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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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

COMES NOW, the Franklin Energy Storage Projects, collectively herein, and pursuant to Idaho Public Utilities Commission ("Commission") order No. 33727 issued in the above captioned docket and hereby provides its Comments on Idaho Power Company's ("Idaho Power" or "Company") Petition for Declaratory Order ("Petition") initiating this docket.

I.

INTRODUCTION

Idaho Power's Petition fails to comply with the legal requirement for the issuance of a petition for a declaratory order as the Power Company has failed to identify any adverse legal relations or issues. The Commission's extant orders are clear, unequivocal policy rulings

[1] Franklin Energy Storage One, LLC; Franklin Energy Storage Two, LLC; Franklin Energy Storage Three, LLC and Franklin Energy Storage Four, LLC (Herein collectively "Franklin Energy Storage Projects").

creating entitlement to published avoided cost rates for up to twenty-years for all QFs' other than solar and wind QFs. Because the Franklin Energy Storage Projects are QFs other than wind or solar QFs, they are unquestionably encompassed under the Commission's policy as "Other Projects." Idaho Power's alleged factual assertions that the Franklin Energy Storage Projects fail to provide distinct benefits from intermittent solar and wind projects are false, unsubstantiated and, ultimately irrelevant.

The Commission is respectfully requested to issue its order denying Idaho Power's Petition for the reasons stated herein.

II.

IDAHO POWER ASKS THE COMMISSION TO DEPART FROM AN AVOIDED COST METHODOLOGY PREVIOUSLY ESTABLISHED IN FINAL ORDERS

Idaho Power fashions its pleading as a "Petition for Declaratory Order," but that label is inaccurate and misleading. Idaho Power does not seek a declaration of rights in the context of an actual legal controversy, as required by law. Rather, it asks this Commission to depart from the unambiguous language of prior orders. In its Petition Idaho Power requests:

> 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, under the facts presented, the Proposed Battery Storage Facilities are subject to the same 100 kw published avoided cost rate eligibility cap applicable to wind and solar facilities.[2]

Idaho Power's Petition is not a request for a declaration of legal rights, but rather is a request that the Commission reconsider its orders adopting a specific rate-making methodology for QFs. The

[2] *Petition* at 13.

orders adopting that methodology, discussed in detail below, provide that all QFs other than wind and solar QFs are eligible for the 10 aMW rate cap and twenty-year contract terms. Thus, Idaho Power's request invites the Commission to reconsider issues previously resolved in orders that are final and non-appealable. It does so relying on alleged changes in circumstances set forth in those prior orders. These allegations are without merit. Idaho Power alleges:

> The status and applicability of the Commission's implementation of PURPA with regard to proposed battery storage facilities was not considered and/or addressed in the Commission's determinations as to published rate eligibility cap, differentiation of applicable avoided cost rates to different generation technologies, or its determinations regarding other contractual terms and conditions, such as contract term.[3]

While Idaho Power has the right to request the Commission to reassess its prior decisions on the basis of changed circumstances, a Petition for Declaratory Judgment is not the proper vehicle by which to make that request. *Idaho Code* § 61-624 specifically permits the Commission to revisit its prior orders. That statute provides:

> 61-624. Recession or change of orders. The Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it.

Idaho Power claims that "under the facts presented[4]" the Commission may "clarify" its prior orders, citing to RP 325[5]. A request for clarification would lie only if the referenced order were unclear. It is not. Because the order is not unclear, Idaho Power is actually seeking a declaratory judgment to circumvent the more onerous procedural requirements contained in *Idaho Code* § 61-624 dealing with a petition to "alter or amend" a final Commission order. That code section

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[3] *Id.* at 7.
[4] *Id* at p. 13.
[5] *IPUC Rules of Procedure*, Rule 325, IDAPA 31.01.01.325. *Petition* at p. 6.

requires the Commission to provide "an opportunity to be heard" which necessarily requires that all affected parties be given an opportunity to present evidence, cross-examine witnesses and otherwise be afforded the full rights of participation. Of course, had it filed a Petition to "alter or amend," and were the Commission to grant such a Petition, the effect of the Commission's ensuing order would be prospective only and would not apply to the Franklin Energy Storage Projects.

