft of the Agreement
21 that incorporated terms and conditions agreed to by the parties, as well as
22 reflecting its position on the three contested issues. This draft of the Agreement is

1 attached as Exhibit A and Exhibit B (red-lined) to the Complaint filed on March
2 25, 2004.

3 (6) On March 4, 2004, Idaho Power delivered a new draft of the Agreement, attached
4 as Exhibit C to the Complaint. Although the draft contained several areas
5 different than the U.S. Geothermal draft of February 20, 2004, from a materiality
6 standpoint, the three contested issues remained the only issues that were not
7 resolved or resolvable.

8 (7) On March 5, 2004, I had a phone discussion with Randy Allphin of Idaho Power
9 Company regarding the latest drafts of each of the parties. I asked Mr. Allphin if
10 there was any way that Idaho Power would materially modify its position relating
11 to the three contested issues. His response was that although Idaho Power was
12 always ready to discuss some form of modification, it would not consider
13 materially changing its position on the three contested issues.

14 (8) On March 25, 2004, U.S. Geothermal filed its Complaint with the Idaho Public
15 Utilities Commission.

16 Q. MR. RUNYAN, CAN YOU PLEASE DESCRIBE THE GENERAL BACKGROUND
17 THAT FORMED THE UNDERLYING BASIS FOR THE NEGOTIATIONS?

18 A. In 2002 the Commission issued a series of Orders (No. 29029, No. 29069 and No. 29124)
19 that made significant changes in the terms and conditions under which a PURPA project
20 could expect to enter into a standard form contract eligible for published avoided cost
21 rates in the State of Idaho. The major changes included: (i) an increase in the eligible
22 project size to 10 megawatts, (ii) an increase in the contract length available to projects to
23 a twenty-year term, and (iii) a recalculation of the avoided cost available to eligible

1 qualifying facilities. The changes the Commission initiated in these Orders resulted in a
2 general revitalization of the independent power industry in the State of Idaho and, in
3 particular, provided U.S. Geothermal an avenue to develop its facility at Raft River.

4 Q. CAN YOU PLEASE RELATE THE CONTRACTING ACTIVITY THAT HAS
5 OCCURRED SINCE THE ISSUANCE OF THE COMMISSION ORDERS IN 2002.

6 A. Since the Orders were issued, I am aware of three contracts that have been submitted to,
7 and approved by, the Commission. The contracts are for the Tiber Montana hydroelectric
8 facility, the Renewable Energy wood waste facility at Emmett, Idaho and the United
9 Materials wind facility in Great Falls, Montana. In both the Tiber and Renewable Energy
10 contracts, Idaho Power will pay published rates for the first 10 megawatts of "Net
11 Energy" delivered in any hour and market-based rates for deliveries in excess of 10
12 megawatts in any hour. In addition, all three contracts include the contested issue relative
13 to the 90%/110% output banding and the contract termination provisions relative to
14 certain deregulation scenarios in the State of Idaho. The Commission approved each of
15 the contracts, although it consistently stated that it considered the provisions establishing
16 actual generation rather than nameplate generation to meet the 10 megawatt classification
17 and the 90%/110% banding to establish "firmness" as "significant changes from prior
18 Idaho Power QF contracts." Order No. 29232 at 6. The Commission further noted that
19 "our decision in this case sets no precedent for our future regulation of such Agreements
20 and should not be viewed as precluding negotiating parties from challenging the
21 reasonableness of such terms for inclusion in any future QF contracts." *Id.*

22 Q. MR. RUNYAN, CAN YOU PLEASE EXPLAIN THE DISPUTE BETWEEN
23 THE PARTIES RELATIVE TO THE PROJECT CAPACITY?

1 A. An independent power project in the State of Idaho that is a qualifying facility (“QF”)
2 under PURPA, is eligible to receive rates published by the Idaho Public Utilities
3 Commission for the sale of its energy. Eligibility for those published rates is restricted by
4 the Idaho Public Utilities Commission to projects of 10 megawatts or less, with a contract
5 term of no more than twenty years. Idaho Power contends that the Commission’s intent
6 was to limit deliveries from the project to no more than 10 megawatts in any hour during
7 the agreement’s term. U. S. Geothermal believes the Commission’s intent was to offer the
8 published rates to agreements for ten average megawatts or less. Stated another way, the
9 question is whether the Commission’s 10 megawatt criteria for published rates refers to
10 peak capacity or total energy. Under U. S. Geothermal’s proposal, output would exceed
11 10 megawatts during favorable ambient conditions (winter months) and would be less
12 than 10 megawatts during unfavorable periods of the year (summer months), but would in
13 total for the year average less than 10 megawatts. U. S. Geothermal believes such a
14 project is, in fact, a 10 megawatt facility under any normal rating criteria and meets the
15 intent of the Commission in establishing the 10 megawatt cap.

