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IDAHO PUBLIC UTILITIES COMMISSION

DONOVAN E. WALKER
Lead Counsel
dwalker@idahopower.com

February 20, 2020

VIA HAND DELIVERY

Diane M. Hanian, Secretary
Idaho Public Utilities Commission
11331 West Chinden Blvd., Building 8
Suite 201-A
Boise, Idaho 83714

IPC-E-20-09
Re: Case No. IPC-E-16-25
Mud Creek S&S Hydro Project
Idaho Power Company's Application for Approval of First Amendment
Regarding Energy Sales Agreement

Dear Ms. Hanian:

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

Very truly yours,

Donovan E. Walker

DEW:cld
Enclosures

DONOVAN E. WALKER (ISB No. 5921)
Idaho Power Company
1221 West Idaho Street (83702)
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Boise, Idaho 83707
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IDAHO PUBLIC UTILITIES COMMISSION

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

| | | |
|----------------------------------|---|---|
| IN THE MATTER OF THE APPLICATION |) | |
| OF IDAHO POWER COMPANY FOR |) | CASE NO. ^{1 PC-E-20-09} IPC-E-16-25 |
| APPROVAL OF THE FIRST AMENDMENT |) | |
| TO THE ENERGY SALES AGREEMENT |) | APPLICATION FOR APPROVAL |
| FOR THE MUD CREEK S&S HYDRO |) | OF FIRST AMENDMENT TO |
| PROJECT. |) | ENERGY SALES AGREEMENT |
| _____ |) | |

Idaho Power Company ("Idaho Power"), in accordance with RP 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), hereby respectfully applies to the Idaho Public Utilities Commission ("Commission") for an order approving the First Amendment to the Energy Sales Agreement for the Mud Creek S&S hydro ("Mud Creek") project ("Amendment") between Idaho Power and a PURPA qualifying facility ("QF"), dated January 24, 2020, filed herewith as Attachment 1. This Amendment deletes and replaces Section 6.2.3 of the Energy Sales Agreement ("ESA"), which addresses Seller's Adjustment of Estimated Net Energy Amounts.

In support of this Application, Idaho Power represents as follows:

I. INTRODUCTION AND BACKGROUND

1. Idaho Power and H K Hydro, LLC (jointly, "Parties") entered into an ESA on October 5, 2016, for the purchase and sale of energy produced by Mud Creek, a QF hydro generation facility ("Facility") located near Buhl, Idaho. This ESA was approved by the Commission in Order No. 33692, Case No. IPC-E-16-25, on January 13, 2017.

2. The ESA contains provisions providing for Seller's Adjustment of Estimated Net Energy Amounts in Section 6.2.3. After the execution and approval of the ESA, Mud Creek requested to change these notification requirements from the monthly schedule as set forth in Section 6.2.3 to a monthly schedule structured around providing notice by the 25th day of the preceding month in which a change is requested, similar to other such 25th day of the month provisions previously approved by the Commission.

3. The Parties agreed to amend the ESA in order to adjust the notification requirements for Seller's Adjustment of Estimated Net Energy Amounts. The Amendment does not otherwise change any of the obligations of the Parties set forth in the ESA.

II. THE AMENDMENT

4. The Amendment provides for the deletion of Section 6.2.3, Seller's Adjustment of Estimated Net Energy Amounts After the Operation Date, and replaces it with a new Section 6.2.3 set forth in the Amendment as follows:

6.2.3 Seller's Adjustment of Estimated Net Energy Amounts After the Operation Date – After the Operation Date, the Seller may revise any future monthly Estimated Net Energy Amounts by providing written notice no later than 5 PM Mountain Standard time on the 25th day of the month that is prior to the month to be revised. If the 25th day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25th day of the month. For example, if the Seller would like to revise the Estimated Net Energy Amount for October, they would need

to submit a revised schedule no later than September 25th or the last business day prior to September 25th.

a.) This written notice must be submitted using the electronic portal provided by Idaho Power if available. If portal is not available, then written notice must be provided to Idaho Power by electronic notice (electronic mail) as agreed by both parties.

b.) Failure to provide timely written notice of changes to the Estimated Net Energy Amounts will be deemed to be an election of no change from the most recently provided Estimated Net Energy Amounts.

5. The Amendment is subject to the Commission's approval. All other terms and conditions of the ESA remain in full force and effect.

III. PROCEDURE

6. Idaho Power believes that a hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure; i.e., by written submissions rather than by hearing. RP 201, *et seq.*

IV. COMMUNICATIONS AND SERVICE OF PLEADINGS

7. Communications and service of pleadings, exhibits, orders, and other documents relating to this proceeding should be sent to the following:

Donovan E. Walker
Lead Counsel
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
dwalker@idahopower.com
dockets@idahopower.com

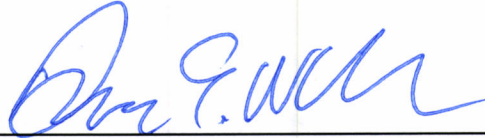
Energy Contracts
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
energycontracts@idahopower.com

V. REQUEST FOR RELIEF

8. Idaho Power respectfully requests that the Commission issue an order accepting the First Amendment to the Energy Sales Agreement submitted herewith

without change or condition.

