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IDAHO PUBLIC
UTILITIES COMMISSION

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

GRAND VIEW PV SOLAR THREE, LLC, Complainant,)	Case No. IPC-E-12- <u>01</u>
GRAND VIEW PV SOLAR FOUR, LLC Complainant,)	FORMAL COMPLAINT
vs.)	
IDAHO POWER COMPANY, Defendant.)	

INTRODUCTION

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This is a formal complaint filed by Grand View PV Solar Three, LLC and Grand View PV Solar Four, LLC (collectively "Grand View") with the Idaho Public Utilities Commission (the "Commission") pursuant to Idaho Administrative Rules 31.01.01.054. On February 15, 2011, Grand View PV Solar Three, LLC and Grand View PV Solar Four first requested that Idaho Power Company ("Idaho Power") execute standard Public Utility Regulatory Policies Act of 1978 ("PURPA") power purchase agreements ("PPA") for qualifying facilities ("QFs") using the Integrated Resource Plan ("IRP") methodology for Grand Views' renewable energy QFs. Because Idaho Power has not negotiated in good faith in response to Grand View's attempts to

1 obligate themselves to the terms of standard PPAs using the IRP derived avoided cost rates,
2 Grand View respectfully requests that the Commission issue a declaratory judgment order that
3 they are entitled to such PPAs and further requests that the Commission order Idaho Power to
4 enter into PPAs using the IRP methodology and relevant inputs and resulting rates as of the date
5 Grand View PV Solar Three and Grand View PV Solar Four obligated Idaho Power to purchase
6 their renewable energy which date is no later than July 2, 2011.

7 **PRELIMINARY MATTERS**

8 Copies of all pleadings and other correspondence in this matter should be served upon
9 counsel for Grand View at:

10 Peter J. Richardson
11 Gregory M. Adams
12 Richardson & O’Leary, PLLC
13 515 N. 27th Street
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20 **In support of this Complaint, Grand View alleges as follows:**

21 **IDENTITY OF PARTIES**

22 1. Idaho Power is an Idaho Corporation with its principal place of business at 1221
23 West Idaho Street, Boise, Idaho 83702. Idaho Power Company is an electric company and a
24 public utility subject to the jurisdiction and regulation of the Idaho Public Utilities Commission
25 pursuant to I.C. § 61-129. Idaho Power is subject to the jurisdiction of the Commission, the
26 Public Utility Commission of Oregon, and the Federal Energy Regulatory Commission
27 (“FERC”).

1 **FACTUAL BACKGROUND**

2 5. Grand View PV Solar Three, LLC and Grand View PV Solar Four, LLC, are
3 companion projects being developed by Alternative Power Development, Northwest, LLC,
4 which is the same entity that developed Grand View PV Solar One.

5 6. This Commission approved the 20 MW power purchase agreement for Grand
6 View PV Solar One in September 2010 in Order No. 32068 in Docket No. IPC-E-10-19.

7 7. Grand View PV Solar Two, LLC is also a companion project to the Grand View
8 projects and is being developed by the same developer.

9 8. Grand View Solar PV Two, LLC currently has a complaint pending before this
10 Commission relative to the ownership of the environmental attributes associated with the
11 generation of renewable energy that is sold to Idaho Power pursuant to a PURPA contract. That
12 complaint was lodged before the Commission on August 2, 2010. The Commission has yet to
13 rule on that complaint.

14 9. Grand View PV Solar Two is in the final stages of securing a generator
15 interconnection agreement with Idaho Power.

16 10. With the exception of the ownership of RECs, Grand View PV Solar Three and
17 Grand View PV Solar Four were ready to execute the standard Idaho Power PPA containing IRP
18 methodologically derived avoided cost rates on July 2, 2011.

19 11. Grand View PV Solar Three, LLC, and Grand View PV Solar Four, LLC have
20 been actively engaged in the development of their respective Solar Projects. Each project has a
21 nameplate capacity rating of 20 MW and is entitled to IRP methodologically derived rates as the
22 developer/owner of the projects will average monthly production that is too high to qualify for
23 published avoided cost rates.

1 12. Grand View has made substantial investments in development of the two projects,
2 and the projects are mature and entitled to obligate themselves to long-term PPAs for PURPA
3 QFs under IRP methodologically derived rates.

4 13. Grand View has been in contact with Idaho Power's transmission business line for
5 a substantial amount of time regarding the site and the specifics of interconnection and sale of its
6 output.

7 14. Interconnection studies have been conducted and deposits made for Grand View
8 PV Solar One and Two.

9 15. Because of that work conducted by its companion projects, Grand View PV Solar
10 Three and Grand View PV Solar Four fully understand the ability of Idaho Power's system to
11 absorb the full 80 MW output of all four projects and are prepared to reimburse Idaho Power for
12 the costs of upgrading the adjacent substation, the Canyon Creek substation.