16 Q. WHY DO YOU BELIEVE U. S. GEOTHERMAL’S POSITION IS CONSISTENT
17 WITH THE COMMISSION’S INTENT?

18 A. U. S. Geothermal will sell only the project output, defined as “Net Energy” in the
19 Agreement, that is qualified to receive the published QF rates. Unlike the Tiber and
20 Renewable Energy facilities, Idaho Power is not obligated to purchase any energy that
21 exceeds “Net Energy” amounts in any hour. In fact, the Agreement specifically disallows
22 the delivery of any energy in excess of the “Maximum Capacity Amount.” The

1 Agreement proposed by U. S. Geothermal is only for the sale of energy produced by a 10
2 megawatt facility as defined in the Agreement.

3 Q. SHOULD THE FACT THAT THE RAFT RIVER FACILITY WILL HAVE
4 CAPACITY IN EXCESS OF 10 MEGAWATTS MAKE IT INELIGIBLE FOR
5 PUBLISHED RATES?

6 A. No, and Idaho Power has not previously taken the position that it should. QF Contracts
7 approved since 2002 have applied the published rates to the first 10 megawatts in any
8 hour for facilities with a capacity in excess of 10 megawatts. The record also shows that
9 during the course of negotiations the parties were never in disagreement on the
10 applicability of the published rates up to the first 10 megawatts of output.

11 This is not to say that the facility's ultimate capacity will not someday grow
12 beyond 10 megawatts, but this potential growth will depend on several factors. The first
13 is the ability to contract at rates that support the construction of each stage of the Project,
14 and the second is the determination of the availability of geothermal water and the cost to
15 produce the supply of geothermal water for each incremental addition. I understand the
16 construction of these types of facilities to be modular in nature. It is reasonable to
17 assume that as market pricing for energy changes over time, additional wells and new
18 generating modules may become possible. For a number of reasons, including
19 permitting, common facilities utilization and overall efficiencies, it is obvious that any
20 growth in the electrical output of this geothermal resource would most likely be sited at
21 or near the currently proposed facility. In any event, U. S. Geothermal will presumably
22 enter into new contracts of some sort to sell any increased production that proves
23 economically and technically feasible. But the potential for further growth and additional

1 sales should not be relevant in this proceeding. I see no reason why it either benefits, or
2 damages, the customers of Idaho Power if U. S. Geothermal is allowed to utilize the
3 facility site to add incremental modules in the future for sale under separate energy
4 agreements if market conditions allow expansion.

5 Q. IF THE COMMISSION WERE TO RULE THAT PROJECTS WITH CAPACITIES
6 GREATER THAN 10 MEGAWATTS ARE NOT ELIGIBLE FOR PUBLISHED
7 RATES, WHAT WOULD BE THE LIKELY RESULT?

8 A. One possibility is that U. S. Geothermal, and possibly other developers facing similar
9 situations, would simply construct a series of 9.9 megawatt plants.

10 Q IS THIS IN ANYONE'S BEST INTERESTS?

11 A. I don't believe so. Nor is it consistent with what I take to be the Commission's intent to
12 assure that only 10 megawatts of energy from a facility is eligible for published rates. I
13 do not believe the economic inefficiencies resulting from siting multiple 9.9 megawatt
14 facilities serves the interest of any of the parties in this proceeding.

15 Q. HAS ANYTHING RECENTLY OCCURRED THAT CHANGES THE PARAMETERS
16 OF THE DISPUTE?

17 A. Yes. Idaho Power recently wrote U. S. Geothermal a letter, dated May 21, 2004, that for
18 the first time claims the Project "is not entitled to published rates for QF projects smaller
19 than 10 MW" as a result of deliveries in excess of 10 megawatts in certain hours.

