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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for U. S. Geothermal, Inc.
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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

REBUTTAL TESTIMONY OF KIP W. RUNYAN

ON BEHALF OF U.S. GEOTHERMAL, INC.

August 19, 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. ARE YOU THE SAME KIP W. RUNYAN WHO PREVIOUSLY SUBMITTED
5 DIRECT TESTIMONY IN THIS PROCEEDING?

6 A. Yes.

7 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

8 A. The purpose of my rebuttal testimony is to respond to a number of comments and
9 concepts put forward in the testimony of Idaho Power witness Gale, Avista witness
10 Kalich, PacifiCorp witness Hale, and Staff witness Sterling (together referred to as the
11 “The Other Witnesses”).

12 Q. DO YOU HAVE A GENERAL COMMENT ABOUT THE NATURE AND CONTENT
13 OF THE TESTIMONY PROVIDED BY THOSE WITNESSES?

14 A. Yes. A common theme running through all of the utility witnesses’ testimony is their
15 insistence that PURPA resources should receive something less than full avoided cost
16 rates because they don’t provide capacity benefits and are less reliable or riskier than
17 utility owned resources. Later on in my testimony, I will submit evidence that proves
18 these contentions are demonstrably wrong, but as a preliminary matter I would like to
19 point out that these issues were fully litigated when the Commission established avoided
20 cost rates. None of the pleadings in this case place the level or reasonableness of avoided
21 cost rates at issue, and the utilities’ arguments about the value of PURPA resources are
22 therefore irrelevant and a prohibited collateral attack on the Commission’s prior orders.

1 Q. DO YOU HAVE ANY OTHER GENERAL OBSERVATIONS ABOUT THE
2 UTILITIES' TESTIMONY?

3 A. Yes. All three utility witnesses conjure up a parade of hypothetical PURPA abuses that
4 might be possible in certain "scenarios." Some of these hypotheticals are ludicrous on
5 their face, such as Mr. Gale's assertion at page 29 that a developer might build a 100
6 megawatt plant and then generate only 876 hours in order to qualify for a posted rate
7 based on 10 average megawatts. Moreover, none of the witnesses submit any evidence
8 whatsoever that any PURPA generator has ever perpetrated, or even attempted, any of the
9 practices the utilities allegedly fear, and they further ignore the fact that many of the
10 envisioned scenarios are prohibited by existing Commission orders or already barred by
11 provisions in the draft contract U.S. Geothermal tendered to Idaho Power. In short, the
12 utilities devote much of their testimony to beating up a strawman of their own invention.
13 None of this has anything to do with the real issues in this case.

14 Q. WHAT ARE THE REAL ISSUES BEFORE THE COMMISSION IN THIS
15 COMPLAINT?

16 A. U.S. Geothermal's complaint raises three discrete issues:

17 (1) What is the definition of the 10 megawatt size limit for entitlement to the
18 Commission's Published Rates?

19 (2) Should Idaho Power be allowed to include contractual provisions that impose
20 financial penalties if a PURPA generator's energy deliveries vary by more than 10
21 percent from its forecasted performance?

1 (3) Should Idaho Power be allowed to include a contract clause that allows Idaho
2 Power to unilaterally terminate PURPA contracts if certain regulatory actions occur in the
3 State of Idaho?

4 Subsequent to the filing of the complaint, an additional issue has arisen as a result of
5 the Renewable Energy of Idaho Project Order (Order No. 29487) and the response to that
6 Order by Idaho Power. The new issue can be summarized as follows:

7 (4) Can a project larger than 10 MW generate more than the contract firm energy
8 amounts and sell that excess either to Idaho Power at market based rates or to a third
9 party and nevertheless remain eligible for the published rates for the first 10 megawatts of
10 generation, consistent with the terms and conditions of the contracts approved by the
11 Commission for the Tiber Montana Project (Order No. 29232) and the Renewable Energy
12 of Idaho Project (Order No. 29487)? Additionally, if the Commission changes its policy,
13 should U.S. Geothermal be “grandfathered” because of the extensive negotiations it
14 conducted with Idaho Power based on Idaho Power’s contracting guidelines and the
15 previous Commission approvals?

16 Q. THE OTHER WITNESSES ALL AGREE THAT THE “TEN MW PROJECT
17 CAPACITY” CRITERIA FOR PUBLISHED RATE ELGIBILITY SHOULD BE
18 INTERPRETED TO MEAN THAT THE ACTUAL ENERGY DELIVERED IN ANY
19 HOUR DOES NOT EXCEED 10,000 KWH’S. WOULD YOU LIKE TO COMMENT
20 ON THAT CONCLUSION?

21 A. Yes, with a little background first. I believe Idaho Power witness Gale provides an
22 accurate summary of the current situation by concluding, on line 8 of page 25 of his
23 testimony, that “we still have no definitive Commission ruling as to the test to be applied

1 to determine the capacity of a QF and its entitlement to the published rates.” Earlier in
2 his testimony, beginning at line 30 of page 24, Mr. Gale points out that in 2002, Idaho
3 Power requested that “name plate capacity” be used to establish published rate
4 entitlement, but that the Commission declined to address this issue.

