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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Complainant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

Grand View PV Solar Two, LLC, Complainant,)	Case No. IPC-E-11-15
vs.)	REPLY TO IDAHO POWER'S RESPONSE PURSUANT TO COMMISSION ORDER NO. 32861
IDAHO POWER COMPANY, Defendant.)	

1
2 Idaho Power Company (“Idaho Power” or the “Company”) filed its Response to Order
3 No. 32861 on August 12, 2013. Because Idaho Power’s Response so fundamentally
4 misconstrues the law and the facts, Grand View PV Solar Two (“Grand View”) is compelled to
5 provide the Idaho Public Utilities Commission (“Commission”) with this Reply.
6 Idaho Power argues that Grand View did not create a legally enforceable obligation
7 (“LEO”) because Grand View made resolution of the REC ownership a condition precedent to
8 the creation of such an obligation. That is not true, and the record does not support such an
9 inference. Grand View made removal of Idaho Power’s REC provision from the Power
10 Purchase Agreement (“PPA”) a condition precedent to its *execution of the PPA*. However, in the
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1 context of PURPA negotiations, a legally enforceable obligation is typically created prior to, and
2 is not dependent upon, a written contract. The record shows that Grand View attached *no*
3 *conditions* when it created its LEO; it would not, however, agree to Idaho Power's demand that it
4 execute a PPA containing a non-essential term regarding RECs. By confounding the concept of
5 a LEO, under PURPA, with the concept of an executed PPA, Idaho Power has created a
6 smokescreen – hoping to persuade the Commission that Grand View's rejection of an extraneous
7 provision in the PPA regarding RECs, insisted upon by Idaho Power, somehow rendered the
8 LEO “conditional.” It did not. Under PURPA, a LEO and a PPA are not the same thing. Grand
9 View has provided the Commission with ample evidence supporting but one reasonable
10 inference: that in the summer of 2011 it had obligated itself to sell its electrical output to Idaho
11 Power. It had created a LEO. There were no reservations and no conditions. All essential terms
12 were met. The dispute over the REC provision in the PPA was not relevant to the creation of the
13 LEO and did not render the LEO “conditional.”

14 If the Commission were to accept Idaho Power's argument, there would be no end to the
15 ways in which a regulated utility could create circumstances that would undermine a QF's right
16 to create a LEO. PURPA vests in the QF the unilateral right to obligate itself to sell, and vests
17 the QF with the unilateral right to obligate the utility to buy, at avoided cost rates. A QF could
18 make the requisite offer, obligating itself as to all material terms; but if a utility insisted upon the
19 inclusion in the PPA of a non-material extraneous provision it knew to be objectionable to the
20 QF, the QF would not sign the PPA and the utility would claim that the LEO itself was
21 “conditional.”

22 If the Commission were to condone this tactic, it would be turning PURPA on its head ---
23 empowering utilities to unilaterally refuse to buy power from a QF unless the QF not only

1 created a LEO *but also* executed a PPA containing extraneous and objectionable terms dictated
2 by the utility. For example, a utility could insist that a QF deed over the property its project sits
3 on as a condition to executing a PPA. The utility would have no legal claim to the property.
4 However the property would be made more valuable by virtue of the QF's development.
5 Similarly, Idaho Power insisted that Grand View deed over its REC property as a condition to
6 executing the PPA. It had no legal claim to the REC property. However, the RECs were made
7 valuable by virtue of the QF's development. The analogy is compelling. Clearly, a utility
8 cannot 'undo' a LEO by insisting on the inclusion of extraneous provisions in a PPA.

9 Likewise, Idaho Power's response to Grand View's arguments regarding due process and
10 retroactive rulemaking lack merit as Idaho Power continues to wrongly equate the existence of a
11 LEO with the existence of an executed PPA. Idaho Power insists that Grand View did not
12 legally obligate itself "to the transaction."¹ If by "the transaction," Idaho Power is referring to
13 the buying and selling of electricity, it is mistaken. But "the transaction" Idaho Power is
14 referring to is the execution of a PPA which required Grand View to surrender a portion of its
15 RECs. Idaho Power's view of "the transaction," in the stark absence of any statute, rule or
16 Commission order then in effect, is fatally flawed.

17 The existence of a legally enforceable obligation was *not* in dispute from the outset –
18 what *was* in dispute was a contract term *completely unrelated* to a legally enforceable obligation
19 and *completely unrelated* to PURPA.

20 WHEREFORE, Grand View PV Solar Two, LLC respectfully requests, once again, that
21 the Commission issue its order declaring that Grand View created a legally enforceable
22 obligation in the summer of 2011 and order Idaho Power to honor that obligation by tendering a
23 contract with the terms and conditions and rates apropos to that time.

¹ Idaho Power Response, p. 8.

Respectfully submitted this 27th day of August 2013.

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