20 Although the letter is somewhat unclear, it appears that the intent of Idaho Power is to
21 change the position it has consistently taken in other agreements since 2002 and during
22 the course of negotiations with this Project over the last year, to now disallow published
23 rates for the delivery of the first 10 megawatts of output to Idaho Power. Such a change

1 in Idaho Power's basic contracting philosophy at this late date in the negotiations will
2 have a substantial impact on the ability of U. S. Geothermal to develop its Project. It
3 should be understood that U. S. Geothermal has proceeded over the last year, with the
4 expenditure of substantial investment and effort, on the basis of Idaho Power's previous
5 position and the Commission's treatment of facilities with a total capacity in excess of 10
6 megawatts.

7 Q. DO YOU KNOW WHY IDAHO POWER HAS SUDDENLY CHANGED ITS
8 POSITION?

9 A. I don't know all the reasons, but I suspect it may be due in part to the Commission's
10 recent criticism of Idaho Power in the *Renewable Energy* case, Case No. IPC-E-04-5.

11 Q. IS THE *RENEWABLE ENERGY* DECISION APPLICABLE TO THIS CASE?

12 A. I don't believe it is. The Commission criticized Idaho Power in that case because it
13 bought the first ten megawatts from a 17 megawatt facility at posted rates, and the
14 balance at negotiated rates. The Commission Staff said that the price for energy in excess
15 of 10 megawatts lacked justification. The Commission pointed out that projects in excess
16 of ten megawatts are supposed to be offered rates derived from Idaho Power's IRP and
17 the AURORA model. In the present case, we are only proposing to sell Idaho Power ten
18 megawatts. There are no excess generation sales, and we have repeatedly pointed that
19 fact out to Idaho Power.

20 Q. ARE THERE ANY ASPECTS OF THE *RENEWABLE ENERGY* DECISION THAT
21 ARE APPLICABLE TO THIS CASE?

22 A. Yes. The Commission ultimately approved the contract in that case primarily because the
23 developer was innocently ensnared by reliance on Idaho Power's negotiating position.

1 The same innocent reliance exists in this case. U. S. Geothermal has spent substantial
2 amounts of money as a result of negotiations that focused solely on published rates. It
3 should be noted that in the Renewable Energy Case, the Commission Staff filed its
4 testimony on April 6, 2004, and the Commission Order was issued May 5, 2004. Both
5 events were after the filing of the Complaint. Although I believe the U. S. Geothermal
6 project meets the 10 megawatt maximum criteria for published rates, if the Commission
7 were to rule otherwise I believe it would be appropriate to grandfather the U. S.
8 Geothermal Project in regard to the availability of the published rates. A major change,
9 and the inevitable delay it would cause, in contracting at this late stage in U. S.
10 Geothermal Project's development would simply be unfair and unnecessary.

11 Q. ARE THERE OTHER FACTORS THE COMMISSION SHOULD CONSIDER IN
12 RESOLVING THIS DISPUTE?

13 A. Yes. I believe acceptance of Idaho Power's position would create an unintended bias
14 against thermal generation projects. For example, in the case of a hydroelectric or wind
15 generation facility, the facility would be capable of generating the same amount of
16 capacity at any time during the year, subject only to the availability of motive force
17 adequate to meet its design capacity. In the case of thermal projects in general, and the
18 U. S. Geothermal project in particular, the project's output in any hour is limited by the
19 ambient temperature in existence at any specific time during the year. If the Idaho Power
20 interpretation of the Commission's intent on the 10 megawatt capacity limitation were
21 deemed appropriate, the U. S. Geothermal facility would in fact have to be designed for
22 an output at average ambient conditions of significantly less than 10 megawatts in order
23 to generate no more than 10 megawatts during the coldest hour in any year. This

1 interpretation is clearly biased against thermal projects in general. You would have to
2 read the Commission's intent as a limitation of capacity to 10 megawatts for technologies
3 that are capable of relatively steady state operation, and significantly less than 10
4 megawatts for projects that are sensitive to actual ambient changes during the course of
5 the year. The net result would be that thermal projects under that interpretation would
6 generate significantly less annual energy than non-thermal projects. Such a bias,
7 specifically against one technology, does not appear to meet the intent of the Commission
8 to limit the total amount of energy purchased under published rates to a level it felt was
9 appropriate.

10 Q. DO THE TERMS AND CONDITIONS PROPOSED BY U. S. GEOTHERMAL BOTH
11 RECOGNIZE THE HOURLY IMPACT OF AMBIENT CONDITIONS AS WELL AS
12 THE COMMISSION'S INTENT TO LIMIT THE ANNUAL ENERGY SUBJECT TO
13 THE PUBLISHED RATES?