Furthermore, Idaho Power's Petition is based, in part, on "the facts presented." The purported "facts" have not been supported by any affidavit, and have not been submitted under oath. Moreover, in a declaratory judgment action, they are not subject to examination. Hence, "the facts presented" are, at this juncture, mere allegations. Idaho Power's Petition is based on unsupported and unsubstantiated factual allegations as to the benefits (or lack thereof) and the alleged operational characteristics of battery storage systems. Were the Commission interested in ascertaining the veracity of Idaho Power's alleged facts, the appropriate forum would, of course, be a full evidentiary hearing for the benefit of the Commission. In such a case, all potentially affected parties would have the right to fully present their cases and cross-examine witnesses.

III.

WERE THE COMMISSION TO REVISE ITS ORDER, SUCH REVISION COULD ONLY BE APPLIED PROSPECTIVELY

The Commission has the full power to entertain Idaho Power's request that it revisit its prior orders making twenty-year published avoided cost rates available to ALL QFs except for wind and solar QFs. The question of eligibility for published rates and twenty-year contracts is a

substantive policy question[6]. This Commission has been clear that the promulgation of a substantive policy rule requires a formal process including prior notice and hearing.[7] The Commission has also been clear that the question of eligibility to published rates is, indeed, a policy question.[8] Here of course, the Franklin Energy Storage Projects have relied on existing Commission orders setting policy as to eligibility for published rates. They have fully complied with all process established by this Commission for the creation of a legally enforceable obligation relative to their projects. They had no prior notice that Idaho Power would be seeking (or that this Commission would even entertain a request) to 'change the rules in the middle of the game.' However, the results of any proceeding changing Commission policy can only have prospective effect. The status of the Franklin Energy Storage Projects is beyond the reach of the result of any subsequent proceedings this Commission may initiate in terms of changing its prior policy orders implementing PURPA.

IV.

THE COMMISSION'S ORDERS ARE UNAMBIGUOUS

It has long been established, and long recognized, by this Commission that rate-making is a legislative act. This Commission explained, in the context of a different PURPA case:

> As Justice Scalia discussed . . . there is a difference between rulemaking (the PURPA investigation) and adjudication (this complaint case). He explained:
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> > Rulemaking [(i.e., the PURPA investigation)] is agency action which regulates the future conduct of either groups of persons or a single person; it is essentially

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[6] *See* Oder No. 32176 at p. 4, declaring the eligibility cap issue to be a "policy question."
[7] *See* Order No. 23271 at p. 20.
[8] *Id.*

> legislative in nature, not only because it operates in the future but also because it is primarily concerned with policy considerations.[9]

As the result of the "legislative in nature" act of ratemaking, the Commission's orders on QF eligibility to published rates are subject to long-standing rules of statutory construction. Specifically: (1) when a statute is written in plain, clear and unambiguous language, no further interpretation is permitted as the language speaks for itself, (*See Koon v. Bottolfsen,* 66 Idaho 771, 189 P.2d 345 (1946); *Haworth v. Bernsten* 68 Idaho 539, 200 P.2d 1007 (1948)), and (2) the inclusion of certain provisions in a statute implies the exclusion of others. *See U.S. v Katatin* 214 F.3d 1049 (9th Cir. 2000). Here, the Commission's orders are clear, unambiguous and plain -- *only* solar and wind projects are subject to the 100 kW eligibility cap. Further, the Commission's orders mandate that QF's "including but not limited to" [all specified entities other than wind and solar] are *not* subject to that cap. Battery storage facilities are neither wind nor solar; and clearly fall within the "including but not limited to" language of the Commission's orders. Thus, the exclusion of other interpretations (beyond just solar or wind QFs) from the Commission's orders is, in this case, not implied but is actually stated explicitly.

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[9] IPUC Docket No. IPC-11-15, Order No. 32974 p. 25, (2014). Quoting *Bowen v. Georgetown University Hospital,* 488 U.S. 204, 208, 109 S.Ct. 469 (1988). Parentheticals in original PUC order. Bracketed material added by the Commission.

V.

