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November 25, 2013

VIA HAND DELIVERY

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

Re: Case No. IPC-E-11-15
Grand View PV Solar Two, LLC, vs. Idaho Power Company – Idaho Power
Company's Answer to Petition for Reconsideration

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of
Idaho Power Company's Answer to Petition for Reconsideration.

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

GRAND VIEW PV SOLAR TWO, LLC,)	
)	CASE NO. IPC-E-11-15
COMPLAINANT,)	
)	IDAHO POWER COMPANY'S
v.)	ANSWER TO PETITION FOR
)	RECONSIDERATION
IDAHO POWER COMPANY,)	
)	
RESPONDENT.)	
)	

Idaho Power Company ("Idaho Power" or "Company"), in accordance with *Idaho Code* § 61-626 and RP 331.05, hereby responds to the Petition for Reconsideration of final Order No. 32913 issued October 29, 2013, filed by Grand View PV Solar Two, LLC ("Grand View").

Grand View has failed to demonstrate that the Idaho Public Utilities Commission's ("Commission") Order No. 32913 is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331.01. The Commission's Order No. 32913 is based upon substantial and competent evidence in the record. The Commission

regularly pursued its authority and was acting within its discretion. Consequently, reconsideration should be denied.

I. INTRODUCTION

Grand View makes conclusions that are fallacies of logic, and misstates the factual record in its Petition for Reconsideration. Grand View fails to address the primary issue considered by the Commission in its determination that Grand View did not gain entitlement to a previously effective avoided cost rate through a legally enforceable obligation: Grand View did not obligate itself to the previously effective rates, and thus did obligate the utility and its customers. No legally enforceable obligation was created.

II. THE COMMISSION'S PRIOR ORDERS

On June 21, 2012, the Commission denied Grand View's Summary Judgment Motion, holding that "it cannot find as a matter of law that ownership of RECs vests solely in Grand View." Order No. 32580, p. 13. The Commission further stated that the language proposed by Idaho Power was not a takings under either the Idaho or U.S. Constitutions, and that it did "not definitively confer REC ownership on either Grand View or Idaho Power. It merely states that REC ownership will be governed by applicable law at the time the contract is executed and approved." Order No. 32580, pp. 14-15.

On July 29, 2013, the Commission denied Grand View's Motion for a Declaratory Order alleging that it had obtained the right to a previously effective avoided cost rate pursuant to a legally enforceable obligation. Order No. 32861. The Commission found that Grand View failed to make a binding and unconditional offer to sell power to the

utility, and thus did not create a legally enforceable obligation to the previously effective rates. Order No. 32861, p. 20. However, although the Commission specifically found that Grand View “had not perfected a LEO on March 11, 2011, August 2, 2011, November 29, 2011, or December 20, 2011, we note the parties did engage in settlement negotiations.” *Id.*, p. 22. The Commission allowed Grand View an opportunity to present “evidence that it created a legally enforceable obligation without conditions.” *Id.* Grand View made an additional submission to the Commission, and Idaho Power responded to the same, and Grand View filed an additional reply. Order No. 32913, p. 2.

On October 29, 2013, the Commission having considered the entire record for this matter, as well as the additional submissions of the parties, affirmed its prior Orders and found that Grand View “failed to present persuasive evidence that it is entitled to ownership of all the RECs or that it perfected a legally enforceable obligation with Idaho Power.” Order No. 32913, p. 2. The Commission denied the requested relief from Grand View’s Complaint, requesting that the Commission order Idaho Power to disclaim all ownership of Renewable Energy Credits (“REC”) in the power sales agreement, and also denied Grand View’s request for a declaratory order that it had perfected a legally enforceable obligation. *Id.*, p. 27.

III. THE COMMISSION PROPERLY FOUND THAT GRAND VIEW DID NOT CREATE A LEGALLY ENFORCEABLE OBLIGATION

Idaho Power argued that Grand View did not create a legally enforceable obligation because Grand View, not Idaho Power, was the party that refused to obligate itself to the previously effective rates, and did not obligate itself to deliver power to Idaho Power. Idaho Power’s Answer to Grand View’s Motion for Declaratory Order, p. 5. The

Commission, upon full consideration of the facts of the case, found that Grand View refused to make a commitment to supply power to Idaho Power, and thus did not create a legally enforceable obligation. Order No. 32913, pp. 20, 21, and 26. The Commission recognized that “there are two general methods by which a QF can provide power to utilities: (1) by entering into a signed contract with the utility; or (2) pursuant to a legally enforceable obligation (LEO).” Order No. 32861, p. 18 (citations omitted). The Commission recognized that the purpose for the concept of a legally enforceable obligation is “to prevent the utilities from circumventing the ‘must purchase’ PURPA provision ‘merely by refusing to enter into a contract with the’ QF.” *Id.* (citations omitted). The Commission also recognized that the determination of a legally enforceable obligation is a matter within the authority of the state commission. *Id.*, p. 19 (citations omitted). The Commission determined, based upon the facts of the case, that Grand View failed to make a binding and unconditional offer to sell power to the utility, and thus did not create a legally enforceable obligation.

