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May 5, 2010

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-10-11
AGPOWER JEROME, LLC, v. IDAHO POWER COMPANY

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Answer in the above matter.

Very truly yours,

Lisa Nordstrom for
Donovan E. Walker

DEW:csb
Enclosures

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Attorneys for Idaho Power Company

Street Address for Express Mail:
1221 West Idaho Street
Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

AGPOWER JEROME, LLC,)	
)	CASE NO. IPC-E-10-11
Complainant,)	
)	ANSWER
v.)	
)	
IDAHO POWER COMPANY,)	
)	
Defendant.)	
_____)	

COMES NOW, Idaho Power Company (hereinafter referred to as "Idaho Power" or "Respondent") by and through its attorneys and hereby answers the Complaint of AgPower Jerome, LLC (hereinafter referred to as "AgPower" or "Complainant").

I. INTRODUCTION

1. In this Complaint AgPower is requesting that the Commission order Idaho Power to enter into a long-term fixed rate contract including purchase rates that exceed Idaho Power's avoided costs as determined by the Commission on March 15, 2010, in

Order No. 31025 issued in Case No. GNR-E-10-01. The rates the Commission adopted in Order in No. 31025 are approximately 10 percent lower than the rates previously adopted in Order No. 30744, Case No. GNR-E-09-01. By its terms, Order No. 31025 applies to new PURPA contracts executed on and after March 16, 2010. Order No. 31025 would require that the rates to be paid to AgPower would be the rates set out in Order No. 31025 rather the rates approved by the Commission in Order No. 30744.

2. However, this Commission has recognized in prior orders that there are situations when it would be appropriate to apply a prior vintage of rates to a current PURPA contract. The Idaho Supreme Court has confirmed that the Commission has the authority to determine the avoided cost rates which should be applied to a particular QF project.¹ In several cases litigated in the early to mid-1990s, the Commission determined, and the Idaho Supreme Court affirmed, certain tests that a QF developer must satisfy in order to establish an entitlement to sell QF output at a particular published avoided cost rate.² One of the tests that would qualify a particular generating facility to receive a higher superseded rate requires that a developer must have executed a power sales agreement with the utility at the rate in question before a successor rate becomes effective. The second test requires the QF developer to file a meritorious complaint alleging that the QF project was sufficiently mature and far enough along in the contracting process that but for the conduct of the utility company, the developer would have been able to sign a contract with the utility containing the superseded rates.

¹ *Empire Lumber v. Washington Water Power*, 114 Idaho 191, 755 P.2d 1229 (1988) and *A.W. Brown Co., Inc., v. Idaho Power Company*, 121 Idaho 812, 828 P.2d 841 (1992).

² *A.W. Brown, Supra. Rosebud Enterprises, Inc., v. Idaho Public Utilities Com'n*, 128 Idaho 609, 917 P.2d 766 (1996). *Rosebud Enterprises, Inc., v. Idaho Public Utilities Com'n*, 128 Idaho 624, 917 P.2d 781 (1996). *Rosebud Enterprises, Inc., v. Idaho Public Utilities Com'n*, 131 Idaho 1, 951 P.2d 521 (1997).

3. In this case, AgPower had not signed a contract with Idaho Power including the rates approved by Order No. 30744 on or before March 16, 2010. Therefore, the only way that AgPower might be entitled to a contract containing the rates set out in Order No. 30744 is if the Commission finds that the particular facts in this case demonstrate that but for Idaho Power's actions, AgPower would have received a contract prior to March 16, 2010.

4. Idaho Power does not believe that AgPower can demonstrate that Idaho Power acted either unreasonably or in bad faith in declining to sign a contract with AgPower which would include the higher rates from Order No. 30744.

5. In making its decision to decline to sign a contract with AgPower containing the higher rates, the Company applied the following criteria to the facts in AgPower's case. The Company concluded that AgPower did not meet the following criteria prior to March 16, 2010.

a. Interconnection and Transmission

- i. Filed an interconnection application; and
- ii. Received and accepted an interconnection feasibility study report for the project and paid any requested study deposits (or established credit) for the next phase of the interconnection process in accordance with Schedule 72; and
- iii. Received confirmation from Idaho Power that transmission capacity is available for the project and/or received and accepted transmission capacity study results and cost estimates.

b. Purchase Power Agreement

i. An agreement was materially complete and would have been executed by both parties prior to March 16, 2010, but for an unreasonable delay in the receipt of final approval from Idaho Power.