BATTERY STORAGE QFs CLEARLY QUALIFY AS "OTHER PROJECTS" UNDER THIS COMMISSION'S EXTANT ORDERS

This Commission has limited the availability of published rate 'standard offer' contracts to two years for just solar and wind Qualifying Facilities. It specifically allows for standard offer contract rates of up to twenty-years for all other PURPA Qualifying Facilities. The Commission's rulings in this regard are explicit and unequivocal:

> After careful consideration, the Commission ultimately determined that it was appropriate to maintain the 100 kW eligibility cap for published avoided cost rates for wind and solar QFs.

Order No. 32697 at p. 3. Emphasis provided.

> This commission is confident that, with other changes to the avoided cost methodologies incorporated in the Order, changing eligibility from 10 aMW for resources other than wind and solar is unnecessary at this time. We find that a 10 aMW eligibility cap for access to published avoided cost rates for resources other than wind and solar is appropriate to continue to encourage renewable development while maintaining ratepayer indifference. Maintaining a 10 aMW eligibility cap is also consistent with our long history of encouraging PURPA projects and renewable energy generation in Idaho.

Id. at p. 14. Emphasis provided.

> We maintain the eligibility cap at 10 aMW for QF projects other than wind and solar (including but not limited to biomass, small hydro, cogeneration, geothermal, and waste-to-energy).

Order No. 32176 at p. 9. Emphasis provided.

The Franklin Energy Storage Projects are "QF projects other than wind and solar QFs." Even Idaho Power concedes that the Franklin Energy Storage Projects are distinct QFs and that the question of the QF status of these projects is well beyond the jurisdictional reach of this

Commission. Idaho Power, in its Petition, correctly observed this Commission's lack of jurisdiction to question the QF status of the Franklin Energy Storage Projects:

> QF status is within the exclusive jurisdiction and properly before FERC, not this Commission for determination.

Petition at p. 7.

Idaho Power, also appropriately, conceded any concern as to the distinct QF status of the Franklin Energy Storage Projects by asserting that, "Idaho Power does not dispute that the facilities are self-certified QFs." *Id.*

The question of whether energy storage facilities are separate and distinct Qualifying Facilities has been answered by FERC in the affirmative. The only caveat FERC imposed on energy storage facilities, as distinct QFs, is that the energy input to the storage system must comply with the same energy source requirements applicable to any other qualifying facility. According to FERC:

> In sum, energy storage facilities . . . are a renewable resource for purposes of QF certification. However, such facilities are subject to the requirement that the energy input to the facility is itself biomass, waste, a renewable resource, a geothermal resource, or any combination therefore…

Luz Development and Finance Corp 51 FERC ¶ 61,078 at p. 9, (1990).

As FERC explained:

> [I]n order for a storage facility to be a QF the primary energy source for generation of this energy must be one of those contemplated by the statute for conventional small power production facilities, e.g., biomass, waste, renewable resources, geothermal resources or any combination thereof.

Id. at p. 8.

No party has challenged, or even intervened in, the Franklin Energy Storage QF filings. *See*, FERC Docket Numbers QF17-581 through QF17-584.

In sum, the Commission's decision tree is simple and leads to a single conclusion. This Commission has explicitly ruled that any QF other than a solar QF or a wind QF is entitled to published rates and a twenty-year contract. Idaho Power concedes that the Franklin Energy Storage Projects are valid QFs and that the very question of QF status is exclusively for FERC to determine as it is beyond the jurisdictional reach of this Commission. FERC has ruled that energy storage facilities (like the Franklin Energy Storage Projects) are distinct renewable QFs. Thus, the Franklin Energy Storage Facilities are QFs other than wind or solar and are, by definition, entitled to rates as "Other Projects" pursuant to this Commission's orders.

VI.

IDAHO POWER INCORRECTLY ASSERTS
THAT ENERGY STORAGE SYSTEMS WERE
NOT CONSIDERED BY THE COMMISSION

Idaho Power sells the Commission short when it argues, at p. 7 of its Petition that "battery storage facilities w[ere] not considered" as to "the Commission's determinations as to published rate eligibility cap, differentiation of applicable avoided cost rates to different generation technologies or its determinations regarding other contractual terms and conditions, such as contract term." While it is true the Commission did not specifically address battery storage facilities it its orders on wind and solar QF eligibility for twenty-year term PURPA contracts, it is also true that the Commission similarly did not specifically address any other type of resource other than in passing. For instance, the Commission, in an attempt to be all inclusive as to the types of resources NOT restricted to two-year contracts ruled that;

> We maintain the eligibility cap at 10 aMW for QF projects other than wind and solar (including but not limited to biomass, small hydro, cogeneration, geothermal, and waste-to-energy.)

