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October 18, 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-10-22
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT WITH YELLOWSTONE POWER, INC., FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY

Dear Ms. Jewell:

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

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT WITH YELLOWSTONE POWER, INC., FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY.	CASE NO. IPC-E-10-22 IDAHO POWER COMPANY'S REPLY COMMENTS

Idaho Power Company ("Idaho Power" or "Company") in response to Comments filed in this docket respectfully submits the following Reply Comments.

I. BACKGROUND

On August 13, 2010, Idaho Power filed an Application with the Idaho Public Utilities Commission ("Commission") requesting approval of a Firm Energy Sales Agreement ("FESA") with Yellowstone Power, Inc. ("Yellowstone") containing the published avoided cost rates in effect prior to March 16, 2010. Staff was the only party to file Comments in this case by the October 1, 2010, comment deadline. The

Commission subsequently set a Reply Comment deadline of October 18, 2010, and an Oral Argument date of October 26, 2010, at 2:00 p.m.

Since the March 16, 2010, change in the published avoided cost rate by the Commission, Idaho Power has submitted six Applications for the approval of FESAs with PURPA qualifying facilities ("QF"). Five of these six Applications have been approved. The sixth, the present case of Yellowstone Power, Inc., is still pending, and a seventh case, AgPower Jerome, is expected to be filed with the Commission this week.

The previously approved matters, in the order in which they were filed, are: (1) IPC-E-10-15, Cargill, Inc., Battencourt B6 Dairy, a 2.25 MW Anaerobic Digester ("Battencourt"); (2) IPC-E-10-16, New Energy One, LLC, Rock Creek Dairy, a 4 MW Anaerobic Digester ("Rock Creek"); (3) IPC-E-10-17, New Energy Two, LLC, Swagger Farms Dairy, a 2 MW Anaerobic Digester ("Swagger Farms"); (4) IPC-E-10-18, New Energy Three, LLC, Double B Dairy, a 2 MW Anaerobic Digester ("Double B"); and (5) IPC-E-10-19, Grandview Solar PV One LLC, a 20 MW Photo Voltaic Solar ("Grandview Solar"). Yellowstone is an 11.7 MW woody biomass fueled, combined heat and power project co-located with the Emerald Forest Sawmill in Emmet, Idaho.

II. THE "REQUIREMENT" OF A COMPLAINT

A formal Complaint, or the lack thereof, is not in and of itself a dispositive factor for the Commission's determination as to which vintage of published avoided costs rates apply to a given FESA. As stated by the Company in its Application, as well as by Staff in its Comments:

> The first criteria that would qualify a particular generating facility to receive a superseded rate requires that the developer have executed a power sales agreement with the utility at the rate in question before a successor rate

> becomes effective. If the QF cannot meet the first criteria, the second criteria requires that prior to the new rates' effective date, the QF developer must have filed a meritorious complaint alleging that the 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.

Staff Comments p. 3, Application p. 4-5.

These two criteria stated above are situations in which it has been affirmed through the Idaho Supreme Court that a QF developer *is entitled* to receive the previously effective avoided cost rate. However, it has never been the factual situation that all claims for entitlement to a superseded ("grandfathered") rate fall neatly into one of the two stated categories. Neither has it been the situation that any claim for a grandfathered rate *must* meet one of the two stated criteria. In fact none of the five approved FESAs containing grandfathered rates meet either of the above-stated criteria. Even in cases where the QF developer has filed a Complaint, such as in the New Energy and AgPower cases, the Complaints have been filed *after* the effective date of the rate change – as is almost universally the case with a claim for grandfathering. If a contract had been executed by both parties, or a complaint been filed seeking the grandfathered rate, *before* the effective date of the rate change, there would really be no issue for the Commission to resolve. It is the great majority of the claims for a grandfathered rate, some of which have merit, that fall outside of the two stated criteria, yet remain clearly within the Commission's authority and discretion to consider whether it is in the public interest to determine if the particular facts of that QF developer's situation entitles them to the grandfathered rate.

In the present case of Yellowstone, as in the previous five grandfathering Applications filed by Idaho Power, the Company examined the facts and equities of each particular case and determined that the Company agreed with the QF developers' claim that they were entitled to a grandfathered rate. Thus, rather than refusing to sign a contract containing such grandfathered rates and requiring the QF developer to file a formal Complaint with the Commission, the Company chose to sign the contracts and submit the same for approval by the Commission. In this manner, the facts of each case could be brought before the Commission for its examination and determination as to whether the grandfathered rate is appropriate. If the Company had disagreed with the QF's claim that it was entitled to the grandfathered rate, the Company would have refused to sign a contract containing those rates, thus requiring the QF to file a complaint to bring the facts of their particular case before the Commission for examination and determination as to the proper rate.

