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IDAHO PUBLIC
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Attorneys for Complainant Black Mesa Energy, LLC

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

BLACK MESA ENERGY, LLC, Complainant, vs. IDAHO POWER COMPANY, Defendant.	Case No. IPC-E-20-17 DECLARATION OF BRIAN LYNCH IN SUPPORT OF BLACK MESA ENERGY, LLC'S MOTION FOR SUMMARY JUDGMENT

I, Brian Lynch, declare under the penalty of perjury as follows:

1. This declaration is based on my personal knowledge and, if called to testify to the following facts, I could and would competently do so.

INTRODUCTION

2. I submit this declaration in support of Black Mesa Energy, LLC's ("Black Mesa") Motion for Summary Judgment before the Idaho Public Utilities Commission ("IPUC" or "Commission"). That Motion requests that the Commission find that Black Mesa has formed two legally enforceable obligations: (1) committing Idaho Power Company ("Idaho Power") to purchase the net output of the Black Mesa Energy 1 storage qualifying facility ("QF") for a 20-year term of power sales utilizing the Commission's published avoided cost rates for "Other" facilities in effect on the date of the complaint in this matter; and (2) committing Idaho Power to

purchase the net output of the Black Mesa Energy 2 storage QF for a 20-year term of power sales utilizing the Commission's published avoided cost rates for "Other" facilities in effect on the date of the complaint.

PROFESSIONAL BACKGROUND AND EXPERIENCE

3. I am an energy professional with 30 years of experience in the United States energy market. I have a BA degree from University of California Los Angeles and an MBA from Pepperdine University. I started in the solar industry in 2006 as an executive at Honeywell and subsequently founded and worked at several firms in the solar industry. In 2012, I founded Redwood Energy, an advisory firm in the solar development industry and supported numerous firms on solar project development and finance. I have personally developed and structured over 300 megawatts ("MW") of solar development in the US and have performed financial modeling and underwriting on over $1 billion of projects easily exceeding 300 distinct solar project opportunities. I have handled the purchase and sale of multiple utility scale projects in the United States totaling almost 2 gigawatts with a specific project size ranging from 100 kilowatts ("kW") to 170 MW. In addition to my work experience, I am also a frequent speaker and panel participant at solar industry conferences as well as an expert witness in cases involving the solar market.

4. In January 2017, I founded MB MezzDev LLC to develop utility scale solar and solar plus storage projects in the United States. In February 2017, Black Mesa Energy LLC was developed as a wholly owned asset of MB MezzDev LLC, with the intent of developing renewable energy storage facilities in Idaho that are the subject of this case. The Black Mesa development team also includes other individuals with experience developing and financing renewable energy storage facilities, but I have overseen or been directly involved in all of Black

Mesa's development efforts for the Black Mesa Energy 1 facility and the Black Mesa Energy 2 facility, and I have personal knowledge of such development efforts discussed in this declaration.