5 I am not familiar with Avista or PacifiCorp’s practices, so I can’t speak to their
6 situation. But in the case of Idaho Power, the utility has taken the position that it would
7 buy the first 10 megawatts through the meter on an hourly basis at published rates,
8 without regard to the project’s theoretical or actual capacity. Deliveries in excess of 10
9 megawatts were labeled “Optional Energy,” which Idaho Power would purchase at the
10 lesser of 85% of Mid-C market prices or the published rates.

11 I believe the contracting parties have the capabilities to reach a logical and fair
12 determination of project capacity, if they are so inclined, and that it is reasonable for the
13 Commission to expect the parties to do so. I believe that U.S. Geothermal’s proposed
14 definition is a reasonable resolution based on sound engineering principles. The utilities’
15 proposed definition is not inherently unreasonable, but the Commission should
16 understand that it will have the effect of reducing the maximum size of many PURPA
17 projects, specifically geothermal projects, well below the supposed 10 megawatt limit.

18 Q. THE OTHER WITNESSES CHARACTERIZE THE U.S. GEOTHERMAL
19 APPROACH TO DEFINING PROJECT CAPACITY AS AN APPROACH BASED ON
20 “AVERAGE ANNUAL ENERGY.” DO YOU AGREE WITH THEIR CONCLUSION?

21 A. No I do not. When analyzing the U.S. Geothermal approach, I think it is important for
22 the Commission to focus solely on the 10 MW capacity definition that is actually in the
23 contract, rather than the utilities’ hypothesized definition. U.S. Geothermal is not

1 proposing an “average annual energy” basis for the calculation of the Project’s capacity.
2 Instead, it is proposing that the facility’s capacity be determined just as Staff witness
3 Sterling describes for the Idaho Power Danskin Project.

4 Staff witness Sterling states at line 17 page 11, “Idaho Power’s Danskin project is
5 normally referred to as a 90 MW plant because it has the capability to generate at 90 MW
6 under **normal conditions**.” (emphasis added). As explained in my direct testimony, as
7 well as the extensive discussion in U.S. Geothermal witness Kitz’s testimony, the U.S.
8 Geothermal Project is capable of generating only 10 MW under **normal conditions**. The
9 fact that both of the above facilities will actually generate at more than the stated
10 capacities under favorable ambient conditions and less than stated capacities at
11 unfavorable conditions does not change the fact that they are respectively a 90 MW and
12 10 MW thermal project. As discussed in the Runyan and Kitz testimony, to conclude
13 otherwise is to impose a bias against thermal projects in general, and specifically a bias
14 against the development of geothermal resources.

15 Q. THE OTHER WITNESSES DISCUSS ABUSES THAT MAY OCCUR IF THE
16 COMMISSION WERE TO ALLOW A PROJECT TO UTILIZE A SO CALLED
17 “AVERAGE ENERGY APPROACH”. DO YOU BELIEVE THEIR CONCERNS ARE
18 VALID?

19 A. If one disregards the provisions of the U.S. Geothermal contract and assumes that the
20 Commission would actually approve published rates for a contract with a 100 MW
21 capacity, they might have a legitimate concern. But the facts in this case are substantially
22 different than the doomsday scenarios they described. The fact is that the contract before
23 the Commission limits deliveries to specified “Maximum Monthly Energy” amounts, and

1 it further limits hourly deliveries to the “Maximum Capacity Amount,” which in this case
2 is set at 12.7 MW. Article 14.2 goes on to state that “Seller’s failure to limit deliveries by
3 the Transmitting Entity pursuant to this contract to the Maximum Capacity Amount will
4 be a Material Breach of this Agreement.” The Project simply cannot do what The Other
5 Witnesses are forecasting without breaching the terms of the contract.

6 Q. THE OTHER WITNESSES ALSO BRING UP THE POSSIBILITY OF OTHER
7 MANIPULATIONS THAT MIGHT OCCUR, PRIMARILY SHIFTING DELIVERIES
8 BETWEEN PEAK AND OFF PEAK PERIODS TO FACILITATE ADDITIONAL
9 PROFITS AT THE EXPENSE OF IDAHO POWERS CUSTOMERS. DO YOU
10 AGREE WITH THEIR CONCERN?

11 A. Later in this rebuttal testimony I will address those concerns since they relate to a project
12 that sells its output to multiple purchasers. This discussion, however, is about how
13 capacity eligibility for published rates is determined, and that determination has nothing
14 to do with any of the conjectured abuses.

15 Q. DOES THE 10 MW FACILITY CAPACITY DEFINITION PROPOSED BY U.S.
16 GEOTHERMAL CREATE ANY RISK FOR THE COMMISSION OR THE
17 CUSTOMERS OF IDAHO POWER?

