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**JASON B. WILLIAMS**  
Corporate Counsel  
[jwilliams@idahopower.com](mailto:jwilliams@idahopower.com)

May 31, 2012

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case No. IPC-E-10-19  
Grand View Solar One PV, LLC, Firm Energy Sales Agreement –  
Comments

Dear Ms. Jewell:

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

Very truly yours,

Jason B. Williams

JBW:csb  
Enclosures

DONOVAN E. WALKER (ISB No. 5921)  
JASON B. WILLIAMS (ISB No. 8718)  
Idaho Power Company  
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Attorneys for Idaho Power Company

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AMENDMENTS	)	
TO THE FIRM ENERGY SALES	)	CASE NO. IPC-E-10-19
AGREEMENT BETWEEN IDAHO	)	
POWER COMPANY AND GRAND VIEW	)	IDAHO POWER COMPANY'S
SOLAR ONE PV, LLC.	)	COMMENTS
	)	

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COMES NOW, Idaho Power Company ("Idaho Power" or "Company"), by and through its undersigned counsel, and hereby submits the following Comments in the above-captioned proceeding.

**I. BACKGROUND**

On June 14, 2010, Idaho Power filed an Application with the Idaho Public Utilities Commission ("Commission") requesting approval of a 20-year Firm Energy Sales Agreement between Idaho Power and Grand View Solar One PV, LLC ("Grand View Solar One") dated June 8, 2010 ("FESA"). Under the terms of the FESA, Idaho Power would purchase the electric energy generated by the 20 megawatt Grand View Solar One photovoltaic solar project to be located in Elmore County, Idaho ("Project"). The

Commission approved Idaho Power's Application and the FESA in Case No. IPC-E-10-10 in Order No. 32068 issued September 14, 2010.

On March 22, 2012, Idaho Power sent Grand View Solar One a Notice of Material Breach of the FESA and a Notice of Termination ("Notice") for (1) failing to maintain the required liquid Delay Security as required by the FESA and (2) failing to achieve the FESA's Scheduled Operation Date. In addition, the Notice sought collection of Delay Liquidated Damages in the amount of \$900,000 for the Project's failure to achieve the Scheduled Operation Date.

On March 23, 2012, Idaho Power received a response to the Notice from Grand View Solar One wherein Grand View Solar One disputed Idaho Power's claim that it failed to meet the Scheduled Operation Date. In addition, Grand View Solar One's response to the Notice claimed that it had immediately available funds in the amount of \$475,000 to pay the obligation associated with its Generator Interconnection Agreement ("GIA") as well as a Letter of Credit necessary to meet the FESA's \$900,000 Delay Security obligations. Grand View Solar One's response further stated that it would make the required GIA payment as well as post the Letter of Credit if Idaho Power would agree to not pursue its Delay Liquidated Damages claim.

Idaho Power and Grand View Solar One entered into a Letter of Understanding and Agreement Relating to Contract Default, Scheduled Operation Date, and Generator Interconnection Agreement dated April 3, 2012 ("Letter Agreement"), attached hereto as Attachment No. 1. The substantive terms of the Letter Agreement established an Operation Date of no later than January 12, 2013, and required Grand View Solar One to post its Delay Security as well as fund the construction deposit of its GIA by no later

than close of business on April 6, 2012. Grand View Solar One posted its Delay Security and funded the construction costs for its GIA in accordance with the deadlines in the Letter Agreement.

On April 11, 2012, Idaho Power filed the Letter Agreement with the Commission as an informational filing in Case No. IPC-E-10-19. On April 24, 2012, the Commission issued a Notice of Proposed Amendments to FESA/Notice of Modified Procedure seeking comments on the Letter Agreement by no later than May 31, 2012. Order No. 32535. Idaho Power now submits these Comments.