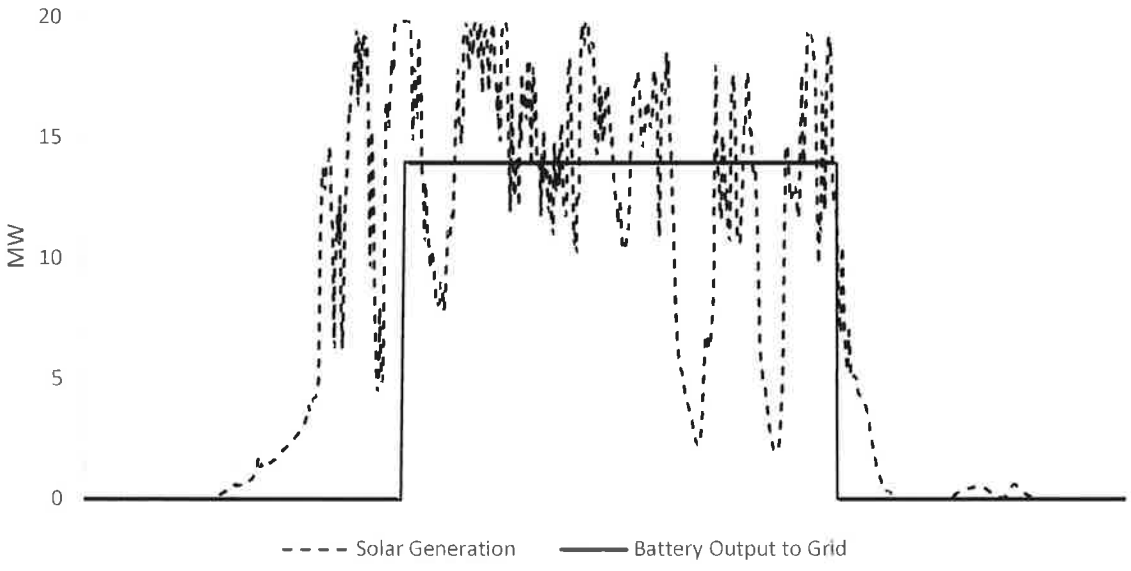
BLACK MESA STORAGE PROJECTS OVERVIEW

5. Black Mesa Energy LLC is developing proposed energy storage facilities known as the Black Mesa Energy 1 facility and the Black Mesa Energy 2 facility, each of which have a net output of 20 MW-AC and will be designed to generate less than 10 average monthly MW. The Black Mesa Energy 1 facility and the Black Mesa Energy 2 facility will utilize a common interconnection to Idaho Power's electrical system, but the electric generating equipment of the two facilities will be separated by a distance of at least one mile.

6. Black Mesa has filed self-certification Form 556s with the Federal Energy Regulatory Commission for the Black Mesa Energy 1 and Black Mesa Energy 2 facilities as storage qualifying facilities ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). On or about February 23, 2017, Black Mesa first completed and duly filed a Form 556 certifying its first configuration for its energy storage development project as a single storage QF (at that time referred to as the Black Mesa Energy facility) utilizing renewable resources in FERC Docket No. QF17-705-000. Subsequently, on January 21, 2020, Black Mesa recertified the initial storage QF in FERC Docket No. QF17-705-001 and changed the name of the facility to "Black Mesa Energy 1", and Black Mesa also filed a Form 556 certifying its second storage QF as "Black Mesa Energy 2" in FERC Docket No. QF20-535-000. In these certification forms, Black Mesa certified the Black Mesa Energy 1 and Black Mesa Energy 2 facilities as "Other renewable resource" – specifically as an "energy storage system Qualifying Facility," not as a wind or solar QF resource type, and explained each facility would utilize energy storage. FERC accepted the Form 556s.

7. Black Mesa's complaint in this proceeding alleges each of its energy storage facilities is entitled to "other" published avoided cost rates and contract term by virtue of its FERC certification status as an "other" facility.

8. However, Black Mesa's complaint further alleges that its storage facilities are further entitled to the "other" rates because each facility's generating characteristics, including daily generation profile, are distinct from those of solar or wind generation. Because a storage facility has stored energy, a cloud or momentary drop in wind does not cause an immediate drop in output. In contrast to as-available renewable energy output, the Black Mesa facilities will deliver firm energy commitments of energy and capacity throughout the day to Idaho Power and will continue supplying energy and capacity during critical peak times after the sun goes down in summer evenings. Such output profiles may resemble the "Battery Output to Grid" curves in the following graphic representation, which was prepared by the Black Mesa engineering team and demonstrates a possible output profile of a battery storage QF that is energized with an intermittent renewable resource:



Furthermore, on account of the stored energy, a storage QF can provide frequency response, an important grid service that helps maintain stability of the grid in the event of unexpected generation or transmission outages. Standalone solar and wind generation facilities are unable to provide this service.

BLACK MESA CONTRACTING EFFORTS

9. Black Mesa attempted to initiate discussions with Idaho Power regarding sale of the power in 2017. On or about February 11, 2017, on behalf of Black Mesa, I submitted to Idaho Power the information required by Schedule 73 to receive a power purchase agreement ("PPA") (also referred to by Idaho Power as an Energy Sales Agreement or "ESA") and requested that Idaho Power, comply with the contracting procedures contained in its Schedule 73 for the purpose of executing a PURPA PPA for a storage QF.

10. Black Mesa's submittal on or about February 11, 2017, provided Idaho Power with a completed Schedule 73 application and all required supporting documents for its first energy storage QF (at that time referred to as the Black Mesa Energy facility) utilizing the non-levelized, non-fueled, published avoided cost rates for "Other" facilities for a 20-year power sale term. A copy of Black Mesa's email request is attached as Exhibit 1 to Black Mesa's Complaint.