Order No. 32176 at p. 9, (emphasis provided). There are not very many other types of QF projects (other than energy storage facilities) the Commission could have been contemplating when it used the phrase "but not limited to." Indeed, the phrase "but not limited to" is expansive not restrictive. It can only mean exactly what it says, that is that all QF projects, other than solar and wind, are eligible for the 10 aMW cap and twenty-year contract. It is not a mere rhetorical question to ask, 'What other types of QFs projects was the Commission considering when it ruled that its list of eligible QFs included but was "not limited to biomass, small hydro, cogeneration, geothermal, and waste-to-energy"?' The Commission is presumed to know what is in its orders, and this Commission, through its orders, has been encouraging Idaho Power (and the other investor owned electric utilities in Idaho) to consider the development and possible deployment of energy storage devices for decades. For Idaho Power to suggest that the Commission was not mindful of this fact when it issued its order limiting just wind and solar QF projects to two-year contracts is utterly speculative and unsupported by reason or facts. The Commission has considered energy storage options for the utilities it regulates in at least a half a dozen orders over the years – both before and after its order restricting wind and solar QFs to just two-year contract terms: See, e.g., Docket No. U-1006-207 (Order No. 17954, March 1983); Docket No. PAC-E-11-10 (Order No. 32351, September 2011); Docket No. IPC-E-16-11 (Order No. 33563 August 2011); Docket No. IPC-E-13-22 (Order No. 33150, October 2014); Docket No. U-1500-170 (Order No. 22636, July 1989); and, Docket No. IPC-E-15-19, (Order No.

33441, December 2015). In fact, two of the three current Commissioners participated in at least some of these proceedings.

VII.

BECAUSE THERE IS NO LEGAL CONTROVERSY
AT ISSUE IDAHO POWER'S PETITION FOR A DECLARATORY RULING
MUST BE DENIED

Idaho Power seeks a declaratory judgment from this commission on an alleged "legal controversy" (Petition at p. 6). As noted in Idaho Power's Petition:

> For a declaratory judgment to be rendered, there must be "an actual or justiciable controversy" that is "real and substantial," and "definite and concrete, touching the legal relations of parties having adverse legal interests." [citations omitted][10]

According to Idaho Power:

> The legal controversy or question for the Commission is, under the facts presented by the requests of the Proposed Battery Storage Facilities, whether they are entitled to published avoided cost rates and 20-year contract terms …[11]

But here there is no legal controversy and there are no adverse legal interests. The standard set by this Commission for entitlement to published rate contracts up to twenty-years is that the project must be under 10 aMW and must not be a wind or a solar QF. Idaho Power explicitly states that it does not question the non-wind and non-solar QF status of the Franklin Energy Storage LLCs:

> [F]or purposes of the determination as to the rate eligibility and contract term length for the Proposed Battery Storage Facilities as requested in this Petition, Idaho Power does not dispute that the facilities are self-certified QFs…[12]

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[10] Petition at p. 5.
[11] *Id.* at p. 6.
[12] *Id.*, emphasis provided.

Obviously, the Franklin Energy Storage LLCs do not question their own legal status as QFs. The Commission's ruling that QFs other than solar and wind are eligible for twenty-year contracts is clear and has not been questioned by Idaho Power or the Franklin Energy Projects. Hence there is not only no justiciable controversy, there is no controversy at all: The Franklin Energy Storage Projects are "QFs other than wind or solar" and Idaho Power has conceded as much. Hence, the Franklin Energy Storage Projects are "QF projects other than wind or solar" and because this Commission has ruled that "QF projects other than wind or solar" are eligible for published avoided cost rates up to 10 aMW there is no legal controversy to be settled by this Commission. That should be the end of the analysis, period.

As the Idaho Supreme Court, in *Whitney v. Randall*[13] explained, there must be some specific adversary question presented.

