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April 27, 2017

VIA HAND DELIVERY

Diane Hanian, Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, Idaho 83702

Re: Case No. IPC-E-17-01
Contract Terms, Conditions, and Avoided Cost Pricing for Battery Storage Facilities – Comments of Idaho Power Company

Dear Ms. Hanian:

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

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF IDAHO POWER COMPANY FOR A DECLARATORY ORDER REGARDING PROPER CONTRACT TERMS, CONDITIONS, AND AVOIDED COST PRICING FOR BATTERY STORAGE FACILITIES	CASE NO. IPC-E-17-01 COMMENTS OF IDAHO POWER COMPANY

Idaho Power Company ("Idaho Power" or "Company"), pursuant to the Idaho Public Utilities Commission's ("Commission") Order No. 33729, hereby respectfully submits the following comments.

I. BACKGROUND

On February 27, 2017, Idaho Power filed a Petition for Declaratory Order with the Commission seeking a determination as to the proper contract terms, conditions, and avoided cost pricing to be included in the Public Utility Regulatory Policies Act of 1978 ("PURPA") contracts requested by several battery storage facilities. Petition, p. 1. More

specifically, Idaho Power asked for a declaratory ruling from the Commission that the proper authorized avoided cost rate for battery storage facilities, such as those proposed by Franklin Energy Storage One through Four and Black Mesa Energy, as projects that exceed 100 kilowatt ("kW") nameplate capacity, is the incremental cost Integrated Resource Plan ("IRP") methodology with a maximum contract term of two years. Petition, p. 13.

On March 23, 2017, the Commission issued Order No. 33729, Notice of Petition for Declaratory Order and Notice of Modified Procedure, setting forth a schedule for the submission of comments. On April 5, 2017, Franklin Energy Storage[1] filed Comments. On April 7, 2017, Black Mesa Energy, LLC ("Black Mesa") filed its Comments. The four Franklin Energy Storage projects and the Black Mesa project (collectively referred to as "Proposed Battery Storage Facilities" in the Petition and hereafter) generally argue that they are entitled to published avoided cost rates and standard contracts with a 20-year term for projects up to 10 average megawatts ("aMW") in size.

II. COMMENTS

A. The Issues Presented are Properly Addressed by a Declaratory Order.

Franklin Energy Storage ("Franklin") goes to great lengths in its Comments attempting to characterize Idaho Power's Petition for Declaratory Order as something else: arguing that Idaho Power's request, rather than seeking a determination of the parties' legal rights, seeks reconsideration of prior orders and arguing that a Declaratory Order is not the proper mechanism for the Commission to address the controversy

[1] Franklin Energy Storage One, LLC (32 MW); Franklin Energy Storage Two, LLC (32 MW); Franklin Energy Storage Three, LLC (32 MW); and Franklin Energy Storage Four, LLC (32 MW) collectively referred to as "Franklin Energy Storage" or "Franklin."

raised by Franklin's own applications for PURPA contracts with Idaho Power, which demand published rates and standard contracts with 20-year terms.

As referenced in the Petition, the Commission has jurisdiction to issue declaratory orders under Title 61 of *Idaho Code.* A Declaratory Judgment is proper where there is "an actual or justiciable controversy" that is "real and substantial," and "definite and concrete, touching the legal relations of parties having adverse legal interests." Order No. 33667, pp. 5-6, Case No. IPC-E-16-21.

Franklin attempts to obfuscate the issue by claiming its purported battery storage qualifying facility ("QF") projects fall into the classification of "other" for purposes of avoided cost pricing and contract eligibility. However, when each of the proposed battery storage QFs proposes to supply energy with the same output profile as related solar generation,[2] it is Idaho Power's position that the Proposed Battery Storage Facilities are properly classified with their generation source—solar—and consequently only eligible for negotiated avoided cost rates, and limited to a two-year maximum contract term. Just as the same parties had a "real and substantial dispute" and "an actual or justiciable controversy" over the appropriate contract term and conditions for the proposed Jackpot Solar facilities[3] there is a real and substantial dispute as to the proper avoided cost rate and contractual terms and conditions that the Proposed Battery Storage Facilities are entitled to.

Franklin further attempts to obscure the real issues by arguing that the facts are not submitted under oath, are somehow "mere allegations," and suggesting that the

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[2] *See* Attachments 1-5, which show the output profile of the Proposed Battery Storage Facilities to almost exactly match the generation shape and profile of solar generation facilities.

