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IDAHO PUBLIC UTILITIES COMMISSION

DONOVAN E. WALKER (ISB No. 5921)  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-5317  
Facsimile: (208) 388-6936  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION	)	
OF IDAHO POWER COMPANY FOR	)	CASE NO. IPC-E-20-27
APPROVAL OR REJECTION OF AN	)	
ENERGY SALES AGREEMENT WITH	)	REPLY COMMENTS OF
COLEMAN HYDROELECTRIC LLC, FOR	)	IDAHO POWER COMPANY
THE SALE AND PURCHASE OF ELECTRIC	)	
ENERGY FROM THE COLEMAN HYDRO	)	
PROJECT	)	
_____	)	

Idaho Power Company ("Idaho Power" or "Company"), in accordance with the Idaho Public Utilities Commission's ("Commission") Notice of Modified Procedure, Order No. 34726, hereby submits the following Reply Comments to the Comments filed by Commission Staff.

**I. REPLY COMMENTS**

Commission Staff ("Staff") recommends in its comments that the Commission approve the submitted Energy Sales Agreement ("ESA") "on condition that the parties update the ESA's published avoided cost rates to those authorized by Order No. 34683." Staff Comments, p 4. The ESA was signed by Coleman Hydroelectric, LLC ("Coleman

Hydro” or “Project”) on June 8, 2020 and signed by Idaho Power on June 19, 2020. The annual published avoided cost rate update was effective on June 1, 2020. Order No. 34683. Consequently, Staff recommends that the ESA be approved, but with the new, 2020, rates. Idaho Power contacted Coleman Hydro to inquire about amending the ESA pursuant to Staff’s comments, and the Project stated that it wished for the matter to be submitted to the Commission for decision.

Coleman Hydro completed the Schedule 73 contracting process and was sent an executable version of the submitted ESA from Idaho Power on May 27, 2020. The Project had been engaged in the Schedule 73, PURPA contracting process with Idaho Power since May 8, 2019. The following is a summary timeline of Coleman Hydro’s movement through the tariffed process:

5/8/2019	Coleman Hydro sends first Schedule 73 Application, requesting 5/1/2020 Operation Date
6/1/2019	IPUC publishes new 2019 avoided cost rates
6/7/2019	Idaho Power sends indicative pricing containing 2019 non-seasonal published rates
10/9/2019	Coleman Hydro informs Idaho Power that it wants to pursue an ESA containing seasonal hydro avoided cost rates
10/10/2019	Idaho Power contacts Coleman Hydro to verify monthly production will qualify for seasonal hydro rates
10/10/2019	Coleman Hydro provides monthly energy schedules that validate seasonal hydro rates
10/22/2019	Idaho Power sends a draft ESA to Coleman Hydro with 6/1/2019 avoided cost rates and a 5/1/2020 Operation Date
1/23/2020	Idaho Power notifies Coleman Hydro that its Schedule 73 Application is about to expire due to 90 days of inactivity
1/24/2020	Coleman Hydro submits second Schedule 73 Application, requesting 5/1/2020 Operation Date
1/27/2020	Idaho Power sends Coleman Hydro a new draft ESA containing 6/1/2019 seasonal hydro rates and inquires about the 5/1/2020 Operation Date
2/10/2020	Coleman Hydro revises the Operation Date to 5/1/2021
5/19/2020	Coleman Hydro sends to Idaho Power revisions and comments on the draft ESA
5/22/2020	Idaho Power routes the draft ESA for internal Sarbanes Oxley (SOX) compliance review



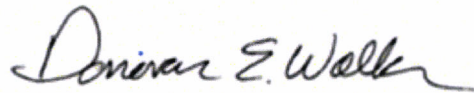
5/27/2020	Idaho Power sends executable version of ESA to Coleman Hydro
6/1/2020	IPUC publishes new 2020 avoided cost rates
6/8/2020	Coleman Hydro signs the ESA
6/19/2020	Idaho Power signs the ESA
6/25/2020	Idaho Power files the ESA for Commission review

Entitlement to a previously effective avoided cost rate in a contract, or pursuant to a non-contractual legally enforceable obligation under PURPA, is a determination left to the exclusive authority, discretion, and jurisdiction of the state commission. “States must provide for legally enforceable obligations as distinct from contractual obligations, but “[i]t is up to the States, not [FERC], to determine the specific parameters of individual QF power purchase agreements, including the date at which a legally enforceable obligation is incurred under State law.” *Idaho Power Company v. Idaho Public Utilities Commission*, 155 Idaho 780, 786, 316 P.3d 1278, 1284 (2013)(*Grouse Creek Wind*) quoting, *Power Resource Group, Inc. v. Public Utility Comm’n of Texas*, 422 F.3d 231, 238 (5<sup>th</sup> Cir. 2005)(additional citations omitted). Staff correctly cites to precedent requiring a signed contract or a meritorious complaint alleging the project is mature and the QF has attempted and failed to negotiate a contract with the utility, prior to locking in a previously effective avoided cost rate pursuant to a legally enforceable obligation. See *A.W. Brown Co., Inc. v. Idaho Public Utilities Commission*, 121 Idaho 812, 815, 828 P.2d 841, 844 (1992); *Rosebud Enterprises Inc. v. Idaho Public Utilities Commission*, 131 Idaho 1, 951 P.2d 521 (1997); *Idaho Power Company v. Idaho Public Utilities Commission*, 155 Idaho 780, 316 P.3d 1278 (2013).

In this instance the Project had completed all required process to obtain an ESA pursuant to Schedule 73. Idaho Power tendered the final, executable version of the ESA on May 27, 2020, prior to the change in avoided cost rates on June 1, 2020. Idaho Power

did not refuse to contract, nor delay the process. The only element absent at the time of the June 1 rate change was the actual signatures on the ESA, which occurred on June 8, and June 19, 2020. The project had been pursuing an ESA since May of 2018 and there were no material terms in dispute. Under these facts, and under PURPA's mandatory purchase obligation, Idaho Power did not believe it could refuse to sign the contract. However, Idaho Power acknowledges that the contract was not signed by the parties until after the June 1, 2020 effective date of the updated avoided cost rates. Idaho Power also acknowledges that such determinations as to eligibility for previously effective rates are the sole province and within the discretion of the Commission to determine.

Respectfully submitted this 13<sup>th</sup> day of August 2020.



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DONOVAN E. WALKER  
Attorney for Idaho Power Company



**CERTIFICATE OF SERVICE**

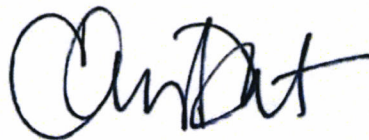
I HEREBY CERTIFY that on this 13<sup>th</sup> day of August 2020, I served a true and correct copy of the within and foregoing REPLY COMMENTS OF IDAHO POWER COMPANY upon the following named parties by the method indicated below, and addressed to the following:

Jordan Whittaker  
Coleman Hydro  
P.O. Box 177  
Leadore, Idaho 83464  
208-3030-0001

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email  
[TwoDotIrrigation@gmail.com](mailto:TwoDotIrrigation@gmail.com)

Idaho Public Utilities Commission Staff  
John R. Hammond  
P.O. Box 83720  
Boise, Idaho 83702-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email  
[John.hammond@puc.idaho.gov](mailto:John.hammond@puc.idaho.gov)



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Christy Davenport, Legal Assistant