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UTILITIES COMMISSION

DONOVAN E. WALKER
Lead Counsel
dwalker@idahopower.com

May 18, 2012

VIA HAND DELIVERY

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

Re: Case No. IPC-E-12-10
Interconnect Solar – Answer to Motion for Reconsideration

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Answer to Interconnect Solar Development, LLC's Motion for Reconsideration in the above matter.

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

JASON B. WILLIAMS (ISB No. 8718)
DONOVAN E. WALKER (ISB No. 5921)
Idaho Power Company
1221 West Idaho Street (83702)
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Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

INTERCONNECT SOLAR)	
DEVELOPMENT, LLC)	CASE NO. IPC-E-12-10
)	
Complainant,)	IDAHO POWER COMPANY'S
v.)	ANSWER TO INTERCONNECT
)	SOLAR DEVELOPMENT, LLC'S
IDAHO POWER COMPANY,)	MOTION FOR RECONSIDERATION
)	
Respondent.)	
)	

Idaho Power Company ("Idaho Power") pursuant to Idaho Public Utilities Commission ("Commission") Rule of Procedure ("RP") 331.05 hereby answers the Motion for Reconsideration of Order No. 32531 ("Reconsideration Motion") of Interconnect Solar Development, LLC ("Interconnect Solar").

The Reconsideration Motion poses no grounds describing why Order No. 32531 was unreasonable, unlawful, erroneous, or not in conformity with the law. Moreover, the Reconsideration Motion offers no new statement of the nature and/or quantity of evidence or argument that Interconnect Solar would offer if the Commission were to

grant its request. Accordingly, the Commission should deny the Reconsideration Motion.

I. BACKGROUND

On June 17, 2011, Idaho Power submitted to the Commission for its acceptance and approval a Firm Energy Sales Agreement ("Agreement") between Idaho Power and Interconnect Solar for the Murphy Flats Solar Project ("Project"). Case No. IPC-E-11-10. After a notice and comment period, the Commission issued Order No. 32361 noting that all parties had acknowledged a computational error that was made in the Integrated Resource Plan pricing model used to set rates for the Interconnect Solar Project. In an effort to permit the parties an opportunity to correct the computational error without creating undue delay, the Commission allowed Idaho Power and Interconnect Solar additional time to resubmit the Agreement with accurate price calculations prior to the Commission making a final determination with regard to the Agreement. Order Nos. 32361 and 32364.

On October 11, 2011, Idaho Power resubmitted the Agreement with corrections to the rate computations. In the Agreement submitted on that date, Interconnect Solar selected September 1, 2012, as its commercial operation date ("COD"). Idaho Power had on numerous occasions advised Interconnect Solar that the COD selected by Interconnect Solar was prior to such time that interconnection and transmission facilities were scheduled to be constructed or complete. Interconnect Solar acknowledged and expressly agreed to accept the risk associated with not meeting its selected COD in a separate letter agreement between it and Idaho Power. See Attachment No. 2 to Idaho Power's Answer and Motion to Dismiss in Case No. IPC-E-12-10. On October 20, 2011, the Commission approved the replacement Agreement. Order No. 32384.

The Agreement contains a provision wherein Interconnect Solar is required to post "Delay Security" in an amount that is the greater of forty-five dollars (\$45) multiplied by the Maximum Capacity where the Maximum Capacity is measured in kilowatts or the sum of three months estimated revenue. Agreement at Section 5.8. Per the Agreement, such Delay Security must be posted within thirty (30) days of the date of a final, non-appealable Commission order. *Id.* Application of these provisions of the Agreement required that Interconnect Solar post an amount equal to Nine Hundred Thousand Dollars (\$900,000) in Delay Security by no later than December 12, 2011. Interconnect Solar did not post the required Delay Security.

The Agreement contains another provision that states, "Delays in the interconnection and transmission network upgrade study, design, and construction process that **are not** Force Majeure events accepted by both Parties, **shall not** prevent Delay Liquidated Damages from being due and owing as calculated in accordance with this Agreement." Agreement at Section 5.3.

On December 16, 2011, Idaho Power sent a Notice of Material Breach to Interconnect Solar advising that Idaho Power would terminate the Agreement if the material breach (i.e., failure to post the required Delay Security) was not cured expeditiously. More than five weeks later, on February 9, 2012, Idaho Power sent Interconnect Solar a Notice of Termination advising that since Interconnect Solar had yet to cure the material breach identified in the December 16, 2011, Notice, Idaho Power would terminate the Agreement effective February 17, 2012, if such material breach was not remedied by Interconnect Solar.

On February 14, 2012, Idaho Power received a Complaint and Request to Intervene from Interconnect Solar. The Commission issued a Summons and the Complaint was served on Idaho Power in Case No. IPC-E-12-10 on February 16, 2012.

Interconnect Solar failed to remedy the material breach and the Agreement was terminated on February 17, 2012.

Idaho Power filed an Answer and Motion to Dismiss on March 8, 2012. Interconnect Solar filed an Objection to Idaho Powers Motion to Dismiss on March 21, 2012.

On April 24, 2012, the Commission issued Order No. 32531 dismissing Interconnect Solar's Complaint against Idaho Power. In dismissing Interconnect Solar's Complaint, the Commission found that Idaho Power had properly implemented the provisions of the Agreement requiring Interconnect Solar to post Delay Security by no later than December 11, 2011. Order No. 32531 at 4. Further, the Commission found that Idaho Power complied with the provisions of the Agreement by terminating the Agreement when Interconnect Solar failed to post the required Delay Security. *Id.* In addition, the Commission found that Interconnect Solar did not dispute that it failed to post the Delay Security in accordance with the provisions of the Agreement. *Id.*

On May 11, 2012, Interconnect Solar filed the present Reconsideration Motion. Idaho Power now files this Answer.

II. ANSWER

The Commission's rules state petitions for reconsideration of a Commission Final Order must state why such final order is "unreasonable, unlawful, erroneous or not in conformity with the law." RP 331. In addition, motions for reconsideration must describe the nature and/or quantity of evidence or argument that the petitioner would offer if the Commission were to grant the request for reconsideration. As explained below, the Reconsideration Motion fails to provide any reason why Order No. 32531 is unreasonable, unlawful, erroneous, or not in conformity with the law, nor does the Reconsideration Motion describe any additional evidence or argument not previously

raised in this proceeding. Accordingly, the Commission should deny the Reconsideration Motion.

At its core, the Reconsideration Motion makes precisely the same claims that were made in its Complaint in this case that was previously dismissed by the Commission—i.e., that it failed to post the Delay Security because it could not obtain financing as the result of an obsolete GIA and an unworkable commercial operation date. The Reconsideration Motion offers no new arguments nor does it describe any new evidence not previously raised in the Complaint. The Reconsideration Motion still does not dispute the basic facts that Interconnect Solar: (1) chose the COD against the admonition of Idaho Power, Commission Staff, and this Commission and (2) failed to post the required Delay Security pursuant to the terms of the Agreement. As noted by the Commission in Order No. 32531, Interconnect Solar proceeded with the Project at its own peril, as it had previously been advised by Idaho Power of the time frames associated with permitting and construction of Interconnect Solar's interconnection facilities and how those time frames were wholly inconsistent with the COD selected by Interconnect Solar in the Agreement. Order No. 32531 dismissed the Complaint by finding that Idaho Power acted within the scope and pursuant to the Agreement. The Reconsideration Motion provides nothing new to suggest Order No. 32531 is in error.

Instead, the Reconsideration Motion provides a rehashing of the same points made in the Complaint as well as additional, irrelevant alleged facts. For example, the Reconsideration Motion suggests that Interconnect Solar's expertise in the solar industry could have provided Idaho Power with a functioning, utility scale solar project. Reconsideration Motion at 3. Further, the Reconsideration Motion alleges that if the Project had not been terminated, the Bureau of Land Management ("BLM") would have issued a right-of-way permit for the Project's interconnection facilities "around July,

August 2012,” allowing “plenty of time” to construct the interconnection facilities. Reconsideration Motion at 4. To support this allegation, the Reconsideration Motion alleges that Interconnect Solar has personal knowledge that its Project could have been “fast tracked” by the BLM. *Id.*

While maybe interesting, none of these alleged facts do anything to suggest the Commission acted inappropriately in dismissing the Complaint. The fact remains undisputed that Interconnect Solar failed to post the required Delay Security in accordance with the terms of the Agreement. As a result, Idaho Power properly terminated the Agreement, and the Commission properly dismissed the Complaint.