## **II. COMMENTS**

Among Idaho Power's approximately 120 PURPA contracts, this FESA is unique in its description of the Scheduled Operation Date. None of Idaho Power's other Public Utility Regulatory Policies Act of 1978 contracts contain the language that was at issue between Idaho Power and Grand View Solar One. Specifically, Appendix B, item B-3 of the FESA describes the Project's Scheduled Operation Date as follows:

1.) 90 days past the date identified within the final Facility Study report in which Idaho Power shall have completed installation of the Idaho Power interconnection equipment as the Scheduled Operation Date or 2.) If by Seller action or inaction, a final Facility Study is not completed or the installation of Idaho Power interconnection equipment is delayed, January 30, 2011 shall be the Scheduled Operation Date.

As evident in the above-quoted language, the FESA contains no firm Scheduled Operation Date, thus providing no firm Commercial Operation Date. This shortcoming created ambiguity, and Idaho Power and Grand View Solar One each interpreted the above-quoted language differently, leading to a dispute between the parties as to when the Scheduled Operation Date was to occur. This good faith dispute around the

ambiguity in the FESA resulted in the parties settling the dispute by requiring Grand View Solar One to make cash payments to move its project forward and establishing a firm Commercial Operation Date of January 12, 2013. Establishing this firm Commercial Operation Date removed the ambiguity from the FESA and gave both Idaho Power and Grand View Solar One certainty as to the parties' obligations and performance requirements under the FESA, and brought the contractual terms regarding the Scheduled Operation Date in line with Idaho Power's other Commission-approved FESAs.

More specifically, as part of agreeing to set a firm Commercial Operation Date, Grand View Solar One agreed to immediately refresh its \$900,000 Delay Security, which had recently expired, as well as immediately pay the required \$475,000 deposit for construction of its generator interconnection facilities. Based upon the good faith dispute among the parties regarding the unique language pertaining to the Scheduled Operation Date in the FESA, as well as Grand View Solar One's immediate remedy and payment of the necessary funding for the Project, Idaho Power determined that settling this matter with Grand View Solar One was reasonable. Thus, in examining the totality of the circumstances in this unique FESA and situation, it was reasonable to enter into the Letter Agreement with Grand View Solar One to remove the ambiguity contained in the FESA.

DATED at Boise, Idaho, this 31<sup>st</sup> day of May 2012.

  
\_\_\_\_\_  
JASON B. WILLIAMS  
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of May 2012 I served a true and correct copy of IDAHO POWER COMPANY'S COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

### Commission Staff

Kristine A. Sasser  
Deputy Attorney General  
Idaho Public Utilities Commission  
472 West Washington (83702)  
P.O. Box 83720  
Boise, Idaho 83720-0074

☒ Hand Delivered  
☐ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [kris.sasser@puc.idaho.gov](mailto:kris.sasser@puc.idaho.gov)

### Grand View Solar One PV, LLC

Peter J. Richardson  
Gregory M. Adams  
RICHARDSON & O'LEARY, PLLC  
515 North 27<sup>th</sup> Street (83702)  
P.O. Box 7218  
Boise, Idaho 83707

☐ Hand Delivered  
☒ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
[greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

Sean Stocker, Director of Development  
5 Whitney Lane  
New Ulm, Minnesota 56073

☐ Hand Delivered  
☒ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [sstocker@coronacapitalpartners.com](mailto:sstocker@coronacapitalpartners.com)

  
Christa Beary, Legal Assistant

**BEFORE THE**  
**IDAHO PUBLIC UTILITIES COMMISSION**  
**CASE NO. IPC-E-10-19**

**ATTACHMENT NO. 1**  
**LETTER AGREEMENT**



JASON B. WILLIAMS  
Corporate Counsel  
jwilliams@idahopower.com

April 3, 2012

VIA E-MAIL: sstocker@coronacapitalpartners.com

Sean Stocker  
Corona Capital Partners  
300 Great Oaks Boulevard, Suite 320  
Albany, New York 12203

