DONOVAN E. WALKER
Lead Counsel
dwalker@idahopower.com

May 15, 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 – Reply 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 Reply Comments of Idaho Power Company.

Very truly yours,

Donovan E. Walker

DEW:csb
Enclosures

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P.O. Box 70
Boise, ID 83707

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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 REPLY COMMENTS OF IDAHO POWER COMPANY

Idaho Power Company ("Idaho Power" or "Company"), pursuant to the Idaho Public Utilities Commission's ("Commission") Order Nos. 33729 and 33765, hereby respectfully submits the following Reply 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.

On April 27, 2017, Avista Corporation ("Avista") filed Comments, and on April 28, 2017, Idaho Power, Commission Staff ("Staff"), and Idaho Conservation League/Sierra Club ("ICL/Sierra") filed Comments. Staff and Avista take the position that the Proposed Battery Storage Facilities be eligible for published rates and contract terms and conditions consistent with those applicable to the generation source that charges the batteries. ICL/Sierra generally object procedurally to the propriety of a declaratory order, and then seek to challenge the Commission's previous determination and order regarding two-year maximum term contracts. In addition to its previously filed Comments on April 28, 2017, Idaho Power offers the following Reply Comments:

[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."

II. REPLY COMMENTS

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

As did Franklin Energy Storage, ICL/Sierra allege that a declaratory ruling is not the appropriate procedure for Idaho Power's request, stating that battery storage qualifies as "other" and characterizing Idaho Power's request as an improper attempt "to alter or amend" previous Commission orders. ICL/Sierra Comments, p. 3. As stated in response to Franklin's similar allegations:

> 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 [and now ICL/Sierra] 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.

Idaho Power Comments, p. 3.

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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.

ICL/Sierra improperly attempt to characterize the actual and justiciable controversy and the real and substantial dispute between the Proposed Battery Storage Facilities and Idaho Power as to their proper avoided cost pricing and contractual terms and conditions as a request to alter, amend, revise, and/or reconsider prior Commission orders, just as Franklin did. The irony with ICL/Sierra's argument is that they then dedicate the remainder of their Comments to providing a concrete example of an impermissible collateral attack upon final orders of the Commission. ICL/Sierra dedicate more than 13 pages of their 19 page Comments making arguments against the Commission's implementation of a maximum contract term of two years for projects that exceed the published rate eligibility cap. ICL/Sierra Comments, pp. 6-19. Despite the fact that ICL/Sierra may now regret, in retrospect, having not made such arguments at the appropriate time and in the appropriate case, they are not now entitled to collaterally attack the Commission's final determination as to the maximum contract length for QF projects that exceed the published rate eligibility cap. ICL/Sierra's arguments add no substance to the questions before the Commission other than their impermissible collateral attack upon Order No. 33357.

In the present matter, 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. Additional Proceedings are not Necessary.

Staff, Avista, and ICL/Sierra all suggest to some extent that the Commission institute additional proceedings to examine the proper classification of battery storage facilities and the proper implementation of PURPA in the state of Idaho for battery storage facilities. While Idaho Power is not necessarily opposed to such proceedings, the same are not required for the Commission to issue a declaratory ruling such as that requested here, applicable to specific requests from specific projects. For the same reasons that a declaratory order is proper, it is proper for the Commission to determine the correct avoided cost rate and contract term eligibility for these specific projects at this time, with no further proceedings necessary. There is no due process infirmity with regard to Franklin and Black Mesa, as they have been properly noticed, given the opportunity to participate and respond, and have in fact participated and responded. Additional proceedings are not necessary to resolve the issue as to the proper classification, published rate eligibility, and proper contract term as to Franklin and Black Mesa.

Staff supports the same in its recommendation that Franklin and Black Mesa be determined eligible for only negotiated avoided cost rates, and a maximum contract term of two-years. Staff Comments, p. 11. Staff recommends that such declaratory order be narrowly tailored by the Commission to address the legal dispute between Idaho Power and the Franklin and Black Mesa proposed projects. *Id.* Staff further recommends additional proceedings as a general investigation into the appropriate

contract terms for battery storage QFs generally, *Id.*, but the same is not required for the Commission to issue its declaratory order applicable to Franklin and Black Mesa.