14 A. Yes. In U. S. Geothermal's last draft of the Firm Energy Sales Agreement (included as
15 Exhibits A and B to the Complaint), U. S. Geothermal proposed that the "Maximum
16 Capacity Amount" (Section 1.8) be defined as 12.7 megawatts in any hour. In addition,
17 in Article VI of the Agreement, U.S. Geothermal introduces the concept of "Maximum
18 Monthly Energy Amounts." This concept limits the maximum energy deliveries in any
19 month to a specified amount. The total of all 12 months' "Maximum Monthly Energy"
20 amounts is 87,661 megawatt hours, or an average output of 10 megawatts (multiplied by
21 8,766 hours in an average year). U.S. Geothermal has gone the extra step in its proposal
22 to assure that the facility output delivered pursuant to this Agreement is in fact from a 10
23 megawatt facility, by contractually limiting the maximum deliveries in any month to

1 those expected of a 10 megawatt geothermal facility subject to the normal influences of
2 its environment.

3 Q. DOES THE FACT THAT U. S GEOTHERMAL VARIES THE "MAXIMUM
4 MONTHLY ENERGY" AMOUNTS CREATE ANY UNINTENDED
5 CONSEQUENCES AS A RESULT OF THE SEASONAL VARIATION IN ENERGY
6 PRICES UNDER THE CONTRACT?

7 A. No. In fact, payments under the proposed contract are slightly less than payments would
8 be for a project that delivered 10 megawatts in every hour of the year. U.S. Geothermal's
9 proposal simply addresses the variance caused by actual ambient conditions, and does it
10 in a manner that is consistent with the Commission's intent to limit the published rates to
11 10 megawatt contracts.

12 Q. COULD YOU PLEASE BRIEFLY EXPLAIN THE DISPUTED 90%/110% OUTPUT
13 PENALTY?

14 A. Idaho Power is requiring the inclusion of terms and conditions within the Agreement that
15 it believes add to the "firmness" of the energy it will receive pursuant to the Agreement.
16 The Provisions limit the payment of published avoided cost rates for energy produced by
17 the Project up to 110% of the monthly "Net Energy Amounts" specified in the
18 Agreement. Energy in any month which exceeds 110% of the monthly "Net Energy
19 Amount" is to be paid the current month's "Market Energy Cost" or the published
20 avoided cost rate in effect, whichever is lower.

21 In addition, Idaho Power insists on the introduction of the concept of "Shortfall
22 Energy" and an associated "Shortfall Energy Payment." In this case, if the Project does
23 not deliver at least 90% of the monthly "Net Energy Amount" specified in the

1 Agreement, the Project is required to pay any resulting "Shortfall Energy Payment." The
2 "Shortfall Energy Payment" is calculated by subtracting actual monthly deliveries from
3 90% of the monthly "Net Energy Amount" in the Agreement and multiplying by the
4 amount, if any, that that month's "Market Energy Cost" exceeds the published avoided
5 cost rate in effect in the Agreement.

6 U. S. Geothermal disagrees with the inclusion of these provisions, and proposes
7 that the Agreement contain the standard terms and conditions that have been used for
8 PURPA projects in the State of Idaho over the last decade. Those terms and conditions
9 rely on the fact a QF is paid only for energy actually delivered, without any compensation
10 for capacity, to assure that the QF receives payment consistent with the published
11 avoided cost.

12 Q. DO YOU BELIEVE THAT THE PUBLISHED RATES FAIRLY COMPENSATE
13 PURPA PROJECTS FOR THE "FIRMNESS PENALTIES" IDAHO POWER IS
14 PROPOSING?

15 A. No. The 90%/110% provisions clearly add to the value Idaho Power receives as result of
16 paying Agreement rates for only a relatively narrow range of Project output. In addition,
17 Idaho Power has mitigated its potential expense if it has to purchase replacement energy
18 in the case of deliveries below the 90% threshold. The problem I have with these terms
19 and conditions is that the value added for the purchaser has not been reflected in the value
20 of the energy sold by the Project. The published avoided cost rates reflect the avoidance
21 of the least cost avoided utility asset. The value of these "firming" characteristics has not
22 been included in the calculation of the value of the avoided resource, and it is not
23 included in the published rates.