> In *State v. State Board of Education*, 56 Idaho 210, 52 P.2d 141, we had occasion to consider a question presented under the Declaratory Judgment Act and said:
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> "The Declaratory Judgment Act (chap. 70, 1933 Sess. Laws) contemplates some specific adversary question or contention based on an existing state of facts, out of which the alleged 'rights, status and other legal relations' arise, upon which the court may predicate a judgment 'either affirmative or negative in form and effect.' (Sec. 1 of Declaratory Act.)
>
> "The questioned 'right' or 'status' may invoke either remedial or preventive relief; it may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered; but, in either or any event, it must involve actual and existing facts." (Citing cases.)
>
> We there held that in order to obtain a declaratory judgment under this act, some specific adversary question must be presented. There must be a justiciable issue presented. No judicial declaration is necessary or seemly where no difference or threat, present or prospective, exists between the parties to the action or proceeding. The authorities under the Uniform Declaratory Judgment Act generally sustain this view of the scope and purpose of the act. (*Jefferson County v. Johnson*, 232 Ala. 406, 168 So. 450; *State v.*

[13] 58 Idaho 49, 58 (1937).

Dammann, 220 Wis. 17, 264 N.W. 627, 103 A. L. R. 1089; *County Board of Education, etc., v. Borgen*, 192 Minn. 512, 257 N.W. 92; *Stewart v. Herten*, 125 Neb. 210, 249 N.W. 552; *Burton v. Durham R. & I. Co.*, 188 N.C. 473, 125 S.E. 3.)

There is simply no justiciable issue as to whether the Franklin Energy Storage Projects are Battery Storage QFs, Idaho Power, itself, concedes this point. Nor is there a justiciable issue as to the meaning of the Commission's ruling that: "We maintain the eligibility cap at 10 aMW for QF projects other than wind and solar (including but not limited to biomass, small hydro, cogeneration, geothermal, and waste-to-energy." In short, there is no question as to the rights, status, or other legal relations between Idaho Power and the Franklin Energy Storage Projects.

VIII.

THE COMMISSION SHOULD NOT BE DISTRACTED BY IDAHO POWER'S RED HERRINGS

As discussed above, the Commission was well aware of the existence of battery storage technologies, including their operational characteristics and benefits when it issued its order restricting wind and solar QFs from eligibility for twenty-year published rate QF contracts. Nevertheless, Idaho Power asserts several false claims as to the efficiency of battery technologies in general and the Franklin Energy Storage Projects in particular – despite the fact that this case is not about battery technologies. Idaho Power's misguided assertions as to the operating characteristics of batteries should therefore be dismissed as irrelevant.

A. Ancillary Services

In order to clear some of the smoke, the Franklin Energy Storage Projects direct the Commission's attention to some of the many factual errors contained in the Power Company's pleading. For example, Idaho Power asserts that the energy source for energizing the Franklin

Energy Storage Projects' battery systems is solar. However, the projects contemplated energy sources in addition to, or in place, of solar. Idaho Power next asserts that the battery facilities would not realize the benefits of energy storage facilities. Again, Idaho Power is factually mistaken as the facilities have offered to be dispatchable. Idaho Power argues that the facilities propose to operate with substantially the same generation profile as a solar generator. Again, Idaho Power is factually mistaken as the facilities will have the ability to shift load pursuant to dispatch signals from Idaho Power. 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."[14] Again, Idaho Power is factually mistaken as the projects have the ability to do all of the above to varying degrees. Unfortunately, in its rush to judgment, Idaho Power never once inquired of the projects as to their ability to provide these services. Instead it filed this misguided Petition for Declaratory Judgment without having first conducted due diligence by inquiring how these projects will provide many, if not all, of the ancillary services it wrongfully asserts are not part of the Franklin Energy Storage QFs' output.

Unsubstantiated claims made by Idaho Power as to the lack of ancillary benefits offered by the Franklin Energy Storage Projects are irrelevant to the question of whether there is a legal controversy such that its Petition for a Declaratory ruling should be granted or denied. Furthermore, such unsubstantiated (and disputed) factual claims cannot form the basis for any

[14] Petition at p. 8.

findings of fact by the Commission as they have not been made under oath, affidavit or pursuant to official notice by the Commission.