The Commission relied upon the precedent of several Idaho Supreme Court cases in its determination, as well as cases offering guidance from the federal courts and Federal Energy Regulatory Commission. *A.W. Brown v. Idaho Power Company*, 121 Idaho 812, 817, 828 P.2d 841, 846 (1992)(“must show that but for the actions of the utility it was otherwise entitled to a contract [or LEO]. In most cases, this will entail making a comprehensive binding offer . . .”)(emphasis added); *Rosebud Enterprises v. Idaho PUC*, 131 Idaho 1, 6, 951 P.2d 521, 526 (1997)(QF not entitled to earlier avoided cost rate because it had not legally obligated itself to deliver power to the utility, “Rosebud made its willingness to commit to ‘a definite agreement’ expressly conditioned

on its obtaining concessions from vendors, financiers, and suppliers.”); *Armco Advance Materials v. Pennsylvania PUC*, 579 A.2d 1337, 1347 (Pa. 1990)(A LEO does not exist when the QF has not unconditionally obligated itself to provide power “and remains free to walk away from the transaction without liability.”).

The Commission referred to several sections of the record upon which it relied upon in reaching its determination. Order No. 32861, pp. 19-22 (Grand View’s Complaint, Affidavit of Grand View’s manager, Paul Affidavit, pleadings in the record); Order No. 32913, pp. 20, 21, 22, and 24 (Grand View’s Complaint and Amended Complaint, Grand View’s Motion for Summary Judgment, Grand View’s Motion for Declaratory Order, e-mail communications in Idaho Power’s Reply Attachment 1, both parties’ additional submissions post Order No. 32861, Affidavit of Grand View’s manager, Paul Affidavit).

The Commission’s Order No. 32913 is based upon substantial and competent evidence in the record. The Commission regularly pursued its authority and was acting within its discretion. Consequently, reconsideration should be denied.

IV. GRAND VIEW’S ARGUMENTS IN ITS PETITION FOR RECONSIDERATION ARE WITHOUT MERIT

Grand View first alleges that “The Commission continues to adhere to the fiction that a legally enforceable obligation and a contract are one and the same[.] They are not the same thing, and this Commission has clearly conflated the two distinct concepts.” Petition for Reconsideration, p. 2. This is clearly without merit. The Commission has stated on several occasions, and again in its Orders for this matter, that it recognizes, “There are two general methods by which a QF can provide power to utilities: (1) by entering into a signed contract with the utility; or (2) pursuant to a legally

enforceable obligation (LEO).” Order No. 32861, p. 18. Furthermore, Grand View’s statement suffers a fallacy of logic, in that there are numerous occasions, namely when the parties have a fully executed contract, when a contract and legally enforceable are in fact one and the same thing. A fully executed and approved contract is always a legally enforceable obligation; however, a legally enforceable obligation in the PURPA context may not always be represented by a fully executed and approved contract. Nonetheless, the Commission clearly recognized, analyzed, and reached its conclusions understanding and recognizing the premise that the QF could be entitled to rates in effect and represented in the parties’ signed contract, or pursuant to a legally enforceable obligation, just as the text of the federal regulation reads. See 18 C.F.R. § 292.304(d).

Grand View also erroneously contends that Idaho Power refused to contract without claiming ownership of RECs. Petition for Reconsideration, p. 5. Grand View stated, “Idaho Power, in violation of Order No. 29840, chose to make its contracting practices subject not merely to Grand View’s granting it a right of first refusal to purchase, but subject to Grand View’s *outright gifting of half of its RECs to the power company*. The Commission’s final order is thus arbitrary” *Id.* (emphasis in original). First of all, this is a misstatement of the facts. The draft contract did not contain any language whereby Idaho Power proposed to claim ownership of RECs. As opposed to Grand View’s assertions that it made in its Complaint proceedings that it, the QF, owned all RECs, the contract provision to which Grand View objected stated that REC ownership would be determined by the proper authority to make such determination. Idaho Power accepted Grand View’s proposal to sign a contract,

containing the rates in effect at that time, and submit the determination as to the contract provisions regarding RECs to the Commission. It was Grand View that refused to obligate itself to those rates, terms, and conditions; instead, it chose to file a Complaint demanding that the Commission order Idaho Power to disclaim any REC ownership. If Grand View wanted to obligate itself, it had the opportunity to do so, but refused. Idaho Power, to the contrary, was willing to enter into the contractual obligation at that time, but Grand View refused. There was no legally enforceable obligation created because Grand View refused to obligate itself.

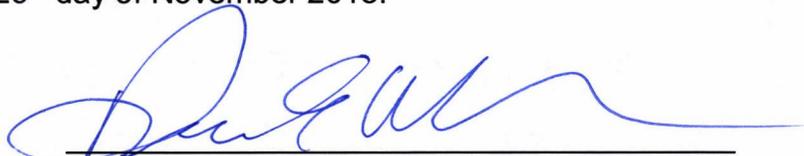
Grand View then argues that the Commission did not address its claim that the Commission's Order is impermissible, retroactive ratemaking. First of all, Grand View's argument assumes that there is a previously effective legally enforceable obligation, which there is not. Consequently, with no previously effective obligation, the Commission's current rules, regulations, policies, practices, and determinations would be applicable to a transaction between Grand View and Idaho Power. Additionally, as recognized by the Commission, although a determination as to REC ownership had not been made at the time Grand View initially filed its Complaint, that determination was made in parallel proceedings, to which both Grand View and Idaho Power were parties, and that determination was made while Grand View's Complaint and LEO issues were still pending with the Commission. Grand View's claim of retroactivity simply does not lie.

V. CONCLUSION

Grand View has failed to demonstrate that the Commission's Order No. 32913 is unreasonable, unlawful, erroneous, or not in conformity with the law. RP 331.01. The

Commission's Order No. 32913 is based upon substantial and competent evidence in the record. The Commission regularly pursued its authority and was acting within its discretion. Consequently, Idaho Power respectfully requests that the Commission deny Grand View's Petition for Reconsideration.

DATED at Boise, Idaho, this 25th day of November 2013.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November 2013 I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO PETITION FOR RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

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