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**JULIA A. HILTON**  
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August 16, 2012

**VIA HAND DELIVERY**

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

Re: Case No. IPC-E-12-18  
Hidden Hollow Energy 2, LLC, — Idaho Power Company's Answer and  
Motion to Dismiss

Dear Ms. Jewell:

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

Very truly yours,

Julia A. Hilton

JAH:evp  
Enclosures

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Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

HIDDEN HOLLOW ENERGY 2, LLC	)	
	)	CASE NO. IPC-E-12-18
Complainant,	)	
v.	)	IDAHO POWER COMPANY'S
	)	ANSWER AND MOTION TO
IDAHO POWER COMPANY,	)	DISMISS
	)	
Respondent.	)	
	)	

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COMES NOW, Idaho Power Company ("Idaho Power" or "Company") and pursuant to Rule 57 hereby answers the Complaint of Hidden Hollow Energy 2, LLC ("Hidden Hollow") as follows:

**I. INTRODUCTION**

On December 8, 2010, Idaho Power and Hidden Hollow entered into a Firm Energy Sales Agreement ("FESA") pursuant to the terms and conditions of the various Idaho Public Utilities Commission ("Commission") Orders applicable to such agreements entered into pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA"). See IPUC Case No. IPC-E-10-44. On December 10, 2010, Idaho Power

filed an Application with the Commission for approval of said agreement. On February 11, 2011, the Commission issued Order No. 32180 approving the FESA. Hidden Hollow selected February 28, 2012, as both its Scheduled First Energy Date and Scheduled Operation Date in the FESA. See Appendix B to the FESA, Application to Approve FESA, Attachment No. 1, Case No. IPC-E-10-44.

On February 7, 2012, Hidden Hollow sent a letter to Idaho Power claiming an event of force majeure had occurred pursuant to the December 2010 FESA, based upon its fuel supply of landfill gas and upon issues related to air quality permitting. Hidden Hollow sent another letter to Idaho Power on May 16, 2012, claiming an additional, separate, and distinct event of force majeure related to both Ada County's and Idaho Power's separate contracts with Dynamis Energy, LLC, for a power generation facility utilizing trash from the landfill as its fuel source.

On May 3, 2012, Idaho Power sent a letter to Hidden Hollow advising that disruptions in fuel supply do not constitute events of force majeure pursuant to the FESA, and further advising and providing notice that Hidden Hollow had missed its Scheduled Operation Date of February 28, 2012, and must achieve its Operation Date by June 1, 2012, (within 90 days of the Scheduled Operation Date) or it would be in material breach of the FESA and subject to termination and damages. On June 14, 2012, Idaho Power sent a letter to Hidden Hollow providing Notice of Termination of the FESA and seeking payment of the Delay Liquidated Damages provided for in the FESA.

On July 13, 2012, Hidden Hollow filed a Complaint with the Petition against Idaho Power. Hidden Hollow's Complaint requests that the Commission: (1) "rescind and retract" the termination of the FESA; (2) require Idaho Power to "return the \$144,000

Delay Liquidated Damages” to Hidden Hollow; and (3) and determine that Hidden Hollow is not in material breach of the FESA and that its two claimed incidents of force majeure are valid events of force majeure under the FESA.

Force majeure is intended to address unforeseeable events or events that are outside of the control of the parties. Hidden Hollow’s failure to adequately plan for potential disruptions in its fuel supply, specifically excluded as grounds for a claim of force majeure in the FESA, does not constitute a valid event of force majeure pursuant to the FESA. Hidden Hollow’s failure to maintain the proper permits necessary to construct and operate its facility are not valid events of force majeure pursuant to the FESA. Idaho Power’s contract with Dynamis Energy, LLC, does not constitute a valid event of force majeure pursuant to the FESA.

## **II. ANSWER**

Idaho Power hereby answers Hidden Hollow’s Complaint as follows. Idaho Power denies any allegation not specifically admitted and reserves the right to supplement and/or amend this Answer if Hidden Hollow amends its Complaint, or if additional defenses are ascertained during the course of discovery or otherwise.

1. Paragraph 1 identifies counsel for Hidden Hollow and therefore requires no response.

2. Idaho Power has insufficient information or knowledge regarding the truth of the allegations in paragraph 2 of the Complaint, which relate to the identity, corporate structure, and contractual agreements and entitlements of Hidden Hollow. The Company acknowledges that Hidden Hollow has provided to it a certification of its Qualifying Facility status.

