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IDAHO PUBLIC  
UTILITIES COMMISSION

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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>IDAHO POWER COMPANY FOR APPROVAL</b>	)	<b>CASE NO. IPC-E-10-18</b>
<b>OF A FIRM ENERGY SALES AGREEMENT</b>	)	
<b>FOR THE SALE AND PURCHASE OF</b>	)	<b>COMMENTS OF THE</b>
<b>ELECTRIC ENERGY BETWEEN IDAHO</b>	)	<b>COMMISSION STAFF</b>
<b>POWER COMPANY AND NEW ENERGY</b>	)	
<b>THREE, LLC (DOUBLE B).</b>	)	
	)	

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on June 3, 2010 in Case No. IPC-E-10-18, submits the following comments.

**BACKGROUND**

On May 25, 2010, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a 15-year Firm Energy Sales Agreement between Idaho Power and New Energy Three, LLC dated May 24, 2010 (Agreement).

Under the terms of the Agreement, New Energy will sell and Idaho Power purchase electric energy generated by the Double B Dairy Anaerobic Digester Power Project (Facility) located near

Murtaugh in Cassia County, Idaho. The nameplate rating of the Facility is 2 MW. Appendix B-1. New Energy warrants that the Facility is a qualifying facility (QF) under applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). ¶ 3.2.

The Agreement contains the non-levelized published avoided cost rates approved in Order No. 30744 and comports with the terms and conditions of Order Nos. 30738 (SAR non-fueled cost variables) and 30415 (daily load shape adjustment). ¶ 7.1. New Energy has selected a Scheduled Operation Date of December 1, 2012. Appendix B-3.

## **STAFF ANALYSIS**

Staff has carefully reviewed the Agreement and notes that all of the terms and conditions included in the Agreement are identical to those contained in other recent PURPA contracts approved by the Commission. The purchase rates contained in the Agreement are consistent with the non-levelized published avoided cost rates for projects smaller than 10 aMW of Order No. 30744. However, there is a legitimate question as to whether the Facility should be grandfathered under the higher rates of Order No. 30744 instead of the lower rates of Order No. 31025, the avoided cost rates in effect on the date of contract signing.

The purchase rates set forth in the Agreement (Order No. 30744) had on the May 24, 2010 date of contract signing been replaced on March 16, 2010 by the lower rates of Order No. 30125 (Case No. GNR-E-10-01). Idaho Power states that the Commission has previously determined grandfathering eligibility for (older and higher) published avoided cost rates by requiring (1) a signed power sales agreement be executed prior to the change in rates; or (2) a meritorious complaint filed with the Commission demonstrating project maturity and that but for the actions of the utility a sales agreement would have been signed prior to the change in rates.

In this case, New Energy had not signed a contract with Idaho Power to purchase the Facility generation on or before March 16, 2010. On April 15, 2010, New Energy filed a Complaint with the Commission alleging that it was entitled to three contracts containing the higher Order No. 30744 rates. Upon further review of the facts, and by signing this Agreement and voluntarily submitting it to the Commission, Idaho Power has concluded that New Energy satisfies the second test described above and should be entitled to the rates established by Order No. 30744 in Case No. GNR-E-09-01.

Idaho Power reports that it has received a number of requests for "grandfathering" of QF contracts. In making a determination to file and support an application urging that a particular QF project is entitled to the Order No. 30744 rates, the Company concluded that a project must have met ALL of 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 an 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, and except for routine Idaho Power final processing, an agreement would have been executed prior to March 16, 2010.

It is Idaho Power's opinion that the New Energy Facility satisfies all of the above-referenced criteria.

With respect to the Power Purchase Agreement criteria, the Company contends that New Energy and Idaho Power had resolved all material outstanding contract issues. Both parties expected the final review to be a relatively straightforward process. However, in early February, the Company became aware of some new procedural requirements from the Federal Energy Regulatory Commission (FERC) that affected the way that the Facility would qualify for a network resource designation and thereby obtain the transmission needed to bring the power to be generated by the Facility from the interconnection to the Company load centers. The new procedure required some changes to the internal process at Idaho Power. Idaho Power maintains that it embarked upon interpreting the FERC regulations and implementing a process to be in compliance. In Idaho Power's opinion the Agreement would have been signed by both parties prior to March 16, 2010, except for the time required by Idaho Power to implement the new internal transmission and network resource process and, as a result, the Facility should qualify for a contract including the Order No. 30744 rates. New Energy is current in all its interconnection study payments and so long as New Energy continues to provide requested information in a timely

manner and pay invoices on time, it appears to the Company that the interconnection can be completed in time for New Energy to achieve its Scheduled Operation Date for the Facility.

In further support of its request for grandfathering, Idaho Power states that the Facility Agreement contains the most recent contract terms and conditions, including the liquidated damages and security provisions previously approved by the Commission in several recent contracts.

Staff believes that the grandfathering criteria developed and applied by Idaho Power in this case are fair and reasonable. Based on the facts presented in this case, Staff believes that but for the actions of Idaho Power, the Agreement would have been fully-executed prior to March 16, 2010. Consequently, Staff concludes that the grandfathered purchase rates (Order No. 30744) contained in the Agreement are appropriate.

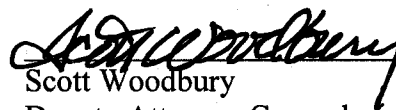
#### **RECOMMENDATION**

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 New Energy Three for purchases of energy from the Double B Facility will be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this

23<sup>rd</sup>

day of June 2010.



Scott Woodbury  
Deputy Attorney General

Technical Staff: Rick Sterling

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 23RD DAY OF JUNE 2010,  
SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE  
NO. IPC-E-10-18, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE  
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SECRETARY

CERTIFICATE OF SERVICE