1 Q. HOW CAN YOU BE SURE THE VALUE OF THESE PROVISIONS HAS NOT BEEN
2 INCLUDED IN THE PUBLISHED AVOIDED COST?

3 A. The cost saved by avoiding the construction and operation of the next lowest cost
4 resource option for a utility is utilized to calculate avoided costs. In Idaho Power's case,
5 the Commission has determined that a utility constructed and owned combined cycle
6 natural gas fired project is the so-called Surrogate Avoided Resource ("SAR"). This
7 determination was the result of an extensive and time-consuming process open to the
8 industry as a whole. The result of this effort was to establish a cost that the utility would
9 avoid if an independent generator provided an equivalent amount of energy in lieu of the
10 avoided resource. In the case of the SAR, the facility presumably owned by a utility
11 would recover its investment and operating expenses in the same manner as other
12 regulated assets. The concept of avoided pricing is designed to leave the consumer
13 unaffected – that is, the consumer would see the same cost regardless of whether the
14 resource was supplied by the utility or by an independent generator.

15 Q. DO UTILITY ASSETS, AND SPECIFICALLY THE SURROGATE AVOIDED
16 RESOURCE, HAVE COST RECOVERY CLAUSES SIMILAR TO THOSE
17 "FIRMING" PROVISIONS BEING PROPOSED BY IDAHO POWER?

18 A. No. The current regulatory process allows for those costs and expenses, prudently
19 incurred, to be recovered through the rates for sales to utility customers. I am not aware
20 of any process that builds in an adjustment similar to the 90%/110% provisions proposed
21 by Idaho Power in the recovery of investments in regulated assets.

22 In fact, Idaho Power currently adjusts rates on an annual basis through the Power
23 Cost Adjustment (PCA), subject to Commission approval, to assure it recovers its

1 investment in generation even when production is significantly more or less than the
2 average production anticipated. The PCA is, at least in the case of lower than anticipated
3 production, the exact opposite of the treatment proposed in the “firming” concept. Under
4 Idaho Power’s proposal, the PURPA resource doesn’t get paid for its capital and
5 operating costs if it doesn’t generate, and it also gets hit with a potentially enormous
6 penalty for potential market costs for replacement power purchases. An Idaho Power
7 SAR, on the other hand, recovers its capital and operating costs even if it doesn’t
8 generate, and it also recovers through the PCA, in all cases except imprudency, 90% of
9 any market costs incurred for replacement power.

10 It is very difficult for me to understand why the avoided utility resource and the
11 project under a QF contract should receive such diverse, and in fact opposite, recovery
12 treatment. Again, if those “firming” provisions are truly desired by the purchaser, the
13 value and cost of those characteristics should be included in the avoided cost.

14 Q. ARE YOU PROPOSING THAT THE QUALIFYING FACILITY SHOULD RECEIVE
15 TREATMENT EXACTLY LIKE THE AVOIDED UTILITY RESOURCE?

16 A. No. I am not advocating that qualifying facilities should receive an equivalent to the
17 PCA or that there should be modifications to the recovery mechanisms the Commission
18 has established. But by the same token, QFs should not be held to a performance
19 standard that has not been required of the SAR. The QF contract payment terms and
20 conditions that have become standard in agreements over the last decade, which are
21 utilized in the U. S. Geothermal draft of the Agreement, were arrived at after many years
22 of significant consideration and hearings conducted by the Commission. The
23 Commission had to weigh many significant issues, including security provisions for

1 performance and assurances that the consumer was in fact not impacted by the supply of
2 the avoided energy at the avoided cost. What I am suggesting is that the unilateral
3 inclusion of the “firming” provisions by Idaho Power Company would dramatically alter
4 the balance achieved by the Commission.

5 Q. IS THE 90%/110% BANDING CONCEPT CONSISTENT WITH OTHER
6 CONTRACTS IN TODAY'S MARKETPLACE?

7 A. Other power purchase contracts in the marketplace today may have terms and conditions
8 similar to those proposed. But the issue in our case is whether the benefit and value
9 obtained by the purchaser in the Agreement has been properly priced into the purchase
10 price for the Project's output. For example, if Idaho Power were to request supply
11 proposals subject to these “firming” requirements, I can assure you that the bid price
12 proposed by prospective sellers would reflect the cost of providing a product reflecting
13 this “firmness.” Similarly, it would not be unreasonable for Idaho Power to request in a
14 system sale agreement that a specified capacity be delivered in every hour over a specific
15 period of time with penalties and consequences if such terms were not met. It would also
16 be true that the cost of providing such a product would be reflected in its price. It is
17 totally incorrect to assume that a facility output contract should be expected to deliver
18 under the same terms and conditions as a system sale without appropriate adjustment in
19 the price of the energy delivered.