11. On February 23, 2017, on behalf of Black Mesa, I followed up with the initial request for a PPA by asking, via email, that Idaho Power to confirm receipt of the request. A copy of this email is attached as Exhibit 2 to Black Mesa's Complaint. Idaho Power responded via email from Michael Darrington, also on February 23, 2017, reassuring me that it (Idaho Power) "will respond in accordance with Schedule 73." A copy of Idaho Power's email dated February 23, 2017 is attached as Exhibit 3 to Black Mesa's Complaint.

12. Despite its reassurance, Idaho Power never did respond to Black Mesa's request

in accordance with Schedule 73. Instead of complying with the contracting procedures in Schedule 73, on February 27, 2017, Idaho Power informed Black Mesa via email from Idaho Power's legal department that it had "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 project may be eligible." Copies of Idaho Power's letter and transmittal email are attached as Exhibit 4 to Black Mesa's Complaint.

13. Idaho Power's application triggered almost two years of delay to resolve the litigation it had commenced. In the interim, Idaho Power was not willing to discuss Black Mesa's contract request, even though Black Mesa remained ready, willing, and able to commit to sell energy and capacity to Idaho Power under the proposed PPA. First, the Commission issued two orders that I understand to have initially declared that all battery energy storage projects energized with solar energy are to be treated as though they are solar QFs without storage and thus not entitled to 20-year published avoided cost rates for facilities that produce 10 average monthly MW or less, as would be the case for "Other" QFs. However, on January 17, 2020, the United States District Court for the District of Idaho issued a decision that I understand to have ruled that the Commission's orders violated PURPA.

14. Once the United States District Court rendered its decision, Black Mesa immediately reiterated its request for a fixed-rate 20-year power sale term utilizing the published, non-levelized, non-fueled avoided cost rates for "Other" facilities for Black Mesa Energy 1 storage QF and submitted a request for its Black Mesa Energy 2 storage QF. Specifically, on or about January 18, 2020, on behalf of Black Mesa, I sent an email to Idaho Power representatives wherein Black Mesa "reiterate[d] its previous request for an Energy Sales Agreement pursuant to Schedule 73 as [initially] requested on 2/10/17" with respect to the Black Mesa Energy 1 storage

QF. Additionally, on or about January 18, 2020, on behalf of Black Mesa, I submitted to Idaho Power a completed Schedule 73 application with all supporting documents for the Black Mesa Energy 2 storage QF, requesting a PPA for a 20-year power sale term utilizing the non-levelized, non-fueled, published avoided cost rates for "Other" facilities. The PPA requests submitted on or about January 18, 2020 are contained in Exhibit 5 to Black Mesa's Complaint.

15. Idaho Power responded with an email from its attorney, Donovan Walker, dated January 21, 2020, stating that it had filed another petition with the Commission to establish avoided cost rates applicable to PURPA storage qualifying facilities.

16. Given Idaho Power's refusal to supply a PPA to Black Mesa, we determined that Black Mesa was able to commit itself to the terms and conditions commonly included in Idaho Power's PURPA PPAs approved by the Commission, and we would produce such PPAs on our own based on publicly available versions of the Idaho Power PURPA PPA. Black Mesa's development team inserted the project-specific information for the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF into a PPA containing what I understood to be common terms and conditions for such PURPA PPAs. On behalf of Black Mesa, I executed and submitted such a PPA for the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF to Idaho Power on or about January 24, 2020. The relevant contents of the PPA submittal on or about January 24, 2020 are contained in Exhibit 6 to Black Mesa's Complaint.

17. To the best of my knowledge and recollection, Idaho Power has not identified any non-rate terms or conditions to which Idaho Power objects in the proposed PPAs for the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF submitted by Black Mesa to Idaho Power on or about January 24, 2020.

18. Idaho Power did not tender indicative pricing within 10 days and contract terms

within the 15 business-day period in Schedule 73 after the submittals for the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF made in January 2020. Instead, Idaho Power asserted through a letter dated February 3, 2020, that it objects to the proposed PPAs on the ground that it had asked the Commission to eliminate the right of energy storage QFs to sell power under published avoided cost rates for a 20-year term of fixed-price power sales. Idaho Power also asserted that Schedule 73 submissions were deficient for failure to supply an estimated 8,760 electrical output profile for the proposed facilities. A copy of Idaho Power's letter dated February 3, 2020, is included in Attachment 1 to Idaho Power's Answer and Motion to Dismiss in this case.