13 16. Grand View first requested power purchase agreements for the two projects on
14 February 15, 2011 via letter request from its counsel to the Idaho Power PURPA contract
15 administrator.

16 17. Also on February 15, 2011, Grand View provided the Idaho Power PURPA
17 contract administrator with an electronic file containing the estimated production from the two
18 projects for one full year on an hourly basis.

19 18. Grand View made repeated requests for contracts for the two projects subsequent
20 to that date.

21 19. Grand View PV Solar Three, LLC, and Grand View PV Solar Four, LLC, again
22 made formal written requests for power purchase agreements through letters sent by their
23 counsel on July 2, 2011.

1 20. During the month of July, Idaho Power and Grand View PV Solar Two were in
2 active negotiations over environmental attribute language in the standard PPA. The results of
3 said negotiations had the potential to impact language in the standard PURPA contract for all
4 three projects – Grand View PV Solar Two, -Three and -Four.

5 21. On July 10, 2011, in an email communication from Idaho Power via its counsel,
6 Idaho Power admitted that all of the contract terms were agreed upon except for the ownership of
7 environmental attributes.

8 22. On July 10, 2011 Grand View PV Solar Two declined to sign the standard
9 contract offered by Idaho Power due to Idaho Power’s instance on language dealing with
10 environmental attribute language that was unacceptable to Grand View PV Solar Two, LLC.

11 23. On July 26, 2011, Idaho Power through an email communication from its counsel
12 reiterated its position that the contracts tendered to Grand View PV Solar Two, LLC were
13 complete in all respects except for the dispute over environmental ownership attributes.

14 24. On August 2, 2011. Grand View PV Solar Two lodged its complaint against
15 Idaho Power on the sole issue of ownership of environmental attributes.

16 25. On September 1, 2011, Grand View PV Solar Three, LLC and Grand View PV
17 Solar Four, LLC, through their counsel sent an email communication to Idaho Power’s PURPA
18 contract administrator with a copy of the July 2, 2011, letters formally requesting PPAs for
19 Grand View PV Solar Three, and Grand View PV Solar Four asking for the requested PPAs.

20 26. On September 6, 2011, Idaho Power responded that it had “assumed that Grand
21 View solar would be waiting for the resolution of [its]...complaint before proceeding with these
22 contracts for projects 3 and 4.”

1 27. Grand View gave Idaho Power no reason to make the assumption that it was
2 “waiting for the resolution” of Grand View PV Solar Two’s complaint on ownership of
3 environmental attributes. That complaint is currently fully submitted before the Idaho PUC and
4 no decision has been issued.

5 28. In mid-September Idaho Power asked for estimated production data related to
6 Grand View’s projects. Said data had already been previously provide on February 15, 2011 and
7 offered in Grand View’s July 2, 2011 letter.

8 29. Grand View promptly again provided the requested production data on September
9 12, 2011. Grand View was led to believe that it could take several weeks to run the IRP
10 methodology for determining avoided cost rates.

11 30. On October 11, 2011, Idaho Power filed a contract with Interconnect Solar for
12 Commission approval that contained IRP methodologically derived rates for a solar project with
13 rates that would have been acceptable to Grand View.

14 31. On October 21, 2011, Grand View’s counsel sent an email inquiry as to the status
15 of the PPAs for Grand View PV Solar Three and Grand View PV Solar Four.

16 32. Idaho Power did not respond.

17 33. On November 21, 2011, Grand View inquired of the Idaho Power PURPA
18 contract administrator as to the status of the PPAs for Grand View PV Solar Three and Grand
19 View PV Solar Four.

20 34. Idaho Power did not respond.

21 35. In the early morning of December 1, 2011, Grand View again inquired of the
22 Idaho Power PURPA contract administrator as to the status of the PPAs for Grand View PV
23 Solar Three and Grand View PV Solar Four.

1 36. Later that morning on December 1, 2011 Idaho Power’s PURPA contract
2 administrator replied that due to the Thanksgiving Holiday he had been unavailable but that he
3 would “let you know today or tomorrow on the timing of me getting the draft contracts back to
4 you.”

5 37. Still later the morning of December 1, 2011, Grand View, through its counsel
6 again sent an email communication to Idaho Power’s PURPA contract administrator with a copy
7 of the July 2, 2011, letters formally requesting PPAs for Grand View PV Solar Three, and Grand
8 View PV Solar Four pointing out that the formal request was made for these PPAs before the
9 Fourth of July Holiday -- not the Thanksgiving Holiday.

10 38. The very next day, on December 2, 2011, Idaho Power provided the PPA attached
11 hereto as Exhibit A, asserting that it is the proposed PPA for the Grand View PV Solar Two,
12 Three and Four projects.

