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IDAHO PUBLIC  
UTILITIES COMMISSION

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May 5, 2022

**VIA ELECTRONIC MAIL**

Jan Noriyuki, Secretary  
Idaho Public Utilities Commission  
11331 West Chinden Blvd., Building 8  
Suite 201-A  
Boise, Idaho 83714

Re: Case No. IPC-E-20-27  
Coleman HydroElectric LLC  
Idaho Power Company's Application re the Sales and Purchase of the  
Electric Energy from the Coleman Hydro Project

Dear Ms. Noriyuki:

Attached for electronic filing, please find the Settlement Stipulation and Motion to Approve Settlement Stipulation in the above entitled matter. If you have any questions about the attached documents, please do not hesitate to contact me.

Very truly yours,

Donovan E. Walker

DEW:cld  
Enclosures

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Attorney for Commission Staff

IN THE PUBLIC UTILITIES COMMISSION OF THE STATE OF IDAHO

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

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This settlement stipulation ("Settlement Stipulation") is entered into between Idaho Power Company ("Idaho Power" or "Company"); Coleman

Hydroelectric, LLC ("Coleman Hydro"), and Idaho Public Utilities Commission Staff ("Staff") (hereafter jointly referred to as "Parties" or individually as a "Party"). As explained below, the Parties respectfully request that the Idaho Public Utilities Commission ("Commission") enter its Order approving the Settlement Stipulation and the Energy Sales Agreement, as amended by the First Amendment to the Energy Sales Agreement, between Idaho Power and Coleman Hydro without material change or condition, and without further proceedings as follows:

### **I. INTRODUCTION AND MOTION**

1. The terms and conditions of this Settlement Stipulation are set forth herein. The Parties agree that this Settlement Stipulation represents a fair, just, and reasonable compromise of the dispute(s) between the Parties and that this Settlement Stipulation is in the public interest. The Parties jointly seek to obtain Commission approval of the Settlement Stipulation as a condition precedent to the Settlement Stipulation's effectiveness. The Parties maintain that the Settlement Stipulation as a whole and its acceptance by the Commission represent a reasonable resolution of all issues between the Parties identified herein. Therefore, the Parties hereby respectfully move the Commission, in accordance with RP 56, for an Order approving the Settlement Stipulation executed between the Parties and all of its terms and conditions without material change or condition.

### **II. BACKGROUND**

2. On June 25, 2021, Idaho Power filed an application requesting

acceptance or rejection of the Energy Sales Agreement executed between Idaho Power and Coleman Hydro. As submitted for Commission approval, the Energy Sales Agreement contained the published avoided cost rates made effective on and after June 1, 2019 by Order No. 34350 (the "Order No. 34350 rates").

3. The Commission established comment deadlines under its rules for modified procedure.

4. On August 6, 2021, Staff filed comments recommending, in relevant part, that the Commission should condition approval of the Energy Sales Agreement on the parties replacing the Order No. 34350 rates with the rates approved effective June 1, 2020 by Order No. 34683 (the "Order No. 34683 rates"). Staff asserted that the rates proposed for use by Idaho Power's application – the Order No. 34350 rates – were unavailable because the Energy Sales Agreement was fully executed and effective after the new rates took effect on June 1, 2020, per Order No. 34683.

5. On August 13, 2020, Idaho Power filed reply comments providing explanation as to the parties' negotiations and why Idaho Power agreed to execute the agreement with the Order No. 34350 rates. Idaho Power explained that Coleman Hydro had been pursuing an Energy Sales Agreement since May of 2018 and there were no material terms in dispute. It explained that the final written agreement had been sent to Coleman Hydro prior to June 1, 2020, and the only element absent at the time of the June 1 rate change was the actual signatures on the Energy Sales Agreement, which occurred on June 8, and June

19, 2020. Thus, based on Idaho Power's understanding of PURPA's mandatory purchase obligation, Idaho Power did not believe it could refuse to sign the contract. But it asserted that eligibility for the Order No. 34350 rates was a determination to be decided by the Commission.

6. Coleman Hydro also filed its own reply comments, and after receiving an extension of time, it filed supplemental comments and a supporting declaration of Jordan Whittaker. Coleman Hydro's filings corroborated the timeline of events submitted by Idaho Power and further explained that prior to June 1, 2020, Coleman Hydro had already incurred the vast majority of the expense in completing construction of the facility in reliance on its belief it would be paid the Order No. 34350 rates. As of May 19, 2020, Coleman Hydro had communicated its agreement to all terms and conditions of the final Energy Sales Agreement, but it explained that the document was not executed until after June 1, 2020, due solely to the delay of having the physical document mailed back and forth to affix signatures to it during the global pandemic. Coleman Hydro argued that under applicable law, it was entitled to the Order No. 34350 rates contained in the executed agreement, and the Commission should approve the agreement as filed by Idaho Power.