Federal regulations require standard rates be made available to QFs of 100 kW or less. 18 C.F.R. § 292.304(c)(1). It is within the sole discretion of the state regulatory authority, here the Commission, as to whether it is in the public interest and whether it will extend standard, or published, avoided cost rates to proposed QF projects beyond 100 kW. The Commission has two separate considerations that both support the conclusion that the Proposed Battery Storage Facilities remain eligible for standard avoided cost rates only up to the federally required 100 kW standard rate eligibility cap. First, as referenced by both Staff and Avista, a non-generator battery storage facility should be classified and treated the same as its generation source. In this case, since all of the Proposed Battery Storage Facilities are proposed as being energized by solar generation, Staff and Avista agree that they should be subject to the same 100 kW published rate eligibility cap, and the corresponding limitation of all proposed projects over the published rate eligibility cap to a maximum term of two-years. Secondly, the Commission has independent justification and rationale for determining that the Proposed Battery Storage Facilities be limited to a 100 kW published rate eligibility threshold in that it is required to prevent the unreasonable disaggregation of larger QF projects into smaller increments to the detriment of customers. The four proposed Franklin facilities are all immediately adjacent to each other within the same one-mile section of land. Idaho Power's Petition, Attachment 8. The projects purport to be in compliance with disaggregation rules by claiming separate ownership, but this appears to be 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 precisely 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. Prevention of the harmful disaggregation of projects aimed at manipulation of the Commission policies and procedures to the detriment of customers is its own separate, additional rationale and justification that supports limitation of the Proposed Battery Storage Facilities to a published rate eligibility cap of 100 kW.

C. <u>The Proposed Battery Storage Facilities Have not Established any Non-Contractual, Legally Enforceable Obligation in this Case</u>.

The Proposed Battery Storage Facilities have not shown that Idaho Power has refused to honor the required utility purchase obligation mandated by PURPA, nor have they followed the Commission's required process for establishment of a legally enforceable obligation ("LEO").

On March 22, 2017, Franklin hand delivered to Idaho Power four separate letters and draft energy sales agreements purporting to claim and establish LEOs to the published avoided cost rates as well as to 20-year term contracts. Please see Attachment 1 hereto. On April 3, 2017, Idaho Power responded by letter to Franklin identifying several mistaken statements in Franklin's letters and claims and stating that Franklin has not followed the proper procedure for the establishment of a LEO. Please see Attachment 2 hereto.

First of all, the concept of a LEO, as created by Federal Energy Regulatory Commission, exists only to prevent the purchasing utility under PURPA form improperly

refusing to contract or purchase from a PURPA QF. There has been no showing that Idaho Power has improperly refused to contract or in any way honor the must-purchase requirement under PURPA. Idaho Power is in full compliance with the response timelines set forth in Schedule 73, which governs the process whereby a PURPA QF sells its output to Idaho Power in the state of Idaho. As outlined in Idaho Power's April 3, 2017, letter to Franklin, Idaho Power responded to Franklin's request for an energy sales agreement within Schedule 73's ten business day response timeframe:

> By letter dated February 27, 2017, Idaho Power responded to your requests stating, "Idaho Power does not agree that your proposed projects are eligible for published avoided cost Rate Option 4, Non-Levelized Non-Fueled Rates, with a 20-year contract term." That letter further advised, "On February 27, 2017, Idaho Power filed an application to the Idaho Public Utilities Commission requesting a declaratory order that determines the contract term and avoided cost pricing methodology for which your proposed projects may be eligible. See IPUC Case No. IPC-E-17-01."

Attachment 2, p. 1. Further, as Idaho Power's letter to Franklin goes on to explain, "Idaho Power has not asked to be excused from PURPA's obligation to purchase. Idaho Power has asked that the Idaho Public Utilities Commission ('IPUC' or 'Commission') determine the proper rates and contract term that your proposed projects may be eligible for, if they are indeed PURPA Qualifying Facilities." *Id.* Idaho Power has not refused to contract, and thus the principles of LEO are not even applicable.