In addition, the Franklin Energy Storage Projects (not to mention other interested parties) have not been afforded minimal due process rights of examination, discovery and/or response regarding Idaho Powers misguided factual assertions. As such, the only reason for their inclusion in Idaho Power's pleading is to confuse the issue and sidetrack the Commission from the threshold and determinative question; "Are QFs, other than wind and solar QFs, entitled to rely on this Commission's prior decisions declaring them eligible for twenty-year contracts at published avoided cost rates?"

B. Not a Simple Pass Through of Kilowatts

Idaho Power suggests a fundamental misunderstanding of the working of the proposed Franklin Energy Storage Projects' battery energy storage systems when it asserts that:

> When operated as proposed by the Proposed Battery Storage Facilities, [Franklin Energy Storage Projects] it appears to be structured in a way that passes through as many kW hours as possible.[15]

Energy storage systems, like the battery storage facilities proposed by the Franklin Energy Storage Projects, utilize renewable energy as input into the battery storage system. That energy is then used to provide a non-intermittent, dispatchable product. Hence the suggestion that the Franklin Energy Storage Projects are a mere "pass through" of solar power (or whatever renewable resource is providing input into the system) is incorrect. Contrary to Idaho Power's

[15] Petition at p. 8.

mistaken assertion, the Franklin Energy Storage Facilities will not, and cannot, simply 'pass through kilowatt hours.'

Unlike water, natural gas, or soybeans, electricity cannot be stored. It must be generated the instant it is needed. This instantaneous balancing requirement has led to expensive inefficiencies in the construction and operation of the nation's power grid. The solution to these inefficiencies is energy storage. Energy storage facilities like the Franklin Energy Storage Projects reduce the need for instantaneous use and as a result will reduce Idaho Power's costs of maintaining the grid. Of course, innovative technologies like the deployment of the Franklin Energy Storage Projects make monopoly providers of traditionally generated electricity uncomfortable. This discomfort may explain Idaho Power's unwillingness to recognize the obvious benefits of battery storage facilities connecting to its system.

C. Schedule 73 Compliance

Idaho Power also apparently objects to the fact that the Franklin Energy Storage projects are being developed by the same individual who has developed other projects and that they are represented by the same legal counsel who has represented other projects.[16] Oddly, Idaho power is also using the same legal counsel, Donovan Walker, in this proceeding as it has in prior PURPA proceedings before this Commission. Apparently, from Idaho Power's perspective, it is acceptable for the Power Company to utilize the same legal counsel in different proceedings, but not for developers. It is true, that the four Franklin Energy Storage Project are adjacent to one another. However, they are in full compliance with this Commission's requirement that such

[16] *Id.* at p. 9.

projects have completely *separate ownership*. The facts that these projects are adjacent to one another, share the same developer and use the same legal counsel, have no relevance to the question presented in Idaho Power's Petition, which is whether there is a legal controversy as to entitlement of a Battery Storage QF to published avoided cost rates for a twenty-year period.

Finally, it should be noted that the Franklin Energy Storage Projects have fully complied with all the requirements contained in Idaho Power's Tariff Schedule 73. Idaho Power's Tariff Schedule 73 outlines PURPA contracting procedures, which the Commission approved in December 2014, in Order No. 33197. Tariff Schedule 73 requires QF applicants to provide general information to the utility (ownership, location, size, and type of QF) – all of which the Franklin Energy Storage Projects have provided to Idaho Power. Significantly, Idaho Power has not alleged that the Franklin Energy Storage Facilities have failed to comply with any other provision from Tariff Schedule 73. Therefore, pursuant to Idaho Power's Tariff Schedule 73, the Franklin Energy Storage Projects have created legally enforceable obligations and are therefore entitled to published rates and twenty-year Energy Sales Agreements.

WHEREFORE, the Franklin Energy Storage Projects respectfully request this Commission issue its order denying Idaho Power's Petition for Declaratory Order.

RESPECTFULLY SUBMITTED this 5th day of April 2017.

Peter J. Richardson, ISB # 3195
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April 2017, I delivered true and correct copies of the enclosed FRANKLIN ENERGY STORAGE PROJECTS' COMMENTS in this Docket No. IPC-E-17-01 to the following persons via the service method indicated ("E" electronic; "H" hand delivery; "US" United States Mail, postage prepaid):

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