18 A. Absolutely not. The result of calculating the capacity of the thermal facility at **normal**
19 **conditions** is to adopt a rating standard that is consistent with standard utility and
20 engineering practices. Any strained interpretation or misrepresentation of this
21 methodology by contracting parties is easily dealt with in the existing contracting and
22 approval process. It is a matter of common sense, and Idaho Power and potential sellers

1 should be expected to conduct the determination in a professional manner, supported by
2 solid engineering principles.

3 Q. IF THE COMMISSION FEELS THAT SOME EXPOSURE IS CREATED BY THE
4 ADOPTION OF THE **NORMAL CONDITIONS** STANDARD FOR THERMAL
5 PROJECTS, ARE THERE WAYS TO ALLEVIATE THAT CONCERN?

6 A. Absolutely. Contracts could simply expand the definition of the Maximum Capacity
7 Amount to include an appropriate capacity amount for each month, determined by
8 utilizing accepted engineering principles. That provision, along with the Maximum
9 Monthly Energy Amounts previously specified by U.S. Geothermal in the Contract,
10 would eliminate any risk of such an abuse. U.S. Geothermal witness Kitz presents
11 extensive testimony explaining how the U.S. Geothermal capacity definition is consistent
12 with the actual operating characteristics of a geothermal resource. U.S. Geothermal is not
13 attempting any slight-of-hand, it simply would like its geothermal resource analyzed like
14 a geothermal facility.

15 Q. IDAHO POWER WITNESS GALE STATES AT LINE 17 OF PAGE 2, THAT IDAHO
16 POWER IS PROPOSING ADDITIONAL CONTRACT PENALTIES TO
17 “ENCOURAGE GREATER FIRMNESS.” DO YOU BELIEVE THESE CHANGES
18 ARE WARRANTED?

19 A. No, I do not. Idaho Power is proposing financial penalties for CSPPs whose monthly
20 production deviates more than 10 percent from estimates required to be submitted two
21 years in advance. Idaho Power has presented no evidence to support this proposal, other
22 than the vague assertion that it will benefit Idaho Power and its customers. That may be

1 true in the sense that it will effectively reduce CSPP rates, but the issue is whether the
2 proposal is fair and reasonable to all stakeholders.

3 Q. DID YOU INVESTIGATE THE RELIABILITY OF THE CSPP INDUSTRY IN
4 COMPARISON TO IDAHO POWER'S FACILITIES?

5 A. Following a review of the testimony by witness Gale, I researched the past performance
6 of both the CSPP projects and Idaho Power's own facilities over the period 1997 through
7 2003 in order to compare the "firmness" of the two types of resources. I selected that
8 specific period because it required only minor modification of the raw data to be
9 consistent for the facilities operating throughout the period. Data for the CSPP projects
10 was taken from the annual "Report of Cogeneration / Small Power Production for Idaho
11 Power" submitted by Idaho Power to the Commission. The data for Idaho Power
12 facilities was taken from the FERC Form 1 reports filed annually by Idaho Power. The
13 results of the analysis are attached to this testimony as Exhibit No. 4.

14 As the Exhibit indicates, over the last seven years the CSPP projects have been
15 more consistent in their output, and therefore more predictable, than Idaho Power's own
16 resources. Actual production over the period for all Idaho Power resources varied from
17 116% (1998) to 84% (2003) of their seven year average production. On the other hand,
18 CSPP production varied from 115% (1997) to 85% (2003) of their average. The figures
19 for Idaho Power are admittedly not directly comparable to CSPPs as a whole because
20 Idaho Power's thermal facilities are idled when market conditions allow more economic
21 purchases. But in reviewing only CSPP thermal projects, the deviation over the seven
22 year period was from 93% to 106% of the seven year average, a very reliable and
23 predictable performance by any definition. Furthermore, comparing only Idaho Power's

1 hydroelectric projects with CSPP hydroelectric projects, the results clearly indicate that
2 the CSPP projects are more predictable and reliable. Idaho Power's hydro facilities
3 varied from 138% (1997) to 71% (2002) of average over the period, while the CSPP
4 projects varied from 125% (1997) to 76% (2001).

5 Q. WHAT CONCLUSIONS CAN BE DRAWN FROM THE CSPP HISTORIC
6 PERFORMANCE DATA?

7 A. This data refutes the utilities' repeated assertions that CSPP facilities provide only energy
8 and not capacity. In terms of reliability and predictability, the CSPP facilities have
9 operated as well as, and arguably better than, utility resources. A utility trying to balance
10 loads and resources knows it can count on the CSPP portfolio to produce base load
11 capacity and energy in much the same manner as the utility's own base load resources.
12 While it is true that the Commission has decided to limit payments to PURPA projects
13 for only energy delivered, that policy decision does not mean that CSPP projects are not
14 delivering both capacity and energy.