III. IDAHO POWER'S GRANDFATHERING CRITERIA

Idaho Power developed two criteria by which it evaluated whether it would entertain signing a FESA with a project that contained a grandfathered rate. The two criteria are related to establishing that the project was in the final stages of establishing interconnection and transmission for its proposed facility and that the FESA contract negotiations were materially complete. The specific criteria as set out in Idaho Power's Applications are:

> *A.) Interconnection and Transmission*. (i) The project had filed and interconnection application; and (ii) the project had 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) the project had received confirmation from Idaho Power that transmission capacity is available for the project and/or received and accepted transmission capacity study results and costs estimates.

B.) Purchase Power Agreement (FESA) (i) An agreement was materially complete prior to March 16, 2010, and except for routine Idaho Power final processing, an agreement would have been executed by both parties prior to March 16, 2010.

The Interconnection and Transmission portion of the criteria was not and is not at issue in any of five previously approved FESAs, nor with Yellowstone. The issues surround the Power Purchase Agreement or the FESA, and whether it was *materially complete* prior to March 16, 2010. A brief comparison of the facts of the Yellowstone case to the other five previously approved FESAs containing grandfathered rates is instructive.

Cargill, Battencourt B6 Dairy. This project was an existing QF project that had been selling power to Idaho Power under a Schedule 86 contract. Cargill and Idaho Power had exchanged draft contracts and finally resolved all outstanding contract issues prior to the March 16, 2010, change in rates. Cargill had agreed to execute the Agreement after being notified that the project had passed Idaho Power's final internal review process. Approximately ten days prior to the March 16, 2010, change in rates Idaho Power's management started the process of reviewing the agreed-upon draft for final approval and execution. The final Sarbanes-Oxley review process and the routine

internal approval had not been completed as of March 16, 2010. There was some additional delay in final execution as the parties sorted through the intervening change in rates that had occurred, and a final contract was executed by both parties on April 30, 2010. The FESA with Cargill was approved by the Commission on July 1, 2010. Order No. 32024.

New Energy One, LLC., Rock Creed Dairy, Swagger Farms, and Double B Dairy. New Energy and Idaho Power had exchanged draft FESAs prior to March 16, 2010, and finally resolved all outstanding contract issues prior to that date for all three of New Energy's projects. In early February 2010, some new procedural requirements from the Federal Energy Regulatory Commission ("FERC") that affected the way that the New Energy facilities would qualify for a Network Resource designation and thereby obtain the transmission needed to bring the power to be generated by the facilities from the interconnection point to the Company load centers arose which necessitated some changes to the internal processes at Idaho Power. On April 15, 2010, New Energy filed a Complaint with the Commission alleging that it was entitled to a grandfathered rate for its three projects. Upon further review, the Company agreed, and once the FERC Network Resource designation issues were worked through by Idaho Power, the parties executed a final FESA on May 24, 2010. New Energy's FESAs were approved by the Commission on July 1, 2010. Order No. 32027 (Double B); Order No. 32026 (Swagger Farms); Order No. 32025 (Rock Creek).

Grandview Solar PV One. Grand View Solar and Idaho Power had exchanged draft FESAs and resolved all material issues prior to March 16, 2010. However, the FESA negotiations were placed on hold because the parties were also evaluating an

alternative, non-PURPA power purchase agreement with Grand View Solar regarding this facility. Idaho Power completed this evaluation and review on or about May 6, 2010, and elected not to proceed with a non-PURPA contract for the project. The effect of pursuing the evaluation of a non-PURPA power purchase with the facility was essentially to place the otherwise complete, but unexecuted, PURPA agreement on hold, during which time the March 16, 2010, order was issued changing the rate. The parties executed a final FESA on June 8, 2010. That FESA was approved by the Commission on September 14, 2010. Order No. 32068.

Yellowstone Power. Similar to the previously described five projects, Idaho Power and Yellowstone had discussed, agreed to, and finally resolved all material terms and conditions of a final FESA prior to March 16, 2010. Similar to the previously approved New Energy grandfathered projects, starting in early February 2010, due to new interpretation of FERC regulations, Idaho Power filed for transmission capacity for this proposed project and received confirmation that adequate transmission capacity exists and that the project can be designated as an Idaho Power Network Resource.

