

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF IDAHO POWER ) CASE NO. IPC-E-24-06**  
**COMPANY’S APPLICATION FOR )**  
**APPROVAL OF A THIRD AMENDMENT )**  
**TO AN EXISTING ENERGY SALES )**  
**AGREEMENT AND REPLACEMENT ) ORDER NO. 36132**  
**ENERGY SALES AGREEMENT )**  
**REGARDING THE BARBER DAM HYDRO )**  
**PROJECT )**  
**)**

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On January 26, 2024, Idaho Power Company (“Company”) applied for approval of a Third Amendment to an existing energy sales agreement (“1987 ESA”) with Fulcrum, LLC (“Fulcrum”) for energy generated by the Barber Dam Hydroelectric Project (“Facility”) as well as the approval of a replacement ESA (“Replacement ESA”) with Barber Pool Hydro, LLC (“BPH”) (“Application”). The Company asked to amend the 1987 ESA to correct the nameplate ratings and to update BPH as the seller while concurrently seeking approval of the Replacement ESA. The Facility has a 3.7-megawatt nameplate capacity and is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The Company requested that the Commission approve the Third Amendment and the Replacement ESA be issued before the 1987 ESA expires on April 10, 2024.

On February 26, 2024, the Commission issued a Notice of Application and established public comment and party reply deadlines. Order No. 36100. Commission Staff (“Staff”) filed the only comments in this case.

With this Order, we approve the proposed Third Amendment to the 1987 ESA and Replacement ESA, as filed.

**BACKGROUND**

The Company and Interwest Hydro, Inc. entered into the 1987 ESA on July 13, 1987. This agreement listed the Facility’s nameplate capacity as 2,400 kilowatts (“kW”).

Interwest Hydro, Inc. assigned its interest to Bonneville Pacific Corporation on May 13, 1988. Bonneville Pacific Corporation then assigned its interest to Fulcrum, Inc.

The Company and Fulcrum, Inc. first amended the 1987 ESA on September 20, 1988. This amendment listed the Facility’s nameplate capacity as 4,200 kW.

The next amendment to the 1987 ESA occurred on November 24, 1999. In this amendment, the Company and Fulcrum, Inc. agreed to modifications related to the requirements of escrow accounts that could be utilized as security provisions for overpayment liability.

Fulcrum, Inc. then changed its corporate status to Fulcrum, LLC on April 2, 2015.

The Company, Fulcrum, and BPH entered a Consent, Assignment, and Assumption Agreement on December 23, 2023. Per this agreement, Fulcrum intends to transfer its interest in the Facility to BPH—which will continue to deliver energy to the Company until the 1987 ESA expires on April 10, 2024. When the 1987 ESA expires the Company and BPH intend to proceed under the requested Replacement ESA.

The Company and BPH entered into the Third Amendment to the 1987 ESA on January 4, 2024. In the Third Amendment, the Company agreed to list BPH as the new seller in accordance with the Consent, Assignment, and Assumption Agreement. The Third Amendment also corrects the nameplate capacity to its actual size of 3,700 kW.

The Company and BPH entered into the Replacement ESA on January 17, 2024. Under the Replacement ESA, BPH would continue selling energy produced by the Facility to the Company.

### **THE APPLICATION**

The Company stated that the Third Amendment will update the description of the Facility as well as change the name of the seller to BPH. In regard to the Facility the Third Amendment would correct Paragraph B-1 of the amended 1987 ESA which errantly lists the Facility as containing two 2,100-kW generators opposed to the actual nameplate rating consisting of the two generators with a capacity of 1,850 kW each. The Company stated that the Third Amendment does not impact the Facility's eligibility to receive published rates and the modified nameplate capacity is within the amount set forth in the 1987 ESA. A copy of the Third Amendment is found in Attachment 2 of the Application.

The proposed Replacement ESA has a 20-year term with non-levelized, non-seasonal hydro published avoided cost rates; it would also adopt a “five-day advanced notice for adjusting Estimated Net Energy Amounts for purposes of complying with 90/110 firmness requirements....” Application at 10.