7. On December 17, 2020, the Commission issued its Final Order No. 34870. The Commission's Final Order No. 34870 conditioned approval of the Energy Sales Agreement upon the Order No. 34350 rates being replaced with the Order No. 34683 rates.

8. On January 4, 2021, Coleman Hydro filed a petition for reconsideration, requesting that the Commission reconsider Final Order No. 34870 and approve the Energy Sales Agreement as filed by Idaho Power with the Order No. 34350 rates. In support, Coleman Hydro submitted additional declarations in support of its position.

9. After granting reconsideration for further consideration, the Commission issued Reconsideration Order No. 34991 on April 5, 2021. The Commission denied Coleman Hydro's request to revise its Final Order No. 34870.

10. On May 11, 2021, Coleman Hydro filed a notice of appeal to the Idaho Supreme Court.

11. Before the due date for Coleman Hydro's opening brief in the Court, the Parties initiated settlement discussions. Based upon the settlement discussions; as a compromise of the respective positions of the parties; in order to provide certainty and to avoid the uncertainties and cost of litigation before the Commission, courts, and other administrative bodies; and for other consideration as set forth below; the Parties agree to the following terms, conditioned upon and subject to approval of the following terms by the Commission:

### **III. TERMS OF THE SETTLEMENT STIPULATION**

12. Idaho Power and Coleman Hydro agree to a First Amendment to the Energy Sales Agreement to include the following amendments to the Agreement initially submitted to the Commission in this proceeding:

- a. Rates: The Parties agree to compromise rates that are less than the Order No. 34350 rates proposed for approval in Idaho Power's initial application and higher than the Order No. 34683 rates initially recommended for use by Staff. The compromise rates are included in amended Appendix E and Appendix F.
- b. Scheduled First Energy and Operation Date: In light of a longer than expected approval process for the Energy Sales Agreement and an unexpected delay in the completion of construction of interconnection facilities, and to avoid future disputes over such matters, the Parties agree to amend the Energy Sales Agreement's Scheduled First Energy Date and Scheduled Operation Date in Appendix B as follows:
  - i. Scheduled First Energy Date: October 15, 2022
  - ii. Scheduled Operation Date: November 15, 2022
- c. Facility Capacity: In light of the Commission's recent direction in Order No. 35239, the Parties agree to amend the Facility Nameplate Capacity and Maximum Capacity Amount in Appendix B as follows to reflect actual anticipated capacity based on the most current information available:
  - i. Facility Nameplate Capacity: 750 kW
  - ii. Maximum Capacity Amount: 800 kW

- d. **Inadvertent Energy:** The Parties agree to amend the ESA's provision for "Inadvertent Energy" to state that energy delivered in excess of the Facility's Nameplate Capacity amount, as measured on any hourly basis in kwh, shall be Inadvertent Energy which Idaho Power will accept but for which Idaho Power has no obligation to pay Seller, as set forth in more detail in the First Amendment to the ESA's amendment to Paragraph 7.7.
- e. **Typographical Correction:** The Parties agree to correct a typographical error regarding the description of the form of business organization in the Energy Sales Agreement's opening paragraph to clarify that the Seller, Coleman Hydroelectric, LLC, is a limited liability company.
- f. **Effectiveness:** The Parties agree that the effectiveness of the First Amendment to the Energy Sales Agreement is expressly conditioned upon Commission approval of the Energy Sales Agreement, as amended by the First Amendment to the Energy Sales Agreement, without material change or condition, and should the Commission fail to issue an order providing such approval, the First Amendment will be of no legal effect whatsoever; in such event of non-approval, the Parties will be



restored to their prior positions under the initially submitted Energy Sales Agreement and applicable law.

13. Reservation of Rights: No Party concedes its position with respect to the lawfulness of the Commission's prior rejection of the rates contained in the initially submitted Energy Sales Agreement in Order Nos. 34870 & 34991. This Settlement Stipulation is intended as a reasonable compromise in the public interest and to save parties and the Commission from further litigation. No Party shall be bound, benefited, or prejudiced by any position asserted in the negotiation of this Settlement Stipulation, except to the extent expressly stated herein, nor shall this Settlement Stipulation be construed as a waiver of rights unless such rights are expressly waived herein. Except as otherwise expressly provided for herein, execution of this Settlement Stipulation shall not be deemed to constitute an acknowledgment by any Party of the validity or invalidity of any particular method, theory, or principle of regulation or cost recovery. No Party shall be deemed to have agreed that any method, theory, or principle of regulation or cost recovery employed in arriving at this Settlement Stipulation is appropriate for resolving any issues in any other proceeding in the future. No findings of fact or conclusions of law other than those stated herein shall be deemed to be implicit in this Settlement Stipulation. This Settlement Stipulation sets forth the complete understanding of the Parties, and this Settlement Stipulation includes no other promises, understandings, representations,

arrangements or agreements pertaining to the subject matter of this Settlement Stipulation, or any other subject matter, not expressly contained