[3] *See* Case No. IPC-E-16-21.

Commission should have a full evidentiary hearing. Again, this is an unnecessary and meritless diversion. The only facts necessary for the Commission's legal determination as to the proper avoided cost rate and contractual terms and conditions that the Proposed Battery Storage Facilities are eligible for are the applications and documents that were submitted by the Proposed Battery Storage Facilities themselves. No evidentiary hearing is necessary or required for the Commission to consider and issue a declaratory ruling as to whether the Proposed Battery Storage Facilities are eligible for published or for negotiated avoided cost rates and contractual terms.

Idaho Power received, in just over two weeks' time, multiple requests totaling 148 megawatts ("MW") from proposed battery storage facilities and disagrees with the Proposed Battery Storage Facilities as to the proper application of the Commission's implementation of PURPA with regard to published avoided cost rate eligibility and the maximum contract term applicable to such projects. There is a real and substantial controversy as to the proper application of this Commission's implementation of PURPA with regard to specific requests and actual and existing facts, applicable to the Proposed Battery Storage Facilities. It is appropriate for the Commission to issue a declaratory order in this case.

B. <u>The Proposed Battery Storage Facilities should be Subject to the 100 kW Published Rate Eligibility Cap</u>.

Again, Franklin goes through great efforts in its Comments discussing and alleging that Idaho Power is somehow "factually mistaken" about the nature of its proposed facilities. First of all, Idaho Power is merely taking at face value the applications, letters, demands, and materials—all provided by the Proposed Battery Storage Facilities themselves. If there are factual mistakes, misrepresentations, or the

like then they originate with the Proposed Battery Storage Facilities themselves, and not with Idaho Power. With regard to the theoretical and potential benefits of the Proposed Battery Storage Facilities, Franklin alleges, "Idaho Power mistakenly questions the ability of the facilities to 'provide ancillary grid services, such as reserve capacity, surge capacity, load-balancing, or voltage support; firming of variable generation; or time-shifting generation to match load.' . . . Idaho Power is factually mistaken as the projects have the ability to do all of the above to varying degrees. . . . Idaho Power never once inquired of the projects as to their ability to provide these services." Franklin Comments, p. 14.

This argument by Franklin entirely misses the point. It is not about whether the Proposed Battery Storage Facilities have the *ability* to do any or all of these referenced things. It is the fact that–taking their applications, demands, and provided materials at face value–the Proposed Battery Storage Facilities are demanding entitlement to published avoided cost rates, which are based and set at the theoretical "avoided" cost of a combined-cycle, natural gas, combustion turbine under the surrogate avoided resource methodology, and standard contract terms and conditions that are designed to be "off-the-shelf" provisions available to small PURPA QF projects. Even assuming the Proposed Battery Storage Facilities can provide all of the referenced "benefits" and be "dispatchable"—the Proposed Battery Storage Facilities have not proposed doing so, and it is not possible to realize, recognize, or provide for these possibilities under the published avoided cost rates and standard contract. If any of these possible benefits were to be considered at all it is only by classifying the Proposed Battery Storage facilities over 100 kW as being subject to the negotiated rates determined by the

incremental cost IRP methodology, which starts with consideration of the actual output profile of the proposed facilities. Additionally, as required by Schedule 73, all of the Proposed Battery Storage Facilities submitted hourly output profiles with their applications, and that output profile shows an output curve and delivery of energy that matches the output of a solar facility.

Furthermore, Franklin's reference to being dispatchable or "providing scheduled and dispatchable electricity in forward-looking time blocks" is without merit and essentially meaningless. The Proposed Battery Storage Facilities have not proposed to sell or provide their energy deliveries in such a manner at all. They have proposed to deliver in an output profile that looks exactly like the output from a solar facility. Even further, the nature of a mandatory purchase PURPA transaction does not give operational control or any dispatchability to the purchasing utility. The mandatory purchase requires the utility to take the QF's "put" of energy to the utility whenever the QF itself determines it can "put" such energy to the utility. The "QF" is motivated to "put" and pass through to the utility all the kilowatt-hours it can in order to maximize its profits. The purchasing utility has no dispatchable control of an independent QF project, and PURPA does not allow the economic dispatch of PURPA resources, which is how the purchasing utility is required to prudently operate and dispatch its own generation. In any event, this theoretical benefit, even if it did exist, could not be recognized, priced, or provided for with the standard rates and contract that the Proposed Battery Storage Facilities are demanding.