Secondly, the Proposed Battery Storage Facilities have not followed Schedule 73's required procedure, which sets for the applicable legal standards established by the Commission for establishment of a LEO. Schedule 73 states:

> d. The indicative pricing proposal provided to the Customer pursuant to Section 1.c. will not be final or binding on either party. Prices and other terms and conditions will

become final and binding on the parties under only two conditions:

> i. The prices and other terms contained in an ESA shall become final and binding upon full execution of such ESA by both parties and approval by the Commission, or
>
> ii. The applicable prices that would apply at the time a complaint is filed by a Qualifying Facility with the Commission shall be final and binding upon approval of such prices by the Commission and a final non-appealable determination by the Commission that:
>
> > (a) a "legally enforceable obligation" has arisen and, but for the conduct of the Company, there would be a contract, and
> >
> > (b) the Qualifying Facility can deliver its electrical output within 365 days of such determination.

Schedule 73, p. 73-5. This procedure and these requirements regarding establishment of a LEO have been affirmed by the Idaho Supreme Court as consistent with both state and federal law. *Idaho Power Company v. Idaho Public Utilities Commission*, 155 Idaho 780, 786, 787, 316 P.3d 1278, 1284, 1285 (2013)(*Grouse Creek Wind*). Here, there is not even a colorable claim that any of the above-stated requirements have been attempted, much less established. There is no LEO.

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. It is appropriate and within the exclusive authority of the Commission to act in the public interest to protect customers

from manipulation of the Commission's rules and declare that the Proposed Battery Storage Facilities are subject to a 100 kW published rate eligibility cap.

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 15th day of May 2017.

DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May 2017 I served a true and correct copy of the within and foregoing REPLY COMMENTS OF IDAHO POWER COMPANY upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff
Camille Christen
Deputy Attorney General
Idaho Public Utilities Commission
472 West Washington (83702)
P.O. Box 83720
Boise, Idaho 83720-0074

_X_ Hand Delivered
____U.S. Mail
____Overnight Mail
____FAX
_X_ Email camille.christen@puc.idaho.gov

Franklin Energy Storage One through Four, LLC
Peter J. Richardson
RICHARDSON ADAMS, PLLC
515 North 27th Street (83702)
P.O. Box 7218
Boise, Idaho 83707

____Hand Delivered
_X_ U.S. Mail
____Overnight Mail
____FAX
_X_ Email peter@richardsonadams.com

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Black Mesa Energy, LLC
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____Hand Delivered
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____Overnight Mail
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____Overnight Mail
____FAX
_X_ Email dbender@earthjustice.org

Christa Bearry, Legal Assistant

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-17-01

IDAHO POWER COMPANY

ATTACHMENT 1

Franklin Energy Storage One, LLC
515 N. 27th Street
Boise, Idaho 83702
(208) 938-7901
peter@richardsonadams.com

Via hand delivery

March 22, 2017

Michael Darrington
Energy Contracts Leader
Idaho Power Company
1221 West Idaho
Boise, Idaho
HAND DELIVERY

Re: Legally Enforceable Obligation for Franklin Energy Storage One, LLC

Dear Mr. Darrington:

On January 26 of this year the Franklin Energy Storage One, LLC (Franklin One) submitted a completed application for a Schedule 73 Energy Sales Agreement. Ten business days later on February 9, 2017, you responded identifying deficiencies in the application. The next day, on February 10, 2017, Franklin One responded, addressing and correcting the deficiencies you identified. You have not subsequently responded to Franklin One, although your tariff Schedule 73 required to do so within ten business days. Instead, your attorney filed a pleading at the Idaho Public Utilities Commission (PUC) essentially asking that Idaho Power be excused from its obligations under the PUC's implementation of PURPA for QF projects other than wind or solar, so-called "Other Projects."