13 39. The contract Idaho Power provided on December 2, 2011, is defective because it
14 contains rates that were not calculated using the inputs to the IRP methodology that were
15 relevant on July 2, 2011.

16 40. The contract Idaho Power provided on December 2, 2011, is defective because it
17 contains language related to preventative maintenance during periods of “low wind availability”
18 in section 1.12.

19 41. Grand View PV Solar Three and Grand View PV Solar Four did not request a
20 wind motive force contract from Idaho Power.

21 42. The contract Idaho Power provided on December 2, 2011, is defective because it
22 deletes seasonally differentiated rates.

1 43. The contract Idaho Power provided on December 2, 2011 is defective because at §
2 26.1 it requires compliance with 38 U.S.C. § 4212 which code section provides in part, that “*Any*
3 *contract in the amount of \$100,000 or more entered into by any department or agency of the*
4 *United States for the procurement of personal property and nonpersonal services (including*
5 *construction) for the United States, shall contain a provision requiring that the party contracting*
6 *with the United States take affirmative action to employ and advance in employment qualified*
7 *covered veterans.*”

8 44. Neither Grand View PV Solar Three nor Grand View PV Solar Four are
9 proposing to sell their electric output to any department or agency of the United States.

10 45. The contract Idaho Power provided on December 2, 2011 is defective because at §
11 26.1 it requires compliance with Executive Order No. 11246 which order prohibits federal
12 contractors and subcontractors and federally-assisted construction contractors and subcontractors
13 that generally have contracts that exceed \$10,000 from discriminating in employment decisions
14 on the basis of race, color, religion, sex, or national origin. It also requires covered contractors to
15 take affirmative action to ensure that equal opportunity is provided in all aspects of their
16 employment.

17 46. Neither Grand View PV Solar Three nor Grand View PV Solar Four are federal
18 contractors.

19 47. The contract Idaho Power provided on December 2, 2011 is defective because it
20 contains language at § 8.1 clouding title to environmental attributes.

21 48. Despite Grand View’s efforts, Idaho Power has acted in bad faith by failing to
22 provide a contract for execution containing the IRP methodologically derived avoided cost rates
23 and standard terms and conditions for PURPA contracts as of July 2, 2011.

1 Interconnect Solar contract and, consequently, Grand View has committed Idaho Power to buy
2 from them at those rates.

3 55. These commitments result in non-contractual, but binding, legally enforceable
4 obligations. 18 C.F.R. § 292.304(d)(2)(ii); *JD Wind 1, LLC*, 129 FERC ¶ 61,148, at pp. 10-11;
5 *Cedar Creek Wind, LLC*, 137 FERC 61,006 at ¶ 35-37.

6 56. By negotiating in bad faith and by failing to execute a PPA, Idaho Power is in
7 violation of PURPA, FERC's implementing regulations, and the Commission's orders. *See* 16
8 U.S.C. § 824a-3(a)(2); 18 C.F.R. § 292.304(d)(2)(ii); *Blind Canyon Aquaranch v. Idaho*
9 *Power Company*, Case No. IPC-E-94-1, Order No. 25802 (November 1994).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Grand View PV Solar Three, LLC and Grand View PV Solar Four, LLC
12 respectfully request that the Commission issue an Order:

13 1. Declaring that Idaho Power is in violation of PURPA, FERC's implementing
14 regulations, and the Commission's orders.

15 2. Requiring Idaho Power to execute a standard PURPA power purchase agreement
16 containing IRP derived avoided cost rates using the methodological inputs that were used in
17 calculating the Interconnect Solar rates for Grand View PV Solar Three, LLC and Grand View
18 PV Solar Four, LLC.

19 3. Granting any other relief that the Commission deems necessary.

Respectfully submitted this 3rd day of January, 2012 .

RICHARDSON AND O'LEARY, PLLC

A handwritten signature in black ink, appearing to read "Peter J. Richardson", written over a horizontal line.

Peter J. Richardson (ISB No: 3195)

Gregory M. Adams (ISB No. 7454)

Attorneys for Complainant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of 2012, I caused a true and correct copy of the foregoing **Complaint of Grand View PV Solar Three, LLC and Grand View PV Solar Four, LLC** to be served by the method indicated below, and addressed to the following:

Jean Jewell
Idaho Public Utilities Commission
472 West Washington Street
Post Office Box 83720
Boise, Idaho 83720-0074

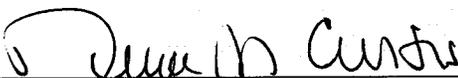
- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail

Donovan Walker
Randy Allphin
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PO Box 70
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- Hand Delivered
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lnordst@puc.state.id.us

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Signed 
Nina M. Curtis