Respectfully submitted this 20th day of February 2020.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of February 2020 I served a true and correct copy of the within and foregoing APPLICATION FOR APPROVAL OF FIRST AMENDMENT TO ENERGY SALES AGREEMENT upon the following named parties by the method indicated below, and addressed to the following:

Mud Creek S&S Hydro Project

Scott Kaster
1429 East 4300 North
Buhl, Idaho 83316

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email hydro2020@icloud.com



Christy Davenport, Legal Assistant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-16-25

IDAHO POWER COMPANY

ATTACHMENT 1

**FIRST AMENDMENT
TO THE
ENERGY SALES AGREEMENT
BETWEEN
IDAHO POWER COMPANY
AND
H K HYDRO, LLC**

This First Amendment of the Energy Sales Agreement (“First Amendment”) is entered into on this 24th day of January 2020, by and between Idaho Power Company, an Idaho corporation (“Idaho Power”), and H K Hydro, LLC, (“Seller”) (individually a “Party” and collectively the “Parties”).

WHEREAS, Idaho Power and Seller entered into an Energy Sales Agreement (“ESA”) on October 5th, 2016, (the “Agreement”) for the purchase and sale of generation produced by the Seller’s Mud Creek S&S hydro PURPA Qualifying Facility with a Maximum Capacity Amount of 0.52 MW that was approved by the Idaho Public Utilities Commission’s (“IPUC”) Order No. 33692;

WHEREAS, on February 28, 2019, the IPUC issued Order No. 34263 approving the ESA between Idaho Power and J.R. Simplot Company that included a change to the notification of Net Energy Amount monthly adjustments. In Order No. 34263, the Commission stated that they would continue to evaluate the reasonableness of these provisions on a case-by-case basis. On March 29, 2019, the IPUC issued Order No. 34295 approving the ESA as amended for the Black Canyon #3 hydro project and on September 17, 2019, the IPUC issued Order No. 34442 approving the First Amendment to the ESA for the Box Canyon hydro project with provisions similar to the First Amendment contained herein; and

WHEREAS, Seller and Idaho Power desire to amend Article 6.2.3 of the Agreement to include a change to the notification of Net Energy Amount monthly adjustments from one-month advanced notice to the 25th day of the month that is prior to the month to be revised. If the 25th day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25th day of the month;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The above-stated recitals are incorporated into and made a part of this Agreement by this reference to the same extent as if these recitals were set forth in full at this point.

2. **Definitions.** Article 6.2.3 shall be deleted in its entirety and the following section shall be substituted in its stead:

6.2.3 Seller’s Adjustment of Estimated Net Energy Amounts After the Operation Date - After the Operation Date, the Seller may revise any future monthly Estimated Net Energy

Amounts by providing written notice no later than 5 PM Mountain Standard time on the 25th day of the month that is prior to the month to be revised. If the 25th day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25th day of the month. For example, if the Seller would like to revise the Estimated Net Energy Amount for October, they would need to submit a revised schedule no later than September 25th or the last business day prior to September 25th.

- a.) This revision must be submitted using the electronic portal provided by Idaho Power if available. If portal is not available, then written notice must be provided to Idaho Power by electronic notice (electronic mail) as agreed by both parties.
- b.) Failure to provide timely written notice of changes to the Estimated Net Energy Amounts will be deemed to be an election of no change from the most recently provided Estimated Net Energy Amounts.

3. **Commission Approval.** The obligations of the Parties under this First Amendment are subject to the IPUC's approval of this First Amendment and such approval being upheld on appeal, if any, by a court of competent jurisdiction. The Parties will submit this First Amendment to the IPUC and request approval or rejection in its entirety pursuant to RP 274.

4. **Effect of Amendment.** Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect.

5. **Capitalized Terms.** All capitalized terms used in this First Amendment and not defined herein shall have the same meaning as used in the Agreement.

6. **Scope of Amendment.** This First Amendment shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, executors, administrators, successors, and assigns, who are obligated to take any action which may be necessary or proper to carry out the purpose and intent thereof.

7. **Authority.** Each Party represents and warrants that (i) it is validly existing and in good standing in the state in which it is organized, (ii) it is the proper party to amend the Agreement, and (iii) it has the requisite authority to execute this First Amendment.

8. **Counterparts.** This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be duly executed as of the date above written.

H K HYDRO, LLC

By: Scott Kaster

Name: SCOTT KASTER

Title: Operator

Date: 1-24-2020

IDAHO POWER COMPANY

By: Tessia Park

Name: Tessia Park

Title: VIP Power Supply

Date: 2-05-2020