Staff's Comments expressed concern about whether the Yellowstone agreement was *materially complete* prior to March 16, 2010, and whether the agreement only lacked *routine Idaho Power final processing* prior to March 16, 2010. The only material difference between the facts of Yellowstone's case and that of the other five approved grandfathered cases is the lack of an exchange of written draft FESAs prior to the change in rates. The main difference in Yellowstone's facts boils down to the difference between an unexecuted draft agreement that was circulated with the other grandfathered projects prior to the rate change, and an oral agreement as to all of the

material terms and conditions to a FESA with Yellowstone prior to the change in rates. Idaho Power does not feel that the mere lack of an exchange of written drafts, in the case of Mr. Vinson and Yellowstone, should exclude this project from receiving like treatment to the previously described five grandfathered projects approved by the Commission. From the Company's previous history and course of dealings with Mr. Vinson, including the previously executed and approved FESA for a different project at this same project site, Idaho Power can confidently say that based upon the several oral communications and discussions that took place between the parties prior to March 16, 2010, that all material terms and conditions of the FESA had been finally resolved and agreed to. Once all material terms and conditions of a FESA are agreed upon by the parties, the Company considers the FESA to be *materially complete*. Even though materially complete there can be a number of details and processes to get the materially complete agreement finally approved and executed. Upon review and when presented with the other additional facts associated with this project as set forth in the Application and in Staff's Comments, the Company felt that the mere difference of a lack of the exchange of written drafts was not a significant enough of a difference from other approved grandfathered projects to warrant refusing to sign a contract with Yellowstone.

Clearly, inherent in any examination of a claim for grandfathering there exists a case by case, factual analysis of the law and equities involved with whether ultimately the project is entitled to receive the previously effective rate. Criteria and guidelines are established to instruct this evaluation and analysis, but no set of guidelines and criteria can possibly envision all possible scenarios that may arise, nor can all factual scenarios

fit neatly into predetermined guidelines and criteria. It is clearly established law that the Commission ultimately has the jurisdiction and authority to determine the rates that a QF facility will receive for its power, and which vintage of QF rates should apply to a PURPA contract.

IV. OTHER FACTORS

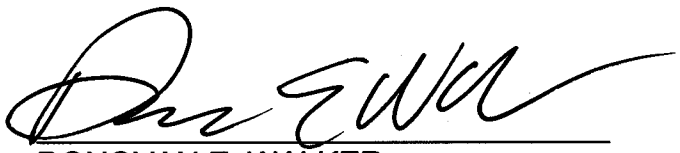
Idaho Power, in its Application set forth several "additional facts" unique to the Yellowstone project for the Commission's consideration of the request to approve the FESA containing a grandfathered rate. Application p. 8-10. Similarly Commission Staff stated, "Staff believes that this case presents a unique set of facts that permit the Commission to look beyond the established criteria applied to other recent requests to grandfather the rates of Order No. 30744 and consider other aspects such as the strong public interest and impact of allowing a grandfathered rate." Staff Comments p. 6. Without repeating all of the additional facts that support approval of this FESA in the public interest, a summary is as follows: The Yellowstone project is an integral part of the Emerald Forest Sawmill in Emmett, Idaho, which began operating earlier this summer and is expected to employ up to 47 workers in Gem County, an economically depressed area. The Yellowstone project is a high capacity factor, renewable, cogeneration project that is expected to provide steady, predictable generation around the clock which will help diversify Idaho Power's resource portfolio. Yellowstone has agreed to repay the non-performance damages liability of the now defunct Renewable Energy in full as an offset to the energy payments of the Yellowstone Agreement as set forth by both the Company and by Staff. This will allow Idaho Power to recover, for the benefit of its customers, non-performance damages which it otherwise likely could not

collect. Prior to the March 16, 2010, rate change Yellowstone had acquired the real property upon which the project is to be located from Boise Cascade, Inc.; completed the required environmental remediation and obtained final acceptance and a permit to construct from the Idaho Department of Environmental Quality; and made significant investment into power plant equipment including the boiler, fuel conveyors, structural steel piping controls, and electrical equipment at a cost of more than $6,000,000 and is on the site or in storage ready for deployment.

V. CONCLUSION

Approval of Yellowstone's FESA is consistent with the previously approved Applications submitted by Idaho Power for approval of grandfathered rate PURPA projects, is consistent with the applicable legal and equitable principles, is soundly within the Commission's jurisdiction, and is in the public interest. Idaho Power appreciates this opportunity to respond to the comments filed in this docket and respectfully requests that the Commission issue an Order approving the Firm Energy Sales Agreement between Idaho Power and Yellowstone Power without change or condition and declaring that all payments for purchases of energy under the Firm Energy Sales Agreement between Idaho Power and Yellowstone Power be allowed as prudently incurred expenses for ratemaking purposes.

DATED at Boise, Idaho, this 18th day of October 2010.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October 2010 I served a true and correct copy of the foregoing IDAHO POWER COMPANY'S REPLY COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

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