20 Q. CAN YOU PLEASE CLARIFY HOW THE TRANSACTION CONTEMPLATED BY
21 THIS AGREEMENT VARIES FROM YOUR EXAMPLE OF A SYSTEM SALE?

22 A. In the case of a system sale, or for that matter the calculation of an electric utility's
23 generating capabilities, the fact that the utility's generation assets are comprised of a

1 number of distinct and separate generating facilities creates a “firmness” to the overall
2 capacity. Even though one facility may not be able to generate for any number of
3 reasons, the system as a whole, in fact, has a reliable firm capacity because of the
4 redundancy created by numerous independent generation sources. This is why utility
5 system reserve margins can be a relatively small percentage of total system capacity,
6 while still assuring the firm delivery of energy to utility customers. This is clearly a case
7 where the strength and characteristics of the whole are far superior to the sum of the
8 individual parts.

9 Similarly, in the case of the more than 60 PURPA qualifying facilities now
10 providing energy to Idaho Power, even though each individual facility may not be
11 considered “firm,” the group as whole in fact delivers the benefit of a firm resource to
12 Idaho Power and its customers. If in fact the “firming” terms and conditions proposed by
13 Idaho Power were appropriate and commonplace for all individual generating assets, then
14 a radical recalculation of the appropriate reserve requirements for utilities should be
15 undertaken. In short, Idaho Power is trying to force attributes associated with systems
16 and tailored sales into a contract that is intended to represent an avoided utility rate based
17 project.

18 Q. DO YOU BELIEVE THAT IDAHO POWER SHOULD BE PRECLUDED FROM
19 CHANGING THE ESTABLISHED TERMS AND CONDITIONS OF PURPA
20 CONTRACTS?

21 A. No. If Idaho Power believes the terms and conditions need revision, then I believe the
22 Commission hearing process, open to all interested parties, should be utilized to
23 investigate the worthiness and potential impacts of those changes. What I do believe is

1 inappropriate is for Idaho Power to unilaterally force those changes on individual
2 developers in the contracting process. The monetary and technical capabilities of Idaho
3 Power, in comparison to the individual developer, hardly make for a fair and productive
4 negotiation. Such a practice also results in the exclusion of other parties with a vested
5 interest in the issues from participating in the achievement of a balanced and
6 comprehensive solution.

7 Q. COULD YOU PLEASE BRIEFLY EXPLAIN THE DISPUTED CONTRACT
8 TERMINATION ISSUE?

9 A. Article XXIII, Section 23.2, of the Agreement presented in Idaho Power's latest draft,
10 provides that if "(1) existing Idaho Law is modified to allow persons or entities other than
11 Idaho Power to sell electric capacity or energy at retail in Idaho Power's exclusive
12 service territory, and (2) such change in law results in Idaho Power being unable to fully
13 recover all costs associated with this Agreement," Idaho Power may terminate this
14 Agreement on sixty days prior written notice.

15 Q. WHAT CONCERNS DOES THIS PROVISION PRESENT TO U.S. GEOTHERMAL?

16 A. There are several issues of concern. The first is that the Agreement provides that it will
17 not take effect until the Commission has approved the Agreement and declared that
18 payments made pursuant to the Agreement shall be allowed as prudently incurred
19 expenses for ratemaking purposes. U. S. Geothermal has no problem accepting the
20 Commission's approval as a precedent to the effectiveness of the Agreement.

21 Having received that approval, it is unfair to U.S. Geothermal, its investors, and
22 its lenders to provide for the termination of the Agreement as a result of actions and
23 negotiations that would be conducted outside the scope of this contract. In the unlikely

1 event that deregulation and retail access were to occur in the State of Idaho during the life
2 of this Agreement, the negotiation, settlement and balancing of assets and liabilities as
3 the utility moved to deregulation would be a comprehensive solution that would
4 undoubtedly include many offsetting compromises and valuations. Under those
5 circumstances, it would make no sense for Idaho Power to have the sole right to
6 determine whether it was allowed full recovery for this specific Agreement, and to
7 subsequently determine whether this Agreement should be terminated.