19. On behalf of Black Mesa, I responded to Idaho Power via letter dated February 4, 2020, to clarify for Idaho Power that the Schedule 73 requests for the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF did in fact contain 8,760 electrical output profile estimates for the proposed facilities, and that such hourly generation profiles are consistent with the capability of the proposed battery storage facilities as described in the FERC Form 556s for such facilities. I also explained that Black Mesa did not agree with Idaho Power's legal assertions made in Idaho Power's letter. My letter dated February 4, 2020, is attached hereto as Exhibit 1 to this Declaration.

20. Idaho Power next responded via email to me from Michael Darrington dated February 18, 2020, wherein he acknowledged receipt of my letter dated February 4, 2020, and the clarification made regarding the generation profiles, but did not further discuss that subject or attempt to engage in any further discussion of the estimated generation profiles. Instead, Mr. Darrington again identified Idaho Power's pending application before the IPUC to establish new terms and conditions for energy storage QFs as the basis for Idaho Power's continued refusal to

offer PPAs, or engage in any way with, the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF. A copy of Mr. Darrington's email dated February 18, 2020, is contained in Attachment 1 to Idaho Power's Answer and Motion to Dismiss in this case.

21. Due to Idaho Power's clear expression of its refusal to engage with Black Mesa, Black Mesa filed a complaint against Idaho Power at the Commission on March 17, 2020, asking the Commission to direct Idaho Power to enter into PPAs to purchase the net output of the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF for a 20-year term of power sales utilizing the Commission's published avoided cost rates for "Other" facilities in effect on the date of the complaint.

BLACK MESA'S DEVELOPMENT EFFORTS

22. Despite Idaho Power's refusal to cooperate with Black Mesa's PPA requests and the extensive delays due to Idaho Power-initiated litigation, Black Mesa has engaged in substantial development efforts for the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage facilities.

23. On May 17, 2019, Black Mesa secured exclusive right to negotiate with Black Mesa Farms for long-term site control on 300 acres for the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage facilities. Long-term site control negotiations have proceeded as expected and the lease arrangements should be finalized well in advance of planned construction. The site will provide direct access to Idaho Power's existing Black Mesa Substation for the interconnection. No third-party easements or rights-of-way are required for construction of the facilities.

24. Black Mesa applied to Idaho Power for interconnection in April 2019 and maintains that request in Idaho Power's interconnection queue, as queue no. 557. The request

was initially for a 200-MW interconnection, but was amended to be an interconnection request is for an interconnection output of 40 MW-AC, which will enable the joint interconnection proposed for use for the Black Mesa Energy 1 and Black Mesa Energy 2 storage facilities. Idaho Power issued a Feasibility Re-Study on 10, February 2020, for the 40-MW interconnection, and it issued a System Impact Study in June 2020. Both studies concluded the interconnection is feasible, and Black Mesa's development team has concluded the forecasted costs therein are financially feasible in the case where the QFs receive the 20-year PPAs with the published avoided cost rates requested in the complaint. The Black Mesa development team has posted the $100,000 deposit to proceed to the Facility Study phase, which is the final study that will finalize the construction schedule. Based on the deadlines in Idaho Power's interconnection tariff, Black Mesa expects to have the results of the Facilities Study by the end of 2020. The Generator Interconnection Agreement would be executed after that study is supplied.

25. The purchase orders for equipment and final engineering of the facility would be normally be completed in the development process only after execution of the PPAs to support such financial commitments. However, Black Mesa's development team has completed financial analyses beginning in 2017, and has also conducted preliminary engineering and design of the facility and site, including selection and modeling of the initial design set such as modules, racking, inverters, and battery energy storage.

26. In 2019, Black Mesa initiated a procurement strategy for achieving safe harbor status for the Investment Tax Credit, which began to diminish incrementally in each year after 2019 without such safe harbor status. Based on the efforts to date, Black Mesa's development team expects to achieve a safe harbor status that will enable the financial viability of the two facilities under the 20-year PPAs with published avoided cost rates requested in the complaint.

