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**DONOVAN E. WALKER**
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December 23, 2014

**VIA HAND DELIVERY**

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

Re: Case No. IPC-E-14-30
Clark Solar 3, LLC – Idaho Power Company's Reply Comments

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Reply Comments in the above matter.

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OR REJECTION OF AN ENERGY SALES AGREEMENT WITH CLARK SOLAR 3, LLC FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY. | ) | CASE NO. IPC-E-14-30<br><br>IDAHO POWER COMPANY'S REPLY COMMENTS |

Idaho Power Company ("Idaho Power" or "Company"), in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 33166 and in response to the Comments of the Idaho Public Utilities Commission ("Commission") Staff ("Staff") and Clark Solar 3, LLC ("Clark Solar 3") filed on December 19, 2014, hereby respectfully submits the following Reply Comments to the Commission. With these Reply Comments, Idaho Power requests that the Commission affirm that the avoided cost rates contained in this contract correctly utilize a first capacity deficit of July 2021.

## I. STAFF'S RECOMMENDED RATES ADJUSTMENTS

1. On November 20, 2014, Idaho Power filed Initial Comments in this matter which submitted a "Replacement Appendix E" reflecting the Commission-approved rate adjustments from the Grand View Solar and Boise City Solar cases. Order No. 33179 (Grand View Solar); Order No. 33180 (Boise City Solar).

2. On December 19, 2014, Staff filed Comments recommending the incorporation of the avoided cost rated contained in Attachment 1 of Idaho Power's November 20, 2014, Initial Comments (Replacement Appendix E to the original Agreement).

3. On December 19, 2014, Mountain Home Solar, LLC; Pocatello Solar 1, LLC; Clark Solar 1, LLC; Clark Solar 2, LLC; Clark Solar 3, LLC; and Clark Solar 4, LLC, filed Initial Comments. In those Initial Comments, Mountain Home Solar, Pocatello Solar, and Clark Solar 1, Clark Solar 2, Clark Solar 3, and Clark Solar 4 each accepted Staff's recommended adjustments to the contract pricing. (Staff recommended approval of pricing from Idaho Power's Response to the Third Production Request of Staff for Mountain Home Solar, Pocatello Solar 1, Clark Solar 1, and Clark Solar 2. Staff recommended pricing from Idaho Power's Initial Comments for Clark Solar 3 and Clark Solar 4.). The projects also provide argument that a 2016 capacity deficiency should be used as opposed to Idaho Power's 2021 capacity deficiency.

4. For comparison purposes, the 20-year levelized rate for the Energy Sales Agreement ("ESA") as originally submitted is $61.23/megawatt-hour ("MWh") and the rate from the Replacement Appendix E is $60.67/MWh. The estimated 20-year contractual obligation based upon the originally submitted prices is $103,602,890 and

the estimated 20-year contractual obligation with the revised prices is $102,562,148. The levelized integration charge contained in the ESA is the same in both instances at $4.60/MWh.

5. Should the Commission determine to accept the recommended rate adjustments, Idaho Power recommends incorporation and approval of the Replacement Appendix E with the approval of the ESA, rather than incorporating the same through a contract amendment.

## II. CAPACITY SUFFICIENCY

6. Idaho Power maintains that the correct capacity sufficiency period for purposes of calculating the appropriate avoided cost rate for this contract is July of 2021. This is the capacity sufficiency period included in the rates set forth in Appendix E, Replacement Appendix E, and the Second Replacement Appendix E. Clark Solar 3 maintains its strained argument that the Commission should adopt and approve a capacity sufficiency period of July 2016 for the associated rates in its contract. The 2016 capacity deficiency is included in the alternative Appendix F, which should be rejected by the Commission.

7. The Commission has already decided this issue, and determined that Idaho Power's 2021 capacity deficiency is appropriate for use in determining avoided costs pursuant to the Incremental Cost Integrated Resource Plan Methodology ("IRP Methodology") used for the determination of rates in this contract. "We find that ignoring the Company's demand response contribution in calculations under the IRP methodology would unjustly inflate avoided costs paid to QFs and harm ratepayers by

requiring them to pay for capacity provided by a QF that the utility does not need." Order No. 33159, p. 8.

> Inclusion of Idaho Power's demand response produces a more accurate avoided cost and, therefore, more closely aligns with the intent and requirement of PURPA and FERC regulations. Therefore, we find it just and reasonable to include the capacity provided by Idaho Power's demand response programs in calculation made under the IRP methodology. We further find that the capacity provided by demand response is sufficient to meet the Company's needs until July 2021.
>
> IT IS HEREBY ORDERED that Idaho Power's Application is approved. We confirm July 2021 as the Company's capacity deficiency period for use in the incremental cost IRP methodology.

Order No. 33159, p. 9.

8. On July 30, 2014, the Commission issued Order No. 33084 that directed Idaho Power to utilize July 2021 as its first capacity deficit to be used in the Company's surrogate avoided resource methodology for the determination of published avoided cost rates. Case No. IPC-E-13-21, Order No. 33084, p. 5. The Company's 2013 IRP contained a first capacity deficiency of 2016. However, subsequent to the filing of the 2013 IRP, the Company entered into a stipulation requiring the acquisition of up to 440 megawatts ("MW") of demand response ("DR"). Idaho Power subsequently enrolled over 400 MW of DR program participants for the 2014 season. Case No. IPC-E-13-21 examined and established that the appropriate capacity deficiency period for determining published avoided cost rates is July 2021 with the inclusion of Idaho Power's DR programs.