The PUC has not excused Idaho Power from its PURPA obligations. Schedule 73 provides that Idaho Power had ten business days from February 10, 2017 to respond if it identified any further deficiencies in Franklin One's application, or if there are no deficiencies to provide a "pricing proposal containing terms and conditions." Idaho Power has not provided notice of any further deficiencies nor has it provided the required pricing proposal or terms and conditions.

Because Franklin One will be making PURPA authorized sales based on Idaho Power's published avoided cost rates, the pricing proposal is a mere formality. As you know, the prices are already established as they are published in the Commission's most recent avoided cost order from June of 2016. The terms and conditions of Idaho Power's firm energy sales agreement (FESA) for PURPA projects have been fully vetted and are reflected in the most recent such agreement approved by the Commission for "Other Projects."

Under PURPA, a QF such as Franklin One, may obligate itself to sell to the purchasing utility without the need for a bilaterally executed agreement. In doing so, the QF also obligates the utility to buy its PURPA qualified electrical output. The Franklin One project has already made

such a commitment and has therefore also obligated Idaho Power to purchase all of the electrical output from the Franklin One project. The Franklin One project evidenced its commitment by having fully complied with the formal process established by the Idaho PUC for obtaining pricing and a FESA. Idaho Power has chosen not to comply and has apparently instead relied on its pending filing at the PUC to be excused from its PURPA obligations as they relate to the Franklin One Project. The PUC has taken no action on Idaho Power's request. In the meantime, Idaho Power's unwarranted delay and failure to comply with Schedule 73 is causing Franklin One to incur significant, needless costs.

As noted above, it is not necessary enter into a formal contract to perfect the legally enforceable obligation that has been created between Franklin One and Idaho Power. However, as a courtesy, and in order to erase any doubt on Idaho Power's part as to the obligation assumed by Franklin One to sell its electrical output to Idaho Power – and Idaho Power's obligation to purchase that output at published avoided cost rates – Franklin One is hereby tendering its FESA incorporating Idaho Power's published avoided cost rates for "Other Projects" and incorporating all terms and conditions required and/or approved by this Commission in the recent past for such projects.

Attached are two executed FESA originals, one for your files and one for our files. Please return one fully executed original once it has been signed by Idaho Power. We are looking to a long and mutually beneficial relationship.

Sincerely,

Peter Richardson
Counsel for Franklin Energy Storage One, LLC

Cc: Donovan Walker w/o enclosures

Franklin Energy Storage Two, LLC
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Boise, Idaho 83702
(208) 938-7901
peter@richardsonadams.com

March 22, 2017

Michael Darrington
Energy Contracts Leader
Idaho Power Company
1221 West Idaho
Boise, Idaho
HAND DELIVERY

Re: Legally Enforceable Obligation for Franklin Energy Storage Two, LLC

Dear Mr. Darrington:

On January 26 of this year the Franklin Energy Storage Two, LLC (Franklin Two) submitted a completed application for a Schedule 73 Energy Sales Agreement. Ten business days later on February 9, 2017, you responded identifying deficiencies in the application. The next day, on February 10, 2017, Franklin Two responded, addressing and correcting the deficiencies you identified. You have not subsequently responded to Franklin Two, although your tariff Schedule 73 required to do so within ten business days. Instead, your attorney filed a pleading at the Idaho Public Utilities Commission (PUC) essentially asking that Idaho Power be excused from its obligations under the PUC's implementation of PURPA for QF projects other than wind or solar, so-called "Other Projects."

The PUC has not excused Idaho Power from its PURPA obligations. Schedule 73 provides that Idaho Power had ten business days from February 10, 2017 to respond if it identified any further deficiencies in Franklin Two's application, or if there are no deficiencies to provide a "pricing proposal containing terms and conditions." Idaho Power has not provided notice of any further deficiencies nor has it provided the required pricing proposal or terms and conditions.

Because Franklin Two will be making PURPA authorized sales based on Idaho Power's published avoided cost rates, the pricing proposal is a mere formality. As you know, the prices are already established as they are published in the Commission's most recent avoided cost order from June of 2016. The terms and conditions of Idaho Power's firm energy sales agreement (FESA) for PURPA projects have been fully vetted and are reflected in the most recent such agreement approved by the Commission for "Other Projects."