27. The primary permitting requirement for the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage facilities will be a conditional use permit from Elmore County. The conditional use permit typically requires construction to commence within a limited timeframe, and therefore in the development process is not typically sought until the schedule is reasonably certain, which is not yet the case due to Idaho Power's refusal to execute PPAs. Applications for the conditional use permit with Elmore County is currently being prepared. Based on the Black Mesa development team's past experience with other renewable energy projects in Elmore County, we anticipate the permit could be issued within 6 months of applying. The development site is located on previously disturbed private farmland, and it is not expected to raise issues of environmental impacts and any delays typically involved with projects using or crossing federal land.

28. Black Mesa alleged in its complaint that consistent with the IPUC-approved Schedule 73 and to the extent required by the Commission and Idaho Power in this case, Black Mesa will be able to commit to delivering the electrical output of the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF within 365 days of a final non-appealable determination by the Commission finding that Black Mesa created a legally enforceable obligation for each facility. Based on the forgoing discussion of the development status and my experience in industry, I continue to conclude that Black Mesa would be able to achieve this objective if required by the Commission in its final order provided that Idaho Power promptly executes PPAs upon the issuance of such order and cooperates to timely complete interconnection construction within such a timeframe.

NON-FINANCAEABILITY OF

TWO-YEAR POWER PURCHASE AGREEMENTS

29. My understanding of Idaho Power's legal position is that Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF are only entitled to two-year power sale terms in a power purchase agreement under the IPUC's implementation of PURPA for QFs that are not entitled to published rates and 20-year fixed-price power sale terms. Without addressing the legal dispute over that assertion which will be addressed in legal briefing, I will provide my expert opinion that a two-year contract term is not financeable for renewable energy facilities such as the proposed Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF.

30. As I understand the policy Idaho Power proposes to apply to the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF, the energy and capacity rates would be locked in for only a two-year power sale term in the PPA. Given that Idaho Power has a capacity deficiency until after that two-year term, there would be no capacity rates paid during this PPA term. However, if the facility were able to somehow continually execute successive two-year PPAs, the capacity deficiency date existing at the time of execution of the first PPA would be used. For example, in the avoided cost rates in effect at the time of the filing of Black Mesa's complaint, the capacity deficiency date was 2026, and therefore the capacity rates would not apply until a successively executed PPA reached into the year 2026. In any case, the applicable rates would only be locked in for two-year periods. Thus, the financiers of the facility would take on the risk that the facility would be unable to obtain all of the requisite two-year PPAs necessary to achieve the full power sale term needed to support financing.

31. Investors in energy infrastructure use a number of financial tests to determine viability for new projects. Among them, investors require a return of capital during the period of

contracted revenue. Typically, at fixed prices for energy and capacity offered today's market conditions, the necessary period is between 15 and 20 years. However, with higher fixed-price rates paid for energy and capacity, the necessary period may be as short as 12 years. Higher rates allow for shorter terms, while lower rates require longer terms. I am unaware of any new projects financed with a two-year term.

32. In the case of the proposed two-year contract policy Idaho Power would prefer to use, the risk of unknown fluctuations in the energy component of the rates every two years would, in my experience, be unacceptable to potential investors. It is hypothetically possible that in the case of a storage facility a predicable capacity component of the rate may justify such investment if it were sufficiently high, predictable or fixed at the time of the initial investment, and of sufficient duration to support such investment. I stress that this is a very remote possibility, and it does not appear these factors would all necessarily apply under the two-year contract policy Idaho Power proposes to use. However, even if we were to assume that a 20-year fixed capacity price and floating energy price could ever support such financing, the two-year contract policy proposed for use by Idaho Power would expose the project's financiers to the risk that the full 20-year power sale term of such expected capacity payments would not be realized due to the inability to secure 10 successive two-year power purchase agreements. The potential investors would reasonably be concerned that a change in policy, law, other changed circumstances, or an inability to execute such agreements for any other reason could prevent successful renewal of 10 successive agreements with Idaho Power and approval of the same by the Commission, which would prevent realization of the full 20-year power sale term with such fixed capacity rates. In my opinion based on many years of experience, even if the capacity rates were quite high, the risks inherent with this two-year contract option are unacceptable for

investors in renewable energy facilities, including the Black Mesa Energy 1 storage QF and the Black Mesa Energy 2 storage QF.

