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Attorney for the Commission Staff

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )	
IDAHO POWER COMPANY FOR APPROVAL )	CASE NO. IPC-E-10-2
OF ITS FIRM ENERGY SALES AGREEMENT )	
WITH CARGILL INCORPORATED. )	
)	COMMENTS OF THE
)	COMMISSION STAFF
)	

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 31014 on February 25, 2010, submits the following comments.

### BACKGROUND

On January 29, 2010, Idaho Power Company ("Idaho Power" or "Company") filed an Application with the Commission seeking approval, in accordance with *Idaho Code* § 61-503, RP 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978, of its Firm Energy Sales Agreement ("Agreement") with Cargill Incorporated ("Cargill") under which Cargill would sell and Idaho Power would purchase electric energy generated by the Bettencourt Dry Creek Biofactory ("Facility") located near Hansen, Idaho. The nameplate rating of this Facility is 2.25 MW.

Cargill is currently selling energy from this Facility to Idaho Power on a non-firm basis under a Schedule 86 uniform agreement dated July 28, 2008, which was approved in Commission Order No. 30631, dated August 27, 2008. The Firm Energy Sales Agreement specifies that the existing Schedule 86 agreement shall be terminated at the time the Facility achieves its Operation Date in accordance with the Firm Energy Sales Agreement. The Facility began actual energy deliveries to Idaho Power under the Schedule 86 agreement on August 28, 2008.

### **The Firm Energy Sales Agreement**

The parties entered into the Firm Energy Sales Agreement on January 22, 2010, pursuant to the terms and conditions of the various Commission Orders applicable to this PURPA agreement. See Order Nos. 30415, 30488, 30738, and 30744. The Agreement is for a 10-year term and utilizes the non-levelized published avoided cost rates as currently established by the Commission for energy deliveries of less than 10 average megawatts ("aMW").

The scheduled operation date for the Agreement is 30 days after the approval of the Agreement by the Commission. The Agreement includes a formula for the assessment and calculation of Delay Liquidated Damages and associated Delay Security provisions if Cargill fails to achieve the scheduled operation date. The Agreement states that it is effective once the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to Cargill for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes. Idaho Power states in its Application that if the Commission approves the Agreement the effective date of the Agreement will be January 22, 2010.

Interconnections with the Facility and applicable charges have been completed in accordance with the parties' existing Schedule 86 Agreement transacted in 2008. All applicable interconnection charges and monthly operation and maintenance charges under Schedule 72 have already been assessed and collected from Cargill in association with the existing Schedule 86 agreement.

### **STAFF ANALYSIS**

Staff has carefully reviewed the Agreement and finds that the rates contained therein are consistent with the currently-approved non-levelized published avoided cost rates for projects smaller than 10 aMW. With only one exception, all of the other terms and conditions included in

the Agreement are identical to those contained in recent PURPA contracts approved by the Commission.

The only unique feature of this Agreement is the amount of Delay Security required in ¶ 5.7.1. This Agreement requires an amount of Delay Security equal to the greater of \$45 per kW or the sum of three months' estimated revenue. Consequently, for this Facility, the total Delay Security amount will be approximately \$101,250.

The purpose of Delay Security is to insure that liquid funds will be available in the event Delay Liquidated Damages are assessed. Delay Liquidated Damages would be assessed if the Facility failed to come online within 90 days following the Scheduled Operation Date.

Prior to December 2006, Idaho Power's Firm Energy Sales Agreements for PURPA projects did not include a Delay Liquidated Damages penalty. However, due to the failure of some PURPA projects to achieve their scheduled operation date, Idaho Power began including the penalty in recent contracts. The Company had been requiring Delay Security in an amount of \$25 per kW prior to this Agreement.

Idaho Power increased the amount of Delay Security from \$25 per kW in prior agreements to \$45 per kW in this Agreement because it did not believe that the lower amount was sufficient to cover actual Delay Liquidated Damages should they be incurred. In addition, the Company believed that the lower amount did not provide sufficient motivation for project owners to complete their projects on time. In adopting the \$45 per kW amount, Idaho Power reviewed the security levels required by ten other electric utilities throughout the U.S. in their renewable energy procurements and contracts. Only one requires security less than \$25 per kW, while the remainder require security of at least \$50 per kW.

Staff believes that the \$45 amount is reasonable. Staff believes that the amount should be high enough to cover possible damages and to motivate owners to complete projects on time, yet not so high as to make it too difficult for owners and developers to post the security and obtain project financing.

Ironically, the Bettencourt Dry Creek project is already online and selling to Idaho Power under a Schedule 86 agreement; consequently, delay damages and the amount of required delay security are not even issues for this Facility. However, Idaho Power intends to begin including the higher delay security amount in this and all future contracts. While Staff never views approval of one PURPA contract as setting a precedent for other future contracts, Staff does

believe that Idaho Power is seeking endorsement of the higher security requirement in this Agreement with the intent of including it in future contracts.

## RECOMMENDATIONS

Staff recommends that the Commission approve all of the Agreement's terms and conditions as submitted, and declare that all payments Idaho Power makes to Cargill for purchases of energy will be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 18th day of March 2010.



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Neil Price  
Deputy Attorney General

Technical Staff: Rick Sterling

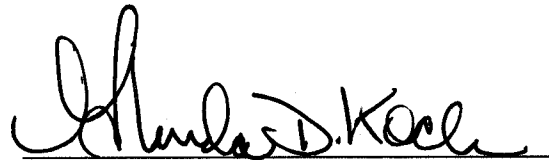
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 18<sup>TH</sup> DAY OF MARCH 2010, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-10-2, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY