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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF TARIFF ADVICE NO.
12-13 OF IDAHO POWER COMPANY FOR
AUTHORITY TO UPDATE SCHEDULE 89.**

Case No.: IPC-E-12-28

**TAMARACK ENERGY
PARTNERSHIP'S COMMENTS
REGARDING IDAHO POWER
COMPANY'S PETITION FOR
CLARIFICATION**

Tamarack Energy Partnership ("Tamarack"), by and through its attorneys of record, Givens Pursley LLP, submits the following comments on *Idaho Power Company's Petition for Clarification of Order No. 32758* ("Petition").

In the Petition, Idaho Power Company ("Idaho Power" or "Company") asks the Commission to clarify its "intent regarding the payment of interest on approximately \$2.46 million in amounts authorized by Order No. 32758 to approximately 43 cogeneration and small power production projects." Petition at 1. Tamarack was not the power producer mentioned in the Petition that inquired with Idaho Power about interest payments, Petition at 3 ¶ 6, but nevertheless appreciates that the issue has been raised and that Idaho Power has sought clarification from the Commission.

Idaho Power cited a number of the Commission's prior orders in which "the customer deposit rate authorized by Utility Customer Relations Rule 106, IDAPA 31.21.01.106, currently

set at 1 percent during calendar year 2013 by Order No. 32684, has been authorized in other proceedings involving customer refunds and deferred accounts.” Petition at 3 ¶ 7. Tamarack has reviewed these orders and believes they support a determination that Idaho Power should pay interest on the additional payment amounts resulting from the June 1, 2010 effective date of the tariff authorized by Order No. 32758.

While some of the orders suggest that the Commission may order the accrual of interest in connection with or as part of a penalty, others suggest that the Commission may order the accrual of interest as part of a “true-up” in recognition of the time value of money held by one party when it is determined it actually belongs to another. Tamarack believes this case falls into the latter category of orders because it has no reason to believe that there was any unreasonable conduct or violation of Commission rules or of statutes involved.

For example, the Commission directed payment of interest in connection with the retroactive “true-up mechanism” approved in Order No. 29157. That case developed amidst a dispute between Monsanto and PacifiCorp over whether their power supply agreement had terminated and, if so, when. In 2003, the Commission denied PacifiCorp’s request for an “interim rate” that would apply if the agreement was found to have terminated at the end of 2001, and instead determined that “the existing contract rate would remain in effect” until the dispute was resolved and new rate was established, at which point “a true up would occur.” Order No. 29157 at 2. As described by the Commission, “a true-up mechanism retroactive to the termination date of the existing Agreement will be used to adjust the difference between the existing rate and the new rate. The true-up amount will accrue interest calculated at the annual interest rate on utility deposits.” *Id.* See also Order No. 27660 (also involving the accrual of interest in connection with a true-up process).

As noted by Idaho Power, the Commission in some cases also has ordered payment of interest accrued on “deferred” refunds or rebates. *See, e.g.*, Order Nos. 28099, 28366, 30272, and 32162. The accrual of interest in these cases accounts for the incremental benefit accruing to the party that held funds belonging to another, and distributes that benefit to the party who is entitled to it.

Tamarack believes the Commission’s prior orders support a determination that Idaho Power pay interest at the rate authorized for customer deposits on the additional amounts owed to producers such as Tamarack due to the backdated rates approved in Order No. 32758.

Respectfully submitted this 29th day of March, 2013.

GIVENS PURSLEY LLP

By



Michael C. Creamer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of March, 2013, the foregoing was filed, served, and copied as follows:

DOCUMENT FILED:

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