15 Q. ARE THERE ANY OTHER CONCLUSIONS WE CAN DRAW FROM THE CSPP
16 PERFORMANCE DATA?

17 A. Yes. There is simply no evidence that the performance penalties Idaho Power is
18 requesting are justified. Mr. Gale would have the Commission believe that the 90/110
19 performance band is necessary to limit CSPP producers "discretion" over the operation of
20 their facilities. But the fact is that Idaho QF projects receive payment only for energy
21 delivered. This is the ultimate motivation for reliable and continuous production.
22 Considering the record, I find no justification for Idaho Power to make a radical change
23 in the pricing terms and conditions that have provided such a positive result. In light of

1 Idaho Power's stated desire to achieve "simplicity of contract administration," the
2 inclusion of the complex performance banding requirements, and the contract disputes
3 they will inevitably cause, is counter productive and unnecessary.

4 Q. DO THE SAME OBJECTIONS APPLY TO THE 80%/120% PERFORMANCE BAND
5 PRESENTED BY STAFF WITNESS STERLING?

6 A. Yes. Like Mr. Gale, Mr. Sterling has not presented any analysis or documentation to
7 justify or support the bandwidth he proposes. As discussed above, Idaho Power's own
8 aggregated hydroelectric facilities, which represent a group of assets that any utility or
9 state would love to include in its generation portfolio, vary from 71% to 138% of average
10 production over the last seven year period. It makes no sense that new resource additions
11 should be expected to operate at levels substantially superior to Idaho Power's admittedly
12 top-flight generation system. As the record indicates, even though certain assets, for a
13 variety of reasons, may operate at less than expected levels during certain periods, the
14 aggregate group of assets operates in a very satisfactory manner. This is not surprising
15 because a CSPP facility that does not operate at its maximum capability is already
16 penalized by the loss of revenue for the energy it could have delivered.

17 Given the fact that CSPPs already have a powerful motive to maximize
18 production, and considering that, in the aggregate, they are performing as well as the
19 utility's own resources, there is no justification for performance penalties of any type.
20 The fact that Mr. Sterling's proposal may be less onerous than Idaho Power's doesn't
21 make it any less arbitrary. Mr. Gale's or Mr. Sterling's desire to see additional resource
22 "firming," does not change the fact that the proposed treatment is completely opposite of
23 what is required by this Commission of Idaho Power's own resources (including the

1 Surrogate Avoided Resource). In fact, the imposition of potential penalties on Idaho
2 Power makes far more sense than it does for CSPPs because, as our direct testimony
3 pointed out, the PCA eliminates for Idaho Power 90% of the penalty a CSPP faces under
4 the payment for delivered energy contracts now in place.

5 Q. WHAT IS YOUR RESPONSE TO STAFF WITNESS STERLING'S
6 RECOMMENDATION THAT MORE FREQUENT UPDATING OF MONTHLY
7 GENERATION ESTIMATES IS APPROPRIATE?

8 A. As I have just explained, the existing CSPP projects are just as predictable as utility
9 assets for planning purposes, and I therefore reject the notion that performance penalties
10 are appropriate. This unfairness is exacerbated by the fact that the two-year lead time for
11 generation estimates that Idaho Power has proposed is clearly arbitrary. As anyone
12 familiar with the weather in the Northwest knows, forecasting weather and stream flows
13 2 years in advance is a recipe for disaster. If the forecast of monthly generation estimates
14 is meant to be informative and useful, and not punitive, then the proposal by Staff witness
15 Sterling to shorten the intervals for updating generation estimates from 2 years to 6
16 months is superior to Idaho Power's proposal. I would suggest, however, that even a six
17 months forecast is too long. For example, who in their right mind would place any
18 credence in a November forecast of May stream flows? If the Commission deems such
19 forecasts necessary, a month ahead forecast will result in much more accurate
20 information, while minimizing the punitive nature of any penalties Idaho Power may be
21 allowed to impose.

1 Q. STAFF WITNESS STERLING REFERS TO IDAHO POWER'S PROPOSED
2 CONTRACT LANGUAGE ABOUT FORCED OUTAGES AND PROPOSES SOME
3 CHANGES. DO YOU AGREE WITH THE PROPOSED CHANGES?

4 A. The contract section referred to by Staff Witness Sterling is, in my view, unwarranted for
5 the reasons I've already discussed, as well as completely confusing as to the section's
6 intent and purpose. In the first place, the contract does not allow for a 72 hour grace
7 period for forced outages as witness Sterling states. The section provides instead that any
8 delivery suspension will be for a minimum of 72 hours. It further states that any
9 suspension has to be for "all" deliveries, despite the representation by Idaho Power
10 witness Gale on page 9 of his testimony that "the net energy commitment amount can be
11 temporarily reduced." Neither of these provisions makes sense to me. For example, if
12 the facility has 3 generating units, why must "all" deliveries be suspended? Why not just
13 the damaged unit, or if the unit is capable of operating at some reduced level, why must
14 "all" deliveries be suspended? If the equipment can be repaired in 24 hours, what public
15 good is served by the requirement to suspend deliveries a minimum of 72 hours? I
16 simply don't understand the reason for the clause and its punitive nature.