8 Q. HAVE ANY OF THE AGREEMENTS APPROVED BY THE COMMISSION SINCE
9 2002 INCLUDED THIS PROVISION?

10 A. Yes, but I believe that the acceptance of those provisions by other developers has been
11 based on their belief in the unenforceability of such clauses. It is simply not conceivable
12 that sophisticated lenders and investors would submit their future contract rights and their
13 ability to recover their investment to a regulatory process over which they have no
14 control, with the final interpretation of the outcome of that very complicated process
15 residing solely in the hands of the purchaser under the Agreement. In effect, despite
16 having received a contract accepted and approved by both Idaho Power and the
17 Commission, the seller is being asked to allow the Commission and Idaho Power the
18 ability to terminate the Agreement as a result of actions completely unrelated to
19 performance pursuant to the Contract. As a businessman, this provision simply does not
20 pass the smell test as a fair, or legal for that matter, provision that Idaho Power should be
21 allowed to unilaterally force into the Agreement.

1 Q. DO YOU BELIEVE THAT IDAHO POWER NEEDS THIS PROVISION TO
2 PROTECT ITS ABILITY TO FULLY RECOVER PAYMENTS MADE PURSUANT
3 TO THIS AGREEMENT?

4 A. No, I do not. As discussed previously, the Agreement is not effective until the
5 Commission approves it and declares that recovery of Idaho Power's payments shall be
6 allowed as prudently incurred expenses. If for some reason Idaho Power felt that, in the
7 course of retail deregulation, it was not allowed to fully recover all costs associated with
8 this Agreement, its recourse should be to the Commission or ultimately to the courts, to
9 protect its rights. To discard that avenue of protection and default to punishing the Seller
10 under the Agreement through a termination is simply indefensible, and Idaho Power's
11 demand for such a provision is, at the very least, heavy handed and unreasonable.

12 Q. IF THE COMMISSION ACCEPTS U. S. GEOTHERMAL'S POSITION ON THESE
13 ISSUES, WHAT IS THE APPROPRIATE REMEDY?

14 A. The U. S. Geothermal draft of the Firm Energy Sales Agreement included as Exhibit A
15 and B to the Complaint is consistent with past agreements approved by this Commission.
16 The terms and conditions of that Agreement are consistent with historical practices,
17 address in a fair and consistent manner the Commission's intent to limit the published
18 rates to 10 megawatt facilities, and will enable U. S. Geothermal to obtain financial
19 commitments in the marketplace. I believe the Commission should order Idaho Power to
20 adopt the provisions of U. S. Geothermal's draft agreement.

21 Q. DO YOU EXPECT THE FINAL AGREEMENT TO BE EXACTLY IN THE FORM OF
22 THE DRAFT AGREEMENT INCLUDED AS EXHIBITS A AND B IN THE
23 COMPLAINT?

1 A. No. The Agreement should be substantially in the form of Exhibit A and B to the
2 Complaint, but will need to be modified in several areas that should not be controversial
3 or contested. For example, since that draft of the Agreement was submitted, the
4 Commission has ruled on the applicability of provisions in the Agreement to address the
5 ownership of the Project's environmental attributes, such as Green Credits, Green Tags,
6 Renewable Energy Credits (REC) and Emission Credits. The current draft of the
7 Agreement left the issue in limbo subject to the Commission's ruling. Consequently,
8 Article VIII should now be entirely deleted from the Agreement.

9 In addition, Idaho Power introduced in its final draft (included as Exhibit C in the
10 Complaint) Article XV, entitled "RELIABILITY MANAGEMENT SYSTEM." This
11 Article attempts to incorporate reliability criteria into the Agreement because Idaho
12 Power is the control area operator, even though the Project is located outside of Idaho
13 Power's service territory. It is necessary to bring the technical experts of Idaho Power
14 into the discussion to resolve several structural issues regarding implementation of the
15 reliability management standards and the appropriate vehicle to address the
16 responsibilities between U.S. Geothermal (the generator), the Bonneville Power
17 Administration (the wheeling entity), and Idaho Power (as the purchaser of the energy)
18 and Idaho Power (as the control area operator in that area of the State). Although these
19 issues need to be resolved, Mr. Allphin of Idaho Power and I both agree that they are
20 resolvable once we get the appropriate parties together. A meeting to discuss these issues
21 is now being scheduled, and it is my hope that resolution of appropriate provisions will
22 be achieved prior to the completion of this case.