Re: Grand View Solar One PV -Letter of Understanding and Agreement Relating  
to Contract Default, Scheduled Operation Date, and Generator Interconnection  
Agreement-IPUC Case No. IPC-E-10-19

Mr. Stocker:

As Idaho Power Company's ("Idaho Power") Randy Alphin explained in his phone call with you on March 28, 2012, this Letter of Understanding and Agreement is meant to express, in writing, the mutual agreement and understandings reached between Idaho Power and Grand View Solar One PV, LLC ("Grand View One") for its qualifying facility generation project ("Project") regarding the Material Breach for failing to maintain the required security and for failing to meet the Scheduled Operation Date required in Grand View One's Idaho Public Utilities Commission-approved Firm Energy Sales Agreement dated June 8, 2010 ("FESA").

Paragraph 5.7 of the FESA requires the Project to post security in the amount of \$900,000. This amount may be reduced by ten percent (10%) if the Project evidences that the interconnection is progressing and will enable the Project to meet the Scheduled Operation Date. Idaho Power received a Standby Letter of Credit in the amount of \$900,000 which was subsequently reduced to \$810,000 pursuant to the terms of the FESA.

The Standby Letter of Credit expired on March 1, 2012 and was not otherwise extended, updated or replaced. Thus, the Project was in Material Breach effective March 1, 2012.

The FESA also contains a provision which Idaho Power has interpreted to mean that the Project's Scheduled Operation Date was January 30, 2011. The Project did not achieve its Operation Date by January 30, 2011. Grand View One disputes Idaho Power's interpretation of the FESA that the Scheduled Operation Date was January 30, 2011, and, instead, asserts that the FESA has a "rolling" Scheduled Operation Date and the deadline for such Operation Date has not yet expired.



On March 22, 2012, Idaho Power sent Grand View Solar One a Notice of Material Breach of the Firm Energy Sales Agreement and Notice of Termination ("Notice") for failing to maintain the required security; and (2) failing to meet the Scheduled Operation Date. Pursuant to the Section 5.3.2 of the FESA, the Notice also sought collection of Delay Liquidated Damages in the amount of \$900,000 for the Project's failure to achieve its Scheduled Operation Date

On March 23, 2012, Idaho Power received a response to the Notice from Grand View One wherein Grand View One disputed Idaho Power's claim that it failed to meet the Scheduled Operation Date. In addition, Grand View One's response claimed it had immediately available funds in the amount of \$475,000 to pay the obligation associated with its Generator Interconnection Agreement ("GIA") as well as a letter of credit necessary to meet its security obligations. Grand View One indicated it would be willing to make the GIA payment as well as post the letter of credit if Idaho Power would agree to not pursue its Delay Liquidated Damages claim.

Pursuant to Mr. Allphin's March 28, 2012, telephone call with you, the Notice, and Grand View One's response to the Notice, the parties' mutual understanding and agreement, having the benefit of consultation with their own respective counsel, is as follows:

The parties hereby agree as follows:

- (1) An Operation Date of no later than January 12, 2013, is a commercially reasonable time period in which to allow Grand View One to have its project commercially operational;
- (2) The commercially reasonable time period granted to Grand View One to achieve its Operation Date is a fair and reasonable time for Grand View One to achieve its Operation Date, and Grand View One shall not bring any legal or equitable challenge to the same, and by this agreement knowingly and intelligently waives its rights to bring any possible legal claim related thereto;
- (3) Grand View One shall post security as required by the FESA in the amount of Eight-Hundred Ten Thousand Dollars (\$810,000) to secure the Operation Date commitment ("Delay Security"). This Delay Security shall be posted no later than Friday, April 6, 2012 by 5:00 p.m. Mountain Time in a form as described in Appendix A attached hereto. If Grand View One fails to achieve a January 12, 2013, Operation Date, Idaho Power shall have the right to immediately draw the funds from the Delay Security and the FESA will terminate without any further action or notice required by Idaho Power. The parties agree that the damages Idaho Power and its customers incur due to Grand View One's failure to achieve its Operation Date are difficult or impossible to calculate with certainty, and that the Delay Security is an appropriate approximation of such damages. The stated Delay Liquidated Damages and Delay Security for such are reasonable, and Grand View One shall not bring any legal or equitable challenges to the same, and by this agreement knowingly and intelligently waives its rights to bring any possible legal claim related thereto;
- (4) In the event Grand View One achieves its Operation Date by or before January 12, 2013, Idaho Power shall release the Delay Security posted hereunder thirty (30) days after the Operation Date has been achieved;