17 Q. EARLIER IN THE REBUTTAL YOU DISCUSSED THE 10 MEGAWATT LIMIT
18 ISSUE AS IT WAS FRAMED IN THE PLEADINGS IN THIS CASE. HAS
19 ANYTHING HAPPENED SINCE THE COMPLAINT WAS FILED THAT
20 COMPLICATES THIS ISSUE?

21 A. Yes. Throughout the negotiations, one of the primary sticking points between Idaho
22 Power and U.S. Geothermal was how to define the Commission's reference to a 10
23 megawatt limit. But both parties assumed that the 10 megawatt standard applied only to

1 the amount of power that must be purchased at published rates, and that it did not limit a
2 seller to a nameplate or peak capacity of 10 megawatts in order to be eligible for the
3 published rates. That is why Idaho Power's draft contracts provided for the purchase of
4 Optional Energy above 10 megawatts at a market based price.

5 This view seemed to be supported by the Commission's Order No. 29232 in the
6 Tiber case, issued on April 28, 2003, which authorized the payment of published rates
7 notwithstanding the fact that the project might ultimately exceed 10 megawatts of
8 capacity. But on May 4, 2004, approximately 6 weeks after U.S. Geothermal filed its
9 complaint in this case, the Commission issued Order No. 29487 approving the Renewable
10 Energy of Idaho contract. That contract contained the "Optional Energy" concepts to
11 facilitate a 17.5 MW biomass facility. In the body of the Order, the Staff and
12 Commission admonished Idaho Power regarding its contracting methodology for projects
13 with a capacity in excess of 10 MW, and indicated that Idaho Power should determine the
14 price for such projects in accordance with the Aurora model IRP methodology.

15 Consequently, Idaho Power changed its position and now argues for the first time
16 that U.S. Geothermal is not entitled to published rates for 10 megawatts or less of
17 production, however defined, but instead is entitled only to the unknown rate that the
18 Aurora model will ultimately produce for the entirety of its output. Staff witness Sterling
19 now endorses this approach in his testimony.

20 Q. IF THE COMMISSION DETERMINES THAT PROJECTS LARGER THAN 10
21 MEGAWATTS ARE NOT ELIGIBLE FOR PUBLISHED RATES, DO YOU FEEL
22 U.S. GEOTHERMAL SHOULD BE SUBJECTED TO THE AURORA MODEL IRP
23 METHODOLOGY?

1 A. No. I believe U.S. Geothermal should receive a “grandfather” exemption from the IRP
2 requirement for the same reason that the Commission exempted Renewable Energy. The
3 Commission stated in its Findings, at page 10, “What is persuasive in this case is the
4 unfairness of holding the QF project hostage for the failure of the utility to follow the
5 Commission-approved avoided cost methodology. The project’s viability, as configured,
6 is dependent on the timely approval of the submitted Agreement.”

7 Q. DO THOSE SAME CONSIDERATIONS APPLY TO THIS CASE?

8 A. Yes. Following is a brief summary of the facts surrounding the effort by U.S.
9 Geothermal to obtain a PURPA contract at published rates:

10 (1) As presented in my direct testimony, early in 2003 Idaho Power sent several
11 standard form PURPA agreements to U.S. Geothermal. These agreements included terms
12 and conditions for the delivery of and payment for “Optional Energy.” “Optional
13 Energy” is defined as “The electric energy produced by the Facility, less Station Use, and
14 less Losses, scheduled and delivered by the Transmission Entity to Idaho Power at the
15 Point of Delivery that exceeds 10,000 Kwh in any single hour.” Article VI of the
16 agreement goes on to state that “Idaho Power will purchase all of the Net Energy and
17 Optional Energy produced by the Sellers Facility”.

18 (2) On April 28, 2003, the Commission issued Order No. 29232. The Order
19 approved the Tiber Montana Contract. That contract included the same provisions that
20 are discussed above. The Order provided a substantial discussion of the “Optional
21 Energy” concept and the likelihood that the Tiber project may or may not someday have
22 a capacity greater than 10 MW.

1 (3) Extensive contract negotiations between Idaho Power and U.S. Geothermal were
2 conducted during the period from October of 2003 to the filing of this Complaint. The
3 specifics of those negotiations are more completely discussed in my direct testimony at
4 pages 4 & 5 and pages 9 through 11. During the entire period of negotiation the
5 availability of published rates for the first 10 MW of output was never in dispute.

6 (4) On March 25, 2004, U.S. Geothermal filed its Complaint with the Commission.

7 (5) On May 4, 2004, some 6 weeks after the filing of the U.S. Geothermal Complaint,
8 the Commission issued Order No. 29487.

9 (6) On May 21, 2004, two months after U.S. Geothermal filed its Complaint, Idaho
10 Power sent a letter to U.S. Geothermal that, for the first time in the negotiation, denied
11 entitlement to the published rates for the U.S. Geothermal project.