6. Because the AgPower project is a part of the Twin Falls interconnection-transmission cluster, the Company has concluded that AgPower meets the above-described criteria in (a), above, related to the interconnection progress. Idaho Power has invoiced AgPower for its share of the transmission upgrade costs associated with its share of the cluster costs. As of the date of this Answer, AgPower has not paid the invoice but payment is not past due until May 10, 2010. If AgPower does not pay the invoice on time, AgPower will lose its place in the interconnection queue.

7. With respect to the Power Purchase Agreement, Idaho Power cannot conclude that the Company and AgPower had reached an agreement on the rates, terms, and conditions to be included in a contract prior to the March 16 cutoff date. In August of 2009, Idaho Power provided a blank QF contract to AgPower as an example of prior contracts approved by the Commission. When it provided the blank contract, Idaho Power notified AgPower the blank contract was merely an example and was subject to change until executed. AgPower's only response at that time was to advise Idaho Power that it objected to the inclusion of security and liquidated damages provisions in the blank agreement. In its Complaint, AgPower continues to refer to those provisions as being "punitive and unreasonable." These are the same liquidated damages and security provisions the Commission has approved in Order Nos. 31060 and 31034 for the Arena Drop hydro project and Dry Creek anaerobic digester projects,

respectively. From August 2009 until March of 2010, AgPower contacted Idaho Power various times with general questions. On March 9, 2010, AgPower filled in some of the blanks in the August 2009 draft agreement, removed the "Draft designations," signed it, and sent it to Idaho Power. This draft version of the contract was not the currently acceptable contract document but was instead an outdated version containing terms and conditions that are not agreed to by the parties. The security and liquidated damage provisions in the 2009 draft are inadequate and Idaho Power did not, and will not, sign a contract containing these provisions. Subsequent to the 2009 draft contract, revisions have been made to the liquidated damage terms and to include security provisions. As stated previously, these revised liquidated damage and security provisions have been executed and approved by the Commission for the Arena Drop hydro project and the Dry Creek anaerobic digester by Order Nos. 31060 and 31034, respectively. AgPower's counsel was well aware of the Company's position with respect to those liquidated damage and security provisions and at no time did AgPower indicate that it was willing to accept those provisions. Therefore, a substantial and legitimate disagreement as to the terms and conditions of a contract between Idaho Power and AgPower existed as of March 16, 2010. AgPower's decision to take an outdated blank contract and sign it and deliver it to Idaho Power on March 9, 2010, does not obviate the fact that material provisions of a contract were still at issue between AgPower and Idaho Power on March 16, 2010.

II. ANSWER

8. Idaho Power hereby admits and denies the allegations contained in the Complaint as follows:

a. Idaho Power denies any allegation not specifically admitted and reserves the right supplement this Answer if AgPower amends its Complaint.

b. Idaho Power admits the factual allegations contained in paragraphs 1, 11, 13, 18, 19, 23, 24, and 25 of the Complaint.

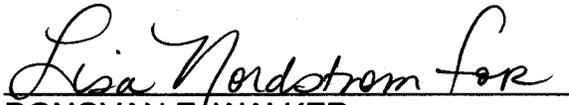
c. Idaho Power has insufficient information or knowledge regarding the truth of the allegations contained in paragraphs 2, 5, 6, 7, 8, 9, 10, and 12 and therefore denies the same.

d. Idaho Power denies the allegations contained in paragraphs 14, 15, 16, 17, 20, 21, 22, 26, 27, and 28.

e. The allegations in paragraphs 3, 4, 29 and 30 are conclusions of law and require no response.

WHEREFORE, Idaho Power respectfully requests that the Commission issue its Order denying the relief sought by AgPower in its prayer for relief.

Respectfully submitted this 5th day of May 2010.


DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5th day of May 2010 I served a true and correct copy of the within and foregoing ANSWER upon the following named parties by the method indicated below, and addressed to the following:

AgPower Jerome, LLC
Peter J. Richardson
Gregory M. Adams
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Donovan E. Walker