(5) If Grand View One does not post the required Delay Security by the date certain of Friday, April 6, 2012 by 5:00 p.m. Mountain Time, the FESA will be terminated with no further notice required or legal challenges to the termination thereof;

(6) If Grand View One does not achieve the Operation Date on or before January 12, 2013, by 5:00 p.m. Mountain Time, the FESA will be terminated with no further notice required or legal challenges to the termination thereof; and


(7) Grand View One shall pay Four-Hundred Seventy Five Thousand Dollars (\$475,000) representing the required construction deposit pursuant to the GIA, which payment shall be made by no later than Friday, April 6, 2012. If Grand View One does not pay the required construction deposit by Friday, April 6, 2012, by 5:00p.m. Mountain Time, the FESA will be terminated with no further notice required or legal challenges to the termination thereof.

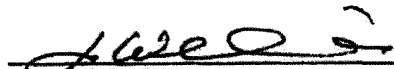
(8) If it can be reasonably demonstrated that Idaho Power was the cause of any delays that would prevent Grand View One from achieving the Operation Date of January 12, 2013, then the Operation Date shall be extended by the length of such delays or to some other reasonable date as mutually agreed. It is hereby stipulated by both parties that no such claim that Idaho Power was or is the cause of any such delays exists as of the date of execution of this Agreement.

Capitalized terms uses in this agreement that are not defined herein shall have the meaning set forth in the FESA.

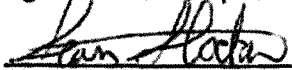
Each party's signature below indicates that party's acceptance of this Letter of Understanding and Agreement and the averments and contents thereof. DATED this 3 day of April 2012.

Agreed to and Accepted on behalf of Idaho Power Company:

  
Lisa Grow  
Senior Vice President, Power Supply  
Idaho Power Company

  
Jason B. Williams  
Corporate Counsel  
Idaho Power Company

Agreed to and Accepted on behalf of Grand View Solar One PV, LLC

  
Sean Stocker  
Grand View Solar One PV, LLC

  
Peter Richardson  
Attorney for Grand View Solar One PV, LLC

## APPENDIX A

### FORMS OF LIQUID SECURITY

The Seller shall provide Idaho Power with commercially reasonable security instruments such as Cash Escrow Security, Guarantee or Letter of Credit as those terms are defined below or other forms of liquid financial security that would provide readily available cash to Idaho Power to satisfy the Delay Security requirement within this Agreement.

For the purpose of this Appendix A, the term "Credit Requirements" shall mean acceptable financial creditworthiness of the entity providing the security instrument in relation to the term of the obligation in the reasonable judgment of Idaho Power, provided that any guarantee and/or letter of credit issued by any other entity with a short-term or long-term investment grade credit rating by Standard & Poor's Corporation or Moody's Investor Services, Inc. shall be deemed to have acceptable financial creditworthiness.

1. Cash Escrow Security – Seller shall deposit funds in an escrow account established by the Seller in a banking institution acceptable to both Parties equal to the Delay Security.
2. Guarantee or Letter of Credit Security – Seller shall post and maintain in an amount equal to the Delay Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Idaho Power at its discretion, or (b) a Letter of Credit in a form acceptable to Idaho Power, in favor of Idaho Power. The Letter of Credit will be issued by a financial institution acceptable to both parties.