3. Idaho Power admits that it is an Idaho corporation with its principal place of business at 1221 West Idaho Street, Boise, Idaho 83702. Idaho Power also admits that it is a public utility subject to the jurisdiction of this Commission, the Public Utility Commission of Oregon, and the Federal Energy Regulatory Commission ("FERC").

4. Idaho Power admits the nature of the case as described in the first sentence of paragraph 4. The remaining allegations are conclusions of law that require no response.

5. While the allegations contained in paragraph 5 are legal conclusions and require no response, Idaho Power acknowledges the Commission's authority to implement PURPA and FERC rules.

6. Idaho Power admits the allegations contained in sentences 1 and 2 of paragraph 6. The allegations in sentence 3 of paragraph 6 are legal conclusions and require no response.

7. The allegations contained in paragraph 7 are legal conclusions and require no response.

8. Idaho Power has insufficient information or knowledge regarding the truth of the allegations in paragraph 8 of the Complaint and therefore denies the same.

9. Idaho Power admits that Idaho Power and Hidden Hollow entered into a PURPA FESA as required by federal law on December 8, 2010, that Idaho Power filed an Application with the Commission seeking approval of that FESA, and that the Commission granted approval of the FESA on February 11, 2011. Idaho Power denies other implications contained in paragraph 9 of the Complaint.

10. Idaho Power admits the allegations in paragraph 10 that Hidden Hollow posted delay liquidated damages security required under the FESA.

11. Idaho Power acknowledges that Hidden Hollow failed to meet its Scheduled Operation Date of February 28, 2012. Idaho Power denies assertions that Hidden Hollow encountered events of force majeure, that said events occurred through no fault of Hidden Hollow, that they were impossible to foresee, and that they are impossible to overcome. Idaho Power has insufficient information or knowledge regarding the truth of the remaining allegations in paragraph 11 of the Complaint and therefore denies the same.

12. Idaho Power has insufficient information or knowledge regarding the truth of the allegations in paragraph 12 of the Complaint and therefore denies the same.

13. Idaho Power admits that, due to Hidden Hollow's failure to achieve its Scheduled Operation Date, Idaho Power sent Hidden Hollow a notice of failure to meet Scheduled Operation Date on May 3, 2012. The letter advised Hidden Hollow that delay liquidated damages would be due under the FESA if operation did not occur within 90 days of the Scheduled Operation Date. This letter also explained that, pursuant to Section 14.1 of the FESA, the force majeure clause did not apply to "short-term disruptions or curtailment of the Facility's fuel supply" or other similar events that are known or anticipated events in the operation of a landfill gas-supplied generation facility.

14. Idaho Power admits that it received Hidden Hollow's letter dated May 16, 2012. Idaho Power denies that Hidden Hollow encountered an event of force majeure, that the allegations constitute an event of force majeure, and that the events are such

that Hidden Hollow could have avoided by exercise of reasonable foresight and due diligence. Idaho Power has insufficient information or knowledge regarding the truth of the remaining allegations in paragraph 14 and therefore denies the same.

15. Idaho Power acknowledges that Hidden Hollow failed to meet its Scheduled Operation Date of February 28, 2012. Idaho Power denies assertions that Hidden Hollow encountered events of force majeure.

16. Idaho Power has insufficient information or knowledge regarding the truth of the allegations in paragraph 16 of the Complaint and therefore denies the same.

17. Idaho Power admits that Hidden Hollow filed a letter dated June 11, 2012, with the Commission purporting to have encountered events of force majeure.

18. Idaho Power admits that it filed a letter with the Commission regarding the termination of the Hidden Hollow FESA due to its failure to achieve the Operation Date and notifying the Commission that the associated Delay Liquidated Damages were due and payable.

19. Idaho Power admits that it issued a letter to Hidden Hollow terminating the FESA on June 14, 2012. Idaho Power denies that the letter to the Commission terminated the FESA, but that the letters to Hidden Hollow on May 3, 2012, and June 14, 2012, provided notice of possible termination and notice of termination, respectively. Idaho Power denies implicit allegations that Hidden Hollow encountered events of force majeure, that said events were timely noticed, that the Commission approval prevents termination of a FESA, and that invoking jurisdiction of the Commission prevents termination of a FESA.