33. As the Commission Staff's review of surrounding states contract length's in Case No. IPC-E-20-02 has shown, the industry norm for power purchase agreements that support successful financing and development is much longer than two years, and is typically at least 15-20 years. As I stated above, that is owning to the fact that at two years financiers will not allocate funds to the projects, which is borne out by the fact that no developers of renewable energy facilities have executed a two-year power purchase agreement under the Commission's policy for qualifying facilities not entitled to 20-year published rates since that policy was adopted in 2015.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 11 day of December 2020.

By: _____
Brian Lynch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th of December 2020, a true and correct copy of the within and foregoing DECLARATION OF BRIAN LYNCH IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT in Docket No. IPC-E-20-07 was served, pursuant to Commission Order No. 34602, exclusively via electronic mail to:

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Jan Nuriyuki, Secretary
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BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

BLACK MESA ENERGY, LLC, Complainant, vs. IDAHO POWER COMPANY, Defendant.	Case No. IPC-E-20-17 DECLARATION OF BRIAN LYNCH IN SUPPORT OF BLACK MESA ENERGY, LLC'S MOTION FOR SUMMARY JUDGMENT

EXHIBIT 1

BLACK MESA ENERGY, LLC
MB MEZZDEV, LLC
PO BOX 2731
PALOS VERDES, CA 90274
blynch@redwoodenergy.com

February 4, 2020

Re: Black Mesa Energy 1, LLC
Black Mesa Energy, 2, LLC
Frederic Energy, 1, LLC
Frederic Energy 2, LLC

Michael Darrington:

This is in response to your letter of February 3, 2020, in which you state that the Schedule 73 Applications for the above referenced QFs are deficient.

As you know, Idaho Power is obligated, pursuant to Schedule 73, to provide indicative pricing and proposed contract terms and conditions within ten business days from the date on which the QF has provided all of the information requested in section 1.a of Schedule 73. Conversely, if Idaho Power determines that the QF has not "provided sufficient information as required in Section 1.a," then the Company is obligated to provide written notice of said deficiency – also within a ten-business day timeframe.

According to your letter, the above referenced QFs submitted "deficient" Schedule 73 requests. The first paragraph in your letter under the heading "Applications' Deficiency" concluded with this sentence: "The schedule of estimated deliveries provided with your application appear to have the same output shape as that of a solar project." Although your observation in this regard may be accurate, it does not allege (nor even infer) a deficiency. Therefore, we have no choice but to treat this observation for what it is, a mere observation and not an assertion of a deficiency.

The second (and only other) paragraph under the heading of "Applications' Deficiency" points out several minor discrepancies between the output spreadsheet provided to Idaho Power pursuant to Schedule 73 and the output described in the projects' Form 556. You conclude this second paragraph with the request that the projects "provide an hourly generation profile consistent with the capability of your proposed battery storage facility that represents the generation output you intend to deliver." Your request suggests that you have rejected (or at best, ignored) our submission of the 8,760 hourly spreadsheets submitted with our Schedule 73 applications. Those spreadsheets do contain our "hourly generation profiles that are consistent with the capability of our proposed battery storage facilities that we intend to deliver."[1] Your

[1] It may be helpful for Idaho Power to understand that Schedule 73 only requests an "estimate" of the hourly output, and that FERC Form 556 only requests a "nominal" description of the electrical output of the proposed facility.

classification of our estimated hourly deliveries as a deficiency in the Schedule 73 Applications is therefore misplaced.

Because you have not, in fact, even alleged a deficiency in our Schedule 73 Applications, we expect the Company to promptly acknowledge its intent to comply with the letter, as well as the intent, of Schedule 73 and to tender terms, conditions and rates for our four proposed contracts within five business days from today.

Your letter also discusses various court orders and alleged legal precedents that appear to be well beyond the immediate scope of our interaction with Idaho Power – which of course has to do with the Company's failure to comply with its Schedule 73 requirement to tender terms, conditions and contract rates within ten business days of receipt of our competed application. With regard to these other issues you raise, we are confident the Idaho PUC will abide by both its federal and state legal obligations with respect to its duties under PURPA.

Sincerely,

Brian Lynch
Managing Member