As stated in Idaho Power's Petition, the Proposed Battery Storage Facilities' Schedule 73 applications are specifically designed in such a way as to circumvent the

Commission's rules and requirements in its implementation of PURPA for the state of Idaho. The four proposed Franklin Energy Storage facilities are all located adjacent to, and in the same vicinity as the previously proposed four, 20 MW each, Jackpot Solar facilities. *See* Case No. IPC-E-16-21. Their own application materials identify the interconnection facilities for the nearby Jackpot Solar facilities. The four proposed Jackpot Solar facilities have the same developer, Robert Paul, and the same legal counsel, Peter Richardson, as the four proposed Franklin Energy Storage facilities. The proposed Black Mesa storage facility submitted almost identical documents as the four proposed Franklin Energy Storage facilities, and the developers of all five proposed projects had some level of involvement with the Grand View Solar project, an 80 MW PURPA solar QF under contract with Idaho Power. As was made clear by the Commission in the previously referred to Jackpot Solar case, Case No. IPC-E-16-21, solar QFs are subject to a 100 kW published rate eligibility cap, and for any projects that exceed the published rate eligibility cap, the maximum contract term is limited to two years. Pricing for such facilities is determined at the start of each two-year contract term. Order No. 33667.

The non-generator Proposed Battery Storage Facilities have proposed to classify themselves without regard to the solar generation that will energize their batteries, and further proposed to disaggregate into 10 aMW increments, which would avoid application of the 100 kW published rate cap and associated two-year contract term limitation for projects over the cap. The Franklin projects purport to be in compliance with disaggregation rules by claiming separate ownership, but are specifically configured in such a way in an attempt to get 128 MW of capacity split up into four

separate 10 aMW increments, with the goal of qualifying for published rates and 20-year contracts. This was the practice that the Commission determined to prevent when it first implemented a temporary reduction to a 100 kW published rate eligibility cap for wind and solar projects, Order No. 32176, and then made that 100 kW published rate cap permanent for wind and solar QFs. Order No. 32262. *See* Case Nos. GNR-E-10-04, GNR-E-11-01.

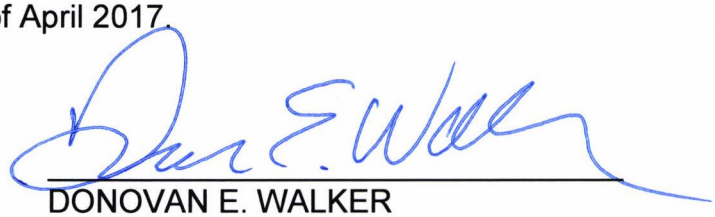
Once again, the Commission is faced with a rush of proposed PURPA projects that appear to be configuring themselves in such a manner as to circumvent the Commission's rules implementing PURPA to the direct detriment of Idaho Power customers, which is contrary to PURPA. The Proposed Battery Storage Facilities share the modular, and easily disaggregated, nature of wind and solar generation referenced by the Commission in its orders limiting those resource types to 100 kW for published rate eligibility. The 148 MW of Proposed Battery Storage Facilities' requests for energy sales agreements also came in a large amount of proposed MW in a very short time, again similar to the previous wind and solar development. It is appropriate and within the exclusive authority of the Commission to act in the public interest to protect customers from this manipulation of the rules and extend the 100 kW published rate eligibility cap to battery storage projects.

III. CONCLUSION

A Declaratory Judgment is within the Commission's jurisdiction and authority, and is necessary and proper in this case to resolve a real and substantial controversy between the parties as to the proper avoided cost rate and contract terms and conditions for the Proposed Battery Storage Facilities.

Idaho Power respectfully requests that the Commission issue a declaratory order, without prejudice to Idaho Power's position on the validity of the underlying self-certifications, finding that the Proposed Battery Storage Facilities are subject to the same 100 kW published avoided cost rate eligibility cap applicable to wind and solar facilities. More specifically, that the proper authorized avoided cost rate for battery storage facilities, such as those proposed by Franklin Energy Storage One through Four and Black Mesa Energy, as projects that exceed 100 kW nameplate capacity, is the incremental cost IRP methodology with a maximum contract term of two years.

Respectfully submitted this 27th day of April 2017.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February 2017 I served a true and correct copy of the within and foregoing COMMENTS OF IDAHO POWER COMPANY upon the following named parties by the method indicated below, and addressed to the following:

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