20. Idaho Power has insufficient information or knowledge regarding the truth of the allegations in paragraph 20 of the Complaint and therefore denies the same.

21. Idaho Power admits that upon Hidden Hollow's failure to pay the Delay Liquidated Damages as provided for in the FESA, Idaho Power collected said amount from the Delay Damage Security Hidden Hollow posted with Idaho Power pursuant to the requirements of the FESA. Idaho Power denies that such action was wrongful.

22. In response to paragraph 22, Idaho Power admits and denies the allegations in paragraphs 1-21 as set forth in paragraphs 1-21 above.

23. Idaho Power denies the allegations in paragraph 23 of the Complaint, which assert that its actions constitute a breach of the FESA. Idaho Power denies that it suspended performance. Idaho Power acknowledges that it terminated the FESA and collected Delay Liquidated Damages after Hidden Hollow materially breached the FESA by failing to achieve its Operation Date as required by the FESA.

24. Idaho Power denies the allegations in paragraph 24 of the Complaint.

25. Idaho Power denies the allegations in paragraph 25 of the Complaint. Idaho Power specifically denies that the problems Hidden Hollow encountered were unforeseeable for a project of this type.

26. Idaho Power admits that it rejected Hidden Hollow's professed claims of force majeure. Idaho Power denies the remaining allegations in paragraph 26 of the Complaint.

27. The allegations in paragraph 27 are legal conclusions and require no response.

### III. AFFIRMATIVE DEFENSES

28. Hidden Hollow's Complaint, and all allegations and requests for relief therein, fails to state a claim upon which relief can be granted.

29. Disruptions or curtailment of a project's fuel supply are expressly stated in the FESA as not constituting valid claims of force majeure.

30. Some or all of Hidden Hollow's claims are barred by the doctrines of waiver and/or estoppel.

31. Some or all of Hidden Hollow's claims are barred by the doctrine of unclean hands.

32. Some or all of Hidden Hollow's claims are barred by the doctrine of judicial estoppel.

33. Any recovery on Hidden Hollow's Complaint, or any purported allegations and requests for relief therein, is barred in whole or in part by Hidden Hollow's failure to mitigate its damages. By alleging this affirmative defense, Idaho Power does not admit that Hidden Hollow was damaged in any manner, or is entitled to any form of relief.

34. Complainant may not be the real party in interest and/or have the right to bring a cause of action for some or all of the claims it alleges due to its sale or assignment of rights, if any, under the FESA to a third party.

35. Some or all of Hidden Hollow's claims are barred, in whole or in part, because Complainant has suffered no damages as a result of the matters alleged in its Complaint.

36. Hidden Hollow's claims are barred, in whole or in part, because any alleged damages suffered by it were caused by and were the result of its own conduct, fault, responsibility, or failure to act.

37. Some or all of Hidden Hollow's claims are barred by the doctrine of laches.

38. Idaho Power hereby reserves the right to assert any and all additional defenses, ascertained during the course of discovery or otherwise, by amendment to this answer as the Commission's rules, procedures, and/or Orders may allow and/or withdraw or amend the above affirmative defenses.

WHEREFORE, having fully answered, Idaho Power respectfully requests:

1. That the Commission issue its Order denying the relief sought by Hidden Hollow in its Prayer for Relief;
2. That Hidden Hollow's Complaint be dismissed with prejudice and that it go hence without cost or delay; and
3. For such other relief as the Commission deems just and reasonable.

Respectfully submitted this 16<sup>th</sup> day of August 2012.

  
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JULIA A. HILTON  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16<sup>th</sup> day of August 2012, I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER AND MOTION TO DISMISS upon the following named parties by the method indicated below, and addressed to the following:

**Hidden Hollow Energy 2, LLC**  
Stephen R. Thomas  
MOFFATT, THOMAS, BARRETT  
ROCK & FIELDS, CHARTERED  
101 South Capitol Blvd., 10<sup>th</sup> Floor  
PO Box 829  
Boise, Idaho 83701

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email srt@moffatt.com

  
\_\_\_\_\_  
Elizabeth Paynter, Legal Secretary