1 Q. ARE THERE ANY OTHER MATTERS YOU BELIEVE THE COMMISSION
2 SHOULD CONSIDER IN RESOLUTION OF THE COMPLAINT?

3 A. Yes. As discussed in the factual background portion of my testimony, it appears that
4 Idaho Power may be changing its position on the pricing of the first 10 megawatts of
5 energy from a project with a capacity of more than 10 megawatts. As I discuss in that
6 portion of my testimony, if the Commission were to determine that none of a project's
7 output for a facility with a capacity in excess of 10 megawatts is eligible for the published
8 rates, I believe it would be appropriate to grandfather the U.S. Geothermal Project in
9 regards to the availability of published rates for the first 10 megawatts of output. A
10 major change in contracting for such projects at this late stage in the U.S. Geothermal
11 Project's development would simply be unfair and unnecessary.

12 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

13 A. Yes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June 2004, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Jean Jewell
Idaho Public Utilities Secretary
472 W. Washington Street
P.O. Box 83720
Boise, ID 83720-0074

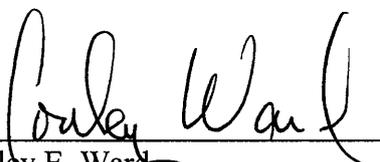
U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Barton L. Kline
Idaho Power Company
1221 W. Idaho Street
P.O. Box 70
Boise, ID 83707

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile

Peter J. Richardson
Richardson & O'Leary
99 E. State Street, Ste. 200
P.O. Box 1849
Eagle, ID 83616

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile



Conley E. Ward

KIP W. RUNYAN, P.E.

2233 Spring Mountain Drive
Boise, Idaho 83702
208-384-0960
Fax 208-384-5978
KRunyan50@aol.com

EMPLOYMENT

- 1975-1977 Morrison-Knudsen Company
Provided Engineering support for bid preparations and field engineering support for several projects including the Kahe Hawaii Cooling Water Outfall and the Prudhoe Bay power plant prefabrication.
- 1977-1988 Idaho Power Company
Participated in a variety of roles in support of permitting, design and construction of various power plants and related projects. Major project involvement is listed in chronological order below:
...Office Engineer and Assistant to the Project Manager during the construction of the fifth electric generating unit (260 mw) at Idaho Power's Brownlee Reservoir.
...Project Manager and Resident Engineer in charge of design, contracting and construction of the Hells Canyon Fish Trap Project in support of the company's anadromous fish mitigation program.
...Analysis of the financial and engineering feasibility of numerous small hydroelectric generating sites. The evaluations supported corporate investigations into possible subsidiary formation.
...Participated in various roles in support of permitting, licensing and design of the North Fork of the Payette River Hydroelectric Project and the Snake River Wylie Hydroelectric Project.
...Lead Engineer evaluating financial, regulatory and political influences on corporate options for relicensing and expansion of the Swan Falls Hydroelectric Project.
- 1988-1989 General Manager, Resource Development Division, Idaho Power Company
Directed the development and/or acquisition of electrical generation projects to meet Idaho Powers future generation resource requirements.
- 1989-1997 President, CEO and member of the Board of Directors, Ida-West Energy Company
Founding employee of Ida-West Energy Company. Ida-West Energy Company is a wholly owned subsidiary of the Idaho Power Company, organized to develop, acquire and operate independent electrical generation resources. Responsibilities included: Corporate start-up, executive management and the ongoing direction of development, permitting, design, power sales contracting, financing, construction and operation activities of the corporation. During this period, Ida-West developed or acquired interest in thirteen hydroelectric projects (72mw's) operating in the western United States. Ida-West also developed and fully permitted the Hermiston Power Project, a 460 mw natural gas fired project, currently under construction, located in Hermiston, Oregon. In 1997, Ida-West had interests in over \$100,000,000 in operating assets and gross sales of \$11,000,000 annually.
- 1997-1999 Senior Vice-President, Delivery, Idaho Power Company
Senior Vice-President for the ongoing strategic planning and operations of Idaho Power Company's Delivery Business Unit. The business unit included over 1,000 employees dedicated to the operation of Idaho Powers electrical transmission and distribution systems, substations, metering, billing and customer service. The business unit operated under a combined annual capital and operations budget of over \$160,000,000.
- 2001-Present Independent consultant providing engineering, financial and general business services to the independent energy marketplace.

EDUCATION

BSCE, University of Idaho, 1975
Stanford Graduate School of Business, Stanford Executive Program, 1997
Numerous power industry related seminars and training programs

ORGANIZATIONS

Licensed Professional Engineer, State of Idaho (#4013)
Member of American Society of Civil Engineers
Former Member of American Concrete Institute
Former Member of Board of Directors of the Western System Coordinating Counsel (WSCC)