9. On August 13, 2014, Idaho Power filed an application with the Commission seeking an order confirming the use of a July 2021 capacity deficiency

period in the approved IRP Methodology. Case No. IPC-E-14-22, Idaho Power's Application, incorporated herein by this reference. As referenced and quoted above, the Commission approved Idaho Power's Application and confirmed July 2021 as the Company's capacity deficiency period for use in the IRP Methodology. Order No. 33159, p. 9.

10. Because Clark Solar 3 is unable to establish any legally enforceable obligation under Idaho law to avoided cost rates using a 2016 capacity deficit, *See, Idaho Power Co., v. Idaho Public Utilities Comm'n.,* 155 Idaho 780, 316 P.3d 1278 ("*Grouse Creek*"), it now argues ineffectively that the contract in this matter, which was signed by the parties on October 13, 2014, was "binding between the parties" prior to the Commission's final order confirming use of the 2021 capacity deficit in the IRP Methodology. Initial Comments of Clark Solar 3, *et al.*, pp. 4-5. This contention is absolutely incorrect. Under this Commission's implementation of the Public Utility Regulatory Policies Act of 1978 ("PURPA") for the state of Idaho, the Commission utilizes a case-by-case implementation where it requires that each separate contract and/or obligation for purchase be separately and distinctly approved by the Commission prior to its effectiveness. In fact, Clark Solar 3 acknowledges that its contract contains the provision in Article 21.1 which states:

> Idaho Power shall file this Agreement for its acceptance or rejection by the Commission and resolution of the disputed Solar Facility Pricing Schedule as described in paragraph 7.1. This Agreement shall only become finally effective upon the Commission's approval of all terms and provisions hereof without change or condition and declaration that all payments to be made to Seller hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.

11. Contrary to Clark Solar 3's assertions that the parties' signatures on the contract make it "binding between the parties" the parties' signatures on a PURPA contract simply means that both parties have reached agreement as to the terms and conditions contained therein. However, it is of no binding effect and is not "finally effective" unless and until it is reviewed and approved by the Commission. Additionally, in the case of this particular contract, the parties agreed to terms and conditions that expressly state that there is not agreement upon the proper capacity sufficiency period to be used in the contractual rates, and the parties agreed to abide by what the Commission would decide with regard to that matter. Contrary to Clark Solar 3's argument that a subsequent Commission decision could not affect the determination, the agreement expressed in the contract itself anticipates and specifically provides that the Commission will decide the matter, subsequently, and that the parties will abide by that decision. Article 7.1 provides:

> The Solar Facility Pricing Schedule to be included in this Agreement is disputed by the Parties. Idaho Power believes Appendix E is the appropriate Solar Facility Pricing as it includes an Idaho Power capacity deficit period beginning in 2021. The Seller believes Appendix F is the appropriate Solar Facility Pricing Schedule and it includes an Idaho Power capacity deficit period beginning in 2016. Both of these pricing schedules were calculated using the Commission approved Incremental Cost IRP Avoided Cost Methodology, with the only difference being the starting date of the Idaho Power capacity deficit period. The Parties have agreed to all other terms and conditions of this Agreement and hereby agree to submit this Solar Facility Pricing Schedule dispute to the Commission for resolution. The Parties may submit to the Commission written argument or Comments in support of their respective positions, in accordance with a procedural schedule mutually agreeable to the Parties and the Commission. The Parties agree to abide and be bound by the Commission's decision on this issue. The final Order of the Commission resolving this

> dispute will be included and become an integral part of this Agreement, which the Parties agree to support and uphold.

Case No. IPC-E-14-22, seeking the Commission confirmation that 2021 was the correct capacity deficiency to be used in the IRP Methodology, was pending at the time Clark Solar 3's contract was signed by the parties. Intermountain Energy Partners, LLC (managing member for Mountain Home Solar, Pocatello Solar, Clark Solar 1, Clark Solar 2, Clark Solar 3, and Clark Solar 4) directly participated in Case No. IPC-E-14-22 advocating for a 2016 capacity deficiency determination that was denied.

12. As stated above, the Commission has already decided this issue, and determined that Idaho Power's 2021 capacity deficiency is appropriate for use in determining avoided costs pursuant to the IRP Methodology used for the determination of rates in this contract. Idaho Power asks that the Commission affirm that July 2021 is the proper first capacity deficit for the calculation of avoided cost rates for Clark Solar 3's contract.

Respectfully submitted this 23rd day of December 2014.

DONOVAN E. WALKER
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of December 2014 I served a true and correct copy of IDAHO POWER COMPANY'S REPLY COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

| | |
|---|---|
| **Commission Staff**<br>Kristine A. Sasser<br>Deputy Attorney General<br>Idaho Public Utilities Commission<br>472 West Washington (83702)<br>P.O. Box 83720<br>Boise, Idaho 83720-0074 | _X_ Hand Delivered<br>____ U.S. Mail<br>____ Overnight Mail<br>____ FAX<br>_X_ Email kris.sasser@puc.idaho.gov |
| **Clark Solar 3, LLC**<br>Dean J. Miller<br>McDEVITT & MILLER, LLP<br>420 West Bannock<br>Boise, Idaho 83702 | ____ Hand Delivered<br>_X_ U.S. Mail<br>____ Overnight Mail<br>____ FAX<br>_X_ Email joe@mcdevitt-miller.com |
| Mark van Gulik<br>Clark Solar 3, LLC<br>P.O. Box 7354<br>Boise, Idaho 83707 | ____ Hand Delivered<br>____ U.S. Mail<br>____ Overnight Mail<br>____ FAX<br>_X_ Email mvangulik@sunergyworld.com |

Christa Bearry, Legal Assistant