The Company stated that, in compliance with Order Nos. 35705 and 35767, the proposed Replacement ESA updates Article XXIII relating to future modifications of the Replacement ESA.

The Company requested the Commission approve the Third Amendment to the 1987 ESA as well as the Replacement ESA and declare all payments for the purchase of energy and capacity be allowed as prudently incurred expenses for ratemaking purposes.

### **STAFF COMMENTS**

Staff reviewed the Application and recommended approval of the Company's Third Amendment to the 1987 ESA—as well as the Replacement ESA. Staff believed that the Third Amendment replacing Fulcrum with BPH as the seller and correcting the nameplate capacity to 3,700 kW was reasonable. Staff stated that this decrease would not necessitate an adjustment of the avoided cost rate or negatively affect customers because there would be no overpayment.

Staff believed that the Replacement ESA's avoided cost rates and language regarding Article XXIII was satisfactory. Staff believed that the Facility was eligible for immediate capacity payments and further recommended that the Commission declare all payments as prudently incurred for ratemaking purposes under the Replacement ESA. Staff asserted that the Facility has operated since 1989 and has contributed to meeting the Company's capacity needs. As a result, Staff believed that the Facility should be granted immediate capacity payments.

Staff also reviewed the Replacement ESA's language in Article XXIII regarding modification and recommended “that only the net power supply expense that reflects the proper authorized rate for all energy delivered as of the first operation date of the modified Facility be included in the Company's Power Cost Adjustment, regardless of the compensation paid to the modified Facility.” Staff Comments at 4. *See* Order 35705.

### **COMMISSION FINDINGS AND DECISION**

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503. The Commission also has authority under PURPA and Federal Energy Regulatory Commission (“FERC”) regulations to set avoided cost rates, to order electric utilities to enter fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules. The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

Having reviewed the record, including the Company's Application, the Third Amendment, the Replacement ESA, and the comments in this case, the Commission finds it reasonable and in

the public interest to approve the Company's requests. The Third Amendment contains the correct description of the Facility's nameplate capacity as well as changing the seller to BPH. The Replacement ESA includes Article XXIII (Modification) that addresses potential modifications to the Facility, language that complies with Order No. 35705. We also find that under the Replacement ESA that it is fair, just, and reasonable if the Facility is modified, only the net power supply expense that reflects the proper authorized rate for all energy delivered as of the first operation date of the modified Facility be included in the Company's Power Cost Adjustment, regardless of the compensation paid to the modified Facility. This treatment is consistent with the Commission direction in Order No. 35705.

The Commission also finds it fair, just, and reasonable that the Facility should be granted immediate capacity payments up to the modified generation capacity over the full terms of the Replacement ESA. Finally, the Commission finds that all payments for purchases of energy under the ESA be allowed as prudently incurred expenses for ratemaking purposes.

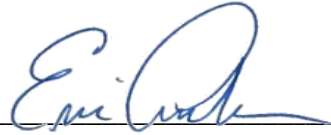
#### **ORDER**

IT IS HEREBY ORDERED that the Company's proposed Third Amendment and Replacement ESA are approved as filed, effective April 10, 2024. All payments for energy and capacity shall be prudent for ratemaking purposes.

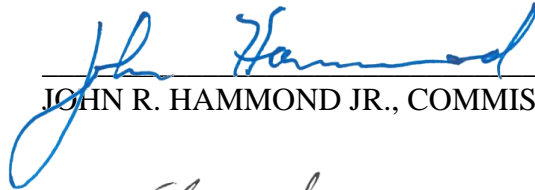
IT IS FURTHER ORDERED that, if the Facility is modified, only the net power supply expense that reflects the proper authorized rate for all energy delivered as of the first operation date of the modified Facility shall be included in the Company's Power Cost Adjustment.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order about any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *Idaho Code* § 61-626.

DONE by order of the Idaho Public Utilities Commission at Boise, Idaho this 10<sup>th</sup> day of April 2024.



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ERIC ANDERSON, PRESIDENT



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JOHN R. HAMMOND JR., COMMISSIONER



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EDWARD LODGE, COMMISSIONER

ATTEST:



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Monica Barrios-Sanchez  
Commission Secretary

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