The Reconsideration Motion further alleges that “Idaho Power was aware of the Interconnection Issues, and error, in the feasibility study prior to the PUC,s [sic] pending concerns while approving the FESA, But chose not to inform the PUC or Interconnect of the Gross ERROR, and at the very least, even raises concern under Idaho Law of Fraud” Reconsideration Motion at 5. Not only are these allegations patently false, they are unsupported by any facts or evidence. More importantly, these new allegations do nothing to show that Order No. 32531 was unlawful or unreasonable. Again, the fact remains that Interconnect Solar failed to cure the Material Breach in the Agreement, and Idaho Power acted appropriately in terminating the Agreement for that reason.

Importantly, Idaho Power notes that since the Commission has issued Order No. 32531, Interconnect Solar has requested, and Idaho Power has provided, a refund of the amounts it had previously given to Idaho Power pursuant to an engineering and procurement agreement for the Project. Attachment No. 1. In addition, Idaho Power removed the Project from its generator interconnection queue as of April 11, 2012. Attachment No. 2. Thus, Idaho Power has ceased all work on the Project from a generator interconnection standpoint. Based on these facts, Idaho Power calls into

question the nature of the Reconsideration Motion as it appears to be frivolous since, from Idaho Power's standpoint, there is no engineering, design, or construction activity whatsoever associated with the Project.

In sum, after being advised by Idaho Power of the consequences of selecting an unworkable COD, Interconnect Solar moved forward with selecting that unworkable COD anyway. As mentioned above, Interconnect Solar executed a separate letter agreement expressly agreeing to accept all risk associated with not meeting its selected COD. Now that those potential risks have become a reality, Interconnect Solar is attempting to place blame on Idaho Power and this Commission for its own business decision. The Commission should reject Interconnect Solar's attempt to do so and deny the Reconsideration Motion.

III. CONCLUSION

The Reconsideration Motion poses no grounds describing why Order No. 32531 was unreasonable, unlawful, erroneous, or not in conformity with the law. Moreover, the Reconsideration Motion offers no new statement of the nature and/or quantity of evidence or argument that Interconnect Solar would offer if the Commission were to grant its request. Accordingly, the Commission should deny the Reconsideration Motion.

DATED at Boise, Idaho, this 18th day of May 2012.

A handwritten signature in black ink, appearing to read "Don Walker", written over a horizontal line.

DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May 2012 I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO INTERCONNECT SOLAR DEVELOPMENT, LLC'S MOTION FOR RECONSIDERATION 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 Kristine.Sasser@puc.idaho.gov

Interconnect Solar Development LLC

Bill Piske, Manager
Interconnect Solar Development, LLC
1303 East Carter
Boise, Idaho 83706

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email billpiske@cableone.net

Randy Hemmer, Manager
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3777 Twilight Drive
Boise, Idaho 83703

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
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Ronald L. Williams
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Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email ron@williamsbradbury.com


Christa Barry, Legal Assistant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-12-10

IDAHO POWER COMPANY

ATTACHMENT NO. 1



March 27, 2012

Interconnect Solar Development
Attn: Bill Piske
15032 Hollow Road
Caldwell, ID 83607

Re: GI #345 Engineering & Procurement Agreement Refund

Dear Mr. Piske:

As requested, all work has ceased on the above project. As a result, we are refunding the deposit of \$50,000, less costs of \$27,095.07, plus interest of \$675.74. Please find enclosed a check in the amount of \$23,580.67.

If I can be of any further assistance, please call (208) 388-5697.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aubrae N. Sloan".

Aubrae N. Sloan

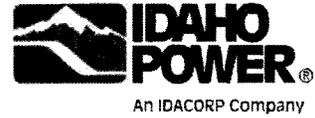
CC: Rowena Bishop

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-12-10

IDAHO POWER COMPANY

ATTACHMENT NO. 2



April 20, 2012

Mr. William Piske
Interconnect Solar Development, LLC
15032 Hollow Road
Caldwell, ID 83607

VIA E-MAIL AND US MAIL

RE: Murphy Flat Solar aka Interconnect Solar; Idaho Power GIA Project No. 345

Dear Mr. Piske:

This letter is to advise you that the above-described project has been removed from Idaho Power's generation interconnection queue and transmission service queue as of April 11, 2012.

Sincerely,

Tess Park
Director – Load Serving Operations
Idaho Power Company

CC:

Randy Hemmer, Interconnect Solar Development
John Anderson, Idaho Power Company
Beth Ryan, Idaho Power Company
Rich Bauer, Idaho Power Company
Joshua Harris, Idaho Power Company