Under PURPA, a QF such as Franklin Two, may obligate itself to sell to the purchasing utility without the need for a bilaterally executed agreement. In doing so, the QF also obligates the utility to buy its PURPA qualified electrical output. The Franklin Two project has already made

such a commitment and has therefore also obligated Idaho Power to purchase all of the electrical output from the Franklin Two project. The Franklin Two project evidenced its commitment by having fully complied with the formal process established by the Idaho PUC for obtaining pricing and a FESA. Idaho Power has chosen not to comply and has apparently instead relied on its pending filing at the PUC to be excused from its PURPA obligations as they relate to the Franklin Two Project. The PUC has taken no action on Idaho Power's request. In the meantime, Idaho Power's unwarranted delay and failure to comply with Schedule 73 is causing Franklin Two to incur significant, needless costs.

As noted above, it is not necessary enter into a formal contract to perfect the legally enforceable obligation that has been created between Franklin Two and Idaho Power. However, as a courtesy, and in order to erase any doubt on Idaho Power's part as to the obligation assumed by Franklin Two to sell its electrical output to Idaho Power – and Idaho Power's obligation to purchase that output at published avoided cost rates – Franklin Two is hereby tendering its FESA incorporating Idaho Power's published avoided cost rates for "Other Projects" and incorporating all terms and conditions required and/or approved by this Commission in the recent past for such projects.

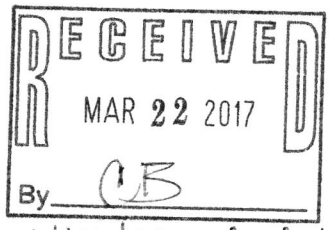
Attached are two executed FESA originals, Two for your files and Two for our files. Please return Two fully executed original once it has been signed by Idaho Power. We are looking to a long and mutually beneficial relationship.

Sincerely,

Peter Richardson
Counsel for Franklin Energy Storage Two, LLC

Cc: Donovan Walker w/o enclosures

Franklin Energy Storage Three, LLC
515 N. 27th Street
Boise, Idaho 83702
(208) 938-7901
peter@richardsonadams.com



Via hand delivery

March 22, 2017

Michael Darrington
Energy Contracts Leader
Idaho Power Company
1221 West Idaho
Boise, Idaho
HAND DELIVERY

Re: Legally Enforceable Obligation for Franklin Energy Storage Three, LLC

Dear Mr. Darrington:

On January 26 of this year the Franklin Energy Storage Three, LLC (Franklin Three) submitted a completed application for a Schedule 73 Energy Sales Agreement. Ten business days later on February 9, 2017, you responded identifying deficiencies in the application. The next day, on February 10, 2017, Franklin Three responded, addressing and correcting the deficiencies you identified. You have not subsequently responded to Franklin Three, although your tariff Schedule 73 required to do so within ten business days. Instead, your attorney filed a pleading at the Idaho Public Utilities Commission (PUC) essentially asking that Idaho Power be excused from its obligations under the PUC's implementation of PURPA for QF projects other than wind or solar, so-called "Other Projects."

The PUC has not excused Idaho Power from its PURPA obligations. Schedule 73 provides that Idaho Power had ten business days from February 10, 2017 to respond if it identified any further deficiencies in Franklin Three's application, or if there are no deficiencies to provide a "pricing proposal containing terms and conditions." Idaho Power has not provided notice of any further deficiencies nor has it provided the required pricing proposal or terms and conditions.

Because Franklin Three will be making PURPA authorized sales based on Idaho Power's published avoided cost rates, the pricing proposal is a mere formality. As you know, the prices are already established as they are published in the Commission's most recent avoided cost order from June of 2016. The terms and conditions of Idaho Power's firm energy sales agreement (FESA) for PURPA projects have been fully vetted and are reflected in the most recent such agreement approved by the Commission for "Other Projects."

