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 IDAHO PUBLIC  
 UTILITIES COMMISSION

Attorney for Tierra Energy, LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

TIERRA ENERGY, LLC,	)	Case No. <i>IPC-E-05-27</i>
	)	
Complainant,	)	<b>COMPLAINT TO OBTAIN</b>
	)	<b>COMMISSION ORDER</b>
v.	)	<b>DIRECTING IDAHO POWER</b>
	)	<b>COMPANY TO EXECUTE AN</b>
IDAHO POWER COMPANY,	)	<b>ENERGY SALES AGREEMENT</b>
	)	<b>WITH TIERRA ENERGY</b>
Respondent.	)	

COMES NOW, Tierra Energy LLC (“Tierra”), and requests that the Commission issue an order directing Idaho Power Company to execute an Energy Sales Agreement pursuant to the Public Regulatory Policies Act of 1978 (“PURPA”) with Tierra. This Complaint is based on the following:

1. Idaho Power Company (“IPCO”) is an investor owned utility which supplies electrical service to customers within the State of Idaho. It is subject to the jurisdiction of the Idaho Public Utilities Commission pursuant to Idaho Code Title 61. IPCO is also subject to the requirements of Sections 201 and 210 of PURPA that require electric utilities to offer to purchase electric energy from qualifying cogeneration and small power production facilities

(known as Qualifying Facilities or QF's)<sup>1</sup>. Pursuant to PURPA the purchase rate for buying this energy from QF's is set by the state commissions.

2. In Order No. 29646 dated December 1, 2004, Case No. IPC-E-04-25, the Commission established current applicable rates which IPCO is legally obligated to pay QF's that are designed to generate not more than 10 aMW per month. The current published rate for a 20 year QF contract is approximately \$61.00 per month.

3. Tierra Energy, LLC is a Delaware limited liability company which owns and operates facilities which are designated QF's. On June 27, 2005, Tierra sent to the Federal Energy Regulatory Commission a Notice of Self Certification of a Qualifying Facility. The Facility is a wind powered generation project located in Power County, Idaho. As identified in the application, Tierra indicated that the electrical output of the Facility was to be sold to IPCO under a power purchase agreement.

4. On June 27, 2005, Tierra also sent a copy of its filing which certified its proposed Facility as a QF to IPCO. Tierra's letter requested that IPCO forward its Energy Sales Agreement to Tierra. Tierra also called IPCO and informed IPCO that the FERC certification filing was being sent.

5. At the time of its filing with FERC and its request for the Energy Sales Agreement from IPCO, IPCO was subject to PURPA's requirement that it purchase energy from Tierra at the published rates set by the Commission.

6. On June 17, 2005, IPCO filed with the Commission a petition seeking a suspension of IPCO's obligation to purchase energy from wind powered facilities such as Tierra's. IPCO's petition is still being considered by the Commission. *See Commission Staff's*

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<sup>1</sup> 16 USC § 824a -3(a)

*Petition for Reconsideration of Final Order No. 29851 Cross Petition for Reconsideration of Final Order No. 29851; see also order No. 29872.*

7. As of June 27, 2005, the date Tierra requested the Energy Sales Agreement and had filed its Notice of Self Certification with FERC, the Commission had not granted nor taken other action on IPCO's petition.

8. Until relieved of its obligation to purchase QF energy, IPCO must purchase such power at the published rates.

9. Subsidiaries of Tierra presently have two existing Energy Sales Agreements with IPCO. One Energy Sales Agreement is between IPCO and Glenns Ferry Cogeneration Partners, Ltd. ("Glenns Ferry Cogen"). The second is between IPCO and Rupert Cogeneration Partners, Ltd. ("Rupert Cogen"). Glenns Ferry Cogen signed a Firm Energy Sales Agreement with IPCO in 1992 and Rupert Cogen signed a Firm Energy Sales Agreement with IPCO in 1993. Both projects commenced commercial operations in 1996.

10. Tierra was directed by IPCO in May 2005 to review Case No. IPC-E-05-18 in the matter of the application of IPCO for approval of a Firm Energy Sales Agreement between IPCO and Burley Butte Wind Park L.L.C. which provided the standard form of Energy Sales Agreement utilized by IPCO for windpower projects. As of June 27, 2005, Tierra was ready, willing, and able to enter into the standard form of Energy Sales Agreement with IPCO for the Power County Facility and had demonstrated its commitment to enter into a legally enforceable obligation to deliver to IPCO the energy and capacity associated with the Power County Facility.

11. Despite Tierra's filing of its Notice of Self Certification with FERC and its requests to IPCO to provide the Energy Sales Agreement, IPCO refused to submit the contract to Tierra.

12. According to IPCO's representations to Tierra, its sole basis for refusing to submit the Energy Sales Agreement for execution was IPCO's intent to "wait and see" how the Commission responded to IPCO's petition for a suspension of its obligation to purchase power pursuant to PURPA. Thus, but for the actions of IPCO in refusing to submit the Energy Sales Agreement for execution, Tierra would have a contract at the Commission's published rates.

13. On October 4, 2005, in a good faith effort to address IPCO's refusal to submit the Energy Sales Agreement for execution, Tierra again contacted IPCO by phone and by letter reaffirming its June 27, 2005 request that IPCO forward an Energy Sales Agreement. By letter dated October 5, 2005, IPCO refused Tierra's request and has to date refused to forward the requested agreement.

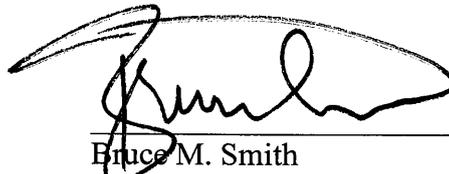
#### **TIERRA'S REQUESTED RELIEF**

1. Tierra submits that IPCO has by its own actions unlawfully refused to enter into the Energy Sales Agreement despite a showing that Tierra was ready, willing, and able to provide energy and a timely request by Tierra to do so.

2. Tierra requests that the Commission issue an order requiring IPCO to provide to Tierra an Energy Sales Agreement at the current published rate.

DATED this 6<sup>th</sup> day of October, 2005.

MOORE SMITH BUXTON & TURCKE  
CHARTERED



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Bruce M. Smith  
Attorney for Tierra Energy, LLC