12 (7) The hearing dates for this Complaint are scheduled for September 2nd and 3rd
13 2004. An Order addressing the complaint is expected sometime thereafter, over one and
14 one-half years after the contract negotiations were initiated.

15 Q. THE OTHER WITNESSES RAISE A NUMBER OF CONCERNS ABOUT THE
16 POTENTIAL FOR ABUSE IF A PROJECT THAT IS LARGER THAN 10 MW (SAY
17 20 MW) SELLS THE OUTPUT OF THE PROJECT TO MULTIPLE PARTIES. DO
18 YOU AGREE WITH THEIR CONCERNS?

19 A. No. The stated concerns primarily center around two issues. The first is that a project in
20 this situation could force multiple 10 MW PURPA contracts on various utilities at the
21 published rates in the State of Idaho. The second is that the project would basically shop
22 its output to the most favorable purchaser at the most favorable periods of time. The

1 Commission has already addressed the first of these concerns, and the second can be
2 addressed by contract terms and conditions that make such abuses impossible.

3 Q. PLEASE EXPLAIN YOUR THOUGHTS ON THE CONCERN THAT MULTIPLE QF
4 CONTRACTS COULD BE OBTAINED.

5 A. This issue was fully discussed in the Staff Comments contained in the Tiber Montana
6 Case (Order No. 29232). On page 4 of that Order, Staff is quoted as stating, "In Order
7 No. 26772, the Commission equated the term 'project' as used in rate orders and
8 schedules with 'qualifying facility,' as that term is defined by FERC. Thus each
9 qualifying facility is only entitled to one PURPA contract." U.S. Geothermal agrees with
10 the Staff interpretation and is willing to stipulate that the Project, except for this contract,
11 is not entitled to utilize the required purchase provisions of PURPA to contract with any
12 other utility doing business in State of Idaho.

13 Q. TURNING TO THE SECOND ISSUE, CAN U.S. GEOTHERMAL GAME THE
14 SYSTEM BY SHIFTING DELIVERIES BETWEEN MULTIPLE PARTIES IN ORDER
15 TO MAXIMIZE ITS PROFITS?

16 A. If the intent of the contracting parties is clearly understood in the contract, I don't believe
17 such "gaming" can occur. If such practices were to occur, the purchaser under the
18 contract would have legal rights to claim a breach of performance and pursue appropriate
19 legal and financial remedies. It should be clearly understood that U.S. Geothermal has no
20 intent to, or any interest in, employing any of the activities referred to by The Other
21 Witnesses. If Idaho Power, or this Commission, has any concerns in that regard, U.S.
22 Geothermal is more than willing to include provisions in the contract that provide
23 adequate protection to all parties. U.S Geothermal intends to deliver Idaho Power its pro-

1 rata share of the project output during all hours of each day of the contract period. Any
2 reasonable contract provision to assure this performance is acceptable to U.S Geothermal.
3 The contract provisions could be quite simple, and easily monitored through the right to
4 audit on demand all of the project production records.

5 The problem I have with the utilities' presentation is that having stated the
6 concerns, the only solution offered is to disallow any and all sales of additional output to
7 any third party, rather than proposing contract language that protects their interests. I
8 cannot identify any public policy issue or concern that would lead to forbidding a sale of
9 excess energy to a third party. Again, reasonable parties attempting to provide adequate
10 and fair contract protections should have no problem agreeing on appropriate contract
11 terms and conditions.

12 Q. STAFF WITNESS STERLING BELIEVES U.S. GEOTHERMAL SHOULD NOT BE
13 ENTITLED TO THE SAME "GRANDFATHERING" TREATMENT AS
14 RENEWABLE ENERGY OF IDAHO. DO YOU AGREE WITH HIS
15 CONCLUSIONS?

16 A. No. In Staff Witness Sterling's testimony on page 23, he states that the Commission
17 reluctantly approved the Renewable Energy contract, "in part because it did not wish to
18 delay Renewable Energy's progress on completing the project and in part because it did
19 not wish to penalize Renewable Energy for mistakes not of its creation." I see no reason
20 why the Commission should treat U.S. Geothermal any differently than Renewable
21 Energy, simply because it has exercised its rights to challenge what it believes are unfair
22 contract terms in a six month complaint process before this Commission.

1 Q. STAFF WITNESS STERLING ALSO STATES THAT THIS CASE IS DIFFERENT,
2 BECAUSE HE REMEMBERS “TELLING U.S. GEOTHERMAL ON ONE OR MORE
3 OCCASIONS THAT IF IT WANTED TO PURSUE A PROJECT 10 MW OR
4 LARGER, IT MUST REQUEST THAT IDAHO POWER COMPUTE A RATE USING
5 THE IRP-BASED METHODOLOGY.” DO YOU AGREE WITH HIS
6 CONCLUSIONS?

7 A. No. PURPA developers do not follow the PUC’s proceedings and orders with anything
8 like the utilities’ intensity or expertise, and they should be entitled to rely on the
9 presumption that a utility’s contractual approach is consistent with Commission orders
10 and policies. The QF developer has a significant number of development and contracting
11 issues it must manage. To further burden it with the responsibility to ensure that Idaho
12 Power’s negotiation positions are entirely consistent with the Commissions intent is
13 simply unreasonable and unworkable.

14 Q. STAFF WITNESS STERLING INDICATES, AT PAGE 22, THAT U.S.
15 GEOTHERMAL REQUESTS “GRANDFATHERING” FOR THE AVAILABILITY OF
16 PUBLISHED RATES CONSISTENT WITH THE RENEWABLE ENERGY OF
17 IDAHO TERMS. IS THIS AN ACCURATE REPRESENTATION?

18 A. Not entirely. U.S. Geothermal is asking the Commission to “grandfather” U.S.
19 Geothermal for eligibility for published rates for the first 10 MW of project output, as
20 that is defined in the contract, with the right to sell any excess to other third parties. As
21 discussed earlier in this rebuttal testimony, as well as in my direct testimony, U.S.
22 Geothermal is more than willing to include contract provisions that protect Idaho Power

1 and its customers from any potential abuses it feels it is not now contractually protected
2 from.

3 Q. IF THE COMMISSION DECIDES THAT U.S. GEOTHERMAL IS ENTITLED TO
4 TERMS CONSISTENT WITH THE RENEWABLE ENERGY OF IDAHO
5 CONTRACT, BUT IS NOT COMFORTABLE WITH ALLOWING THE SALE OF
6 EXCESS PRODUCTION TO A THIRD PARTY, WHAT EFFECT WILL THIS HAVE
7 ON THE VIABILITY OF THE U.S. GEOTHERMAL PROJECT?

8 A. The financial feasibility of the project under the described scenario is really outside the
9 scope of the services I am providing U.S. Geothermal. I would, in such a case, ask the
10 Commission to review the fairness of the provision Idaho Power has included in its
11 Market Based Pricing for Optional Energy. "Market Energy Cost" is defined as "eighty-
12 five percent (85%) of the weighted average of the daily on-peak and off-peak Dow Jones
13 Mid-Columbia Index (Dow Jones Mid-C Index) prices for non-firm energy." "Optional
14 Energy," that is energy in excess of 10,000 Kwh in any single hour, is paid the current
15 month's Market Energy Cost or the published rates, whichever is lower. Idaho Power
16 enjoys the benefit if the Market Energy Cost is below the published rates, but denies the
17 seller the benefit of a Market Energy Cost that is above the published rates by limiting the
18 payments to the lesser of the published rates or Market Energy Costs. "Optional Energy"
19 is treated as non-firm. Staff witness Sterling describes the terms under which "non firm"
20 energy sales are made on page 4 of his testimony. "Non-firm energy projects less than 10
21 MW in size are paid 85% of Mid-C market prices." Idaho Powers inclusion of the "lesser
22 of" provision in the Optional Energy pricing is inconsistent with the pricing criteria the
23 Commission has established. The "lesser of" provision is unfair and inconsistent with

1 Commission pricing criteria and Idaho Power should be instructed to remove that
2 provision from the contract.

3 Q. DOES THAT COMPLETE YOUR REBUTTAL TESTIMONY?

4 A. Yes.

EXHIBIT 4.1 - COMPARISON OF CSPP & IDAHO POWER GENERATION RECORD

| Year | Annual output as a Percent of Period Average | | | | | | | |
|------|--|------|----------------|------|----------------|------|-------|------|
| | Thermal Projects | | Hydro Projects | | Total Projects | | | |
| | IPCo. | CSPP | IPCo. | CSPP | IPCo. | CSPP | IPCo. | CSPP |
| 1997 | 77% | 101% | 138% | 125% | 111% | 115% | | |
| 1998 | 99% | 101% | 130% | 114% | 116% | 109% | | |
| 1999 | 104% | 100% | 124% | 120% | 115% | 112% | | |
| 2000 | 110% | 96% | 99% | 106% | 104% | 102% | | |
| 2001 | 109% | 106% | 66% | 76% | 85% | 88% | | |
| 2002 | 103% | 104% | 71% | 80% | 85% | 90% | | |
| 2003 | 98% | 93% | 72% | 79% | 84% | 85% | | |

EXHIBIT 4.2 - CSPP GENERATION RECORD

| Annual CSPP Production - Gigawatt hours | | | |
|---|----------------------|-----------------------|--------------------------------------|
| Year | Total 65-Projects | 58 Hydro. Projects | 7 Thermal Projects (see below) |
| 1997 | 856 | 557 | 299 |
| 1998 | 807 | 509 | 298 |
| 1999 | 831 | 535 | 296 |
| 2000 | 757 | 472 | 285 |
| 2001 | 653 | 339 | 314 |
| 2002 | 665 | 358 | 307 |
| 2003 | 628 | 353 | 275 |
| Average | 742 | 446 | 296 |

Notes:

- (1) The "7 Thermal Projects" include West Boise Waste, Pocatello City Waste, Glens Ferry Cogen, JR Simplot Thermal, Rupert Cogen, Tamarack Wood Waste and the Tasco Thermal Projects.
- (2) The "Total 65 Projects" do not include the Boise Cascade Emmett Wood Waste and Vaagen Lumber Wood Waste Projects because they were not in service the entire study period.

| Annual CSPP Production - % of Average | | | |
|---------------------------------------|----------------------|-----------------------|--------------------------------------|
| Year | Total 65-Projects | 58 Hydro. Projects | 7 Thermal Projects (see below) |
| 1997 | 115% | 125% | 101% |
| 1998 | 109% | 114% | 101% |
| 1999 | 112% | 120% | 100% |
| 2000 | 102% | 106% | 96% |
| 2001 | 88% | 76% | 106% |
| 2002 | 90% | 80% | 104% |
| 2003 | 85% | 79% | 93% |

EXHIBIT 4.3 - IDAHO POWER GENERATION RECORD

| Annual Idaho Power Production - Gigawatt hours | | | | | | | | |
|--|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | Average |
| THERMAL: | | | | | | | | |
| Bridger | 4,327 | 5,183 | 5,309 | 5,400 | 5,365 | 4,945 | 4,820 | 5,050 |
| Boardman | 142 | 322 | 349 | 354 | 444 | 353 | 424 | 341 |
| Valmy | 925 | 1,420 | 1,608 | 1,945 | 1,788 | 1,945 | 1,628 | 1,608 |
| Danskin | -- | -- | -- | -- | 18 | 43 | 42 | 15 |
| Salmon Diesel | 0 | 0 | 0 | 3 | 4 | 0 | 1 | 1 |
| Total Thermal | 5,394 | 6,925 | 7,266 | 7,702 | 7,619 | 7,286 | 6,915 | 7,015 |
| Total w/o Danskin | 5,394 | 6,925 | 7,266 | 7,702 | 7,601 | 7,243 | 6,873 | 7,001 |
| HYDRO: | | | | | | | | |
| American Falls | 733 | 596 | 579 | 386 | 230 | 210 | 206 | 420 |
| Bliss | 568 | 492 | 465 | 406 | 315 | 299 | 294 | 406 |
| Brownlee | 3,341 | 3,318 | 3,084 | 2,508 | 1,633 | 1,839 | 1,943 | 2,524 |
| Cascade | 60 | 58 | 63 | 47 | 24 | 1 | 47 | 43 |
| Oxbow | 1,421 | 1,370 | 1,171 | 1,088 | 707 | 823 | 838 | 1,060 |
| Hells Canyon | 2,951 | 2,794 | 2,786 | 2,172 | 1,385 | 1,621 | 1,630 | 2,191 |
| Malad | 167 | 186 | 187 | 182 | 170 | 165 | 159 | 174 |
| C J Strike | 636 | 631 | 643 | 493 | 377 | 364 | 351 | 499 |
| Swan Falls | 179 | 139 | 104 | 124 | 119 | 113 | 110 | 127 |
| Twin Falls | 399 | 349 | 339 | 185 | 53 | 43 | 36 | 201 |
| Upper Salmon | 269 | 262 | 285 | 278 | 218 | 193 | 179 | 241 |
| Shoshone Falls | 114 | 102 | 117 | 111 | 91 | 84 | 83 | 100 |
| Lower Salmon | 453 | 408 | 403 | 285 | 213 | 194 | 194 | 307 |
| Milner | 441 | 354 | 350 | 170 | 30 | 25 | 18 | 198 |
| Clear Lakes | 14 | 15 | 16 | 15 | 15 | 15 | 7 | 14 |
| Thousand Springs | 60 | 61 | 60 | 47 | 58 | 49 | 53 | 55 |
| Total Hydro | 11,806 | 11,135 | 10,652 | 8,497 | 5,638 | 6,038 | 6,148 | 8,559 |
| Total Both - w/o Danskin | 17,200 | 18,060 | 17,918 | 16,199 | 13,239 | 13,281 | 13,021 | 15,560 |

| Annual Idaho Power Production - % of Average | | | | | | | | |
|--|------|------|------|------|------|------|------|---------|
| | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | Average |
| Thermal | 77% | 99% | 104% | 110% | 109% | 103% | 98% | |
| Hydro | 138% | 130% | 124% | 99% | 66% | 71% | 72% | |
| Total | 111% | 116% | 115% | 104% | 85% | 85% | 84% | |

Exhibit No. 4.3
Case Nos. IPC-E-04-08 and IPC-E-04-10
K. Runyan, U.S. Geothermal
August 19, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of August 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:

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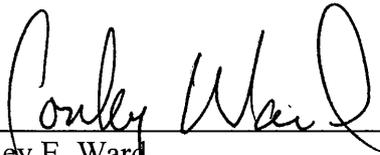
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