Under PURPA, a QF such as Franklin Three, may obligate itself to sell to the purchasing utility without the need for a bilaterally executed agreement. In doing so, the QF also obligates the utility to buy its PURPA qualified electrical output. The Franklin Three project has already

made such a commitment and has therefore also obligated Idaho Power to purchase all of the electrical output from the Franklin Three project. The Franklin Three project evidenced its commitment by having fully complied with the formal process established by the Idaho PUC for obtaining pricing and a FESA. Idaho Power has chosen not to comply and has apparently instead relied on its pending filing at the PUC to be excused from its PURPA obligations as they relate to the Franklin Three Project. The PUC has taken no action on Idaho Power's request. In the meantime, Idaho Power's unwarranted delay and failure to comply with Schedule 73 is causing Franklin Three to incur significant, needless costs.

As noted above, it is not necessary enter into a formal contract to perfect the legally enforceable obligation that has been created between Franklin Three and Idaho Power. However, as a courtesy, and in order to erase any doubt on Idaho Power's part as to the obligation assumed by Franklin Three to sell its electrical output to Idaho Power – and Idaho Power's obligation to purchase that output at published avoided cost rates – Franklin Three is hereby tendering its FESA incorporating Idaho Power's published avoided cost rates for "Other Projects" and incorporating all terms and conditions required and/or approved by this Commission in the recent past for such projects.

Attached are Three executed FESA originals, Three for your files and Three for our files. Please return Three fully executed original once it has been signed by Idaho Power. We are looking to a long and mutually beneficial relationship.

Sincerely,

Peter Richardson
Counsel for Franklin Energy Storage Three, LLC

Cc: Donovan Walker w/o enclosures

Franklin Energy Storage Four, LLC
515 N. 27th Street
Boise, Idaho 83702
(208) 938-7901
peter@richardsonadams.com

Via hand delivery

March 22, 2017

Michael Darrington
Energy Contracts Leader
Idaho Power Company
1221 West Idaho
Boise, Idaho
HAND DELIVERY

Re: Legally Enforceable Obligation for Franklin Energy Storage Four, LLC

Dear Mr. Darrington:

On January 26 of this year the Franklin Energy Storage Four, LLC (Franklin Four) submitted a completed application for a Schedule 73 Energy Sales Agreement. Ten business days later on February 9, 2017, you responded identifying deficiencies in the application. The next day, on February 10, 2017, Franklin Four responded, addressing and correcting the deficiencies you identified. You have not subsequently responded to Franklin Four, although your tariff Schedule 73 required to do so within ten business days. Instead, your attorney filed a pleading at the Idaho Public Utilities Commission (PUC) essentially asking that Idaho Power be excused from its obligations under the PUC's implementation of PURPA for QF projects other than wind or solar, so-called "Other Projects."

The PUC has not excused Idaho Power from its PURPA obligations. Schedule 73 provides that Idaho Power had ten business days from February 10, 2017 to respond if it identified any further deficiencies in Franklin Four's application, or if there are no deficiencies to provide a "pricing proposal containing terms and conditions." Idaho Power has not provided notice of any further deficiencies nor has it provided the required pricing proposal or terms and conditions.

Because Franklin Four will be making PURPA authorized sales based on Idaho Power's published avoided cost rates, the pricing proposal is a mere formality. As you know, the prices are already established as they are published in the Commission's most recent avoided cost order from June of 2016. The terms and conditions of Idaho Power's firm energy sales agreement (FESA) for PURPA projects have been fully vetted and are reflected in the most recent such agreement approved by the Commission for "Other Projects."

Under PURPA, a QF such as Franklin Four, may obligate itself to sell to the purchasing utility without the need for a bilaterally executed agreement. In doing so, the QF also obligates the utility to buy its PURPA qualified electrical output. The Franklin Four project has already made

such a commitment and has therefore also obligated Idaho Power to purchase all of the electrical output from the Franklin Four project. The Franklin Four project evidenced its commitment by having fully complied with the formal process established by the Idaho PUC for obtaining pricing and a FESA. Idaho Power has chosen not to comply and has apparently instead relied on its pending filing at the PUC to be excused from its PURPA obligations as they relate to the Franklin Four Project. The PUC has taken no action on Idaho Power's request. In the meantime, Idaho Power's unwarranted delay and failure to comply with Schedule 73 is causing Franklin Four to incur significant, needless costs.

As noted above, it is not necessary enter into a formal contract to perfect the legally enforceable obligation that has been created between Franklin Four and Idaho Power. However, as a courtesy, and in order to erase any doubt on Idaho Power's part as to the obligation assumed by Franklin Four to sell its electrical output to Idaho Power – and Idaho Power's obligation to purchase that output at published avoided cost rates – Franklin Four is hereby tendering its FESA incorporating Idaho Power's published avoided cost rates for "Other Projects" and incorporating all terms and conditions required and/or approved by this Commission in the recent past for such projects.

Attached are Four executed FESA originals, Four for your files and Four for our files. Please return Four fully executed original once it has been signed by Idaho Power. We are looking to a long and mutually beneficial relationship.

Sincerely

Peter Richardson
Counsel for Franklin Energy Storage Four, LLC

Cc: Donovan Walker w/o enclosures

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-17-01

IDAHO POWER COMPANY

ATTACHMENT 2

IDAHO POWER®
An IDACORP Company

DONOVAN E. WALKER
Lead Counsel
dwalker@idahopower.com

April 3, 2017

Peter Richardson
Franklin Energy Storage One, Two, Three, and Four, LLC
515 N. 27th Street
Boise, ID 83702

peter@richardsonadams.com

VIA ELECTRONIC MAIL ONLY

Re: Franklin Energy Storage One, Two, Three, and Four, LLC

Mr. Richardson:

I write in response to your letters dated March 22, 2017, which seek to establish legally enforceable obligations on behalf of the four proposed Franklin Energy Storage projects.

Your letters are mistaken in their claim that Idaho Power did not provide a response to your February 10, 2017, submittals within Schedule 73's ten business day response timeframe. By letter dated February 27, 2017, Idaho Power responded to your requests stating, "Idaho Power does not agree that your proposed projects are eligible for published avoided cost Rate Option 4, Non-Levelized Non-Fueled Rates, with a 20-year contract term." That letter further advised, "On February 27, 2017, Idaho Power filed an application to the Idaho Public Utilities Commission requesting a declaratory order that determines the contract term and avoided cost pricing methodology for which your proposed projects may be eligible. See IPUC Case No. IPC-E-17-01."

Your letters are also mistaken in their claim that Idaho Power has asked to be "excused from its obligations under the PUC's implementation of PURPA". Idaho Power has not asked to be excused from PURPA's obligation to purchase. Idaho Power has asked that the Idaho Public Utilities Commission ("IPUC" or "Commission") determine the proper rates and contract term that your proposed projects may be eligible for, if they are indeed PURPA Qualifying Facilities.

Your letters are additionally mistaken in their claim that, "The PUC has taken no action on Idaho Power's request." Idaho Power's petition in Case No. IPC-E-17-01 was before the Commission in its regularly scheduled, public Decision Meeting on March 20, 2017, 1:30 p.m., at which the Commission determined to issue a Notice of Petition and Notice

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of Modified Procedure as well as a procedural schedule, adopting Commission Staff's proposed schedule from Staff's March 15, 2017, Decision Memorandum. The Commission subsequently issued its written Notice of Petition for Declaratory Order and Notice of Modified Procedure, Order No. 33729, on March 23, 2017.

As you are well aware from your participation in past cases and dockets, your attempted "tendering" of a "FESA" is not the properly established procedure for determination of the proper rates, term, and/or conditions of required PURPA purchases or of establishment of a legally enforceable obligation. Please see Schedule 73 and *Idaho Power Company v. Idaho Public Utilities Commission*, 155 Idaho 780, 316 P.3d 1278 (2013)(*Grouse Creek Wind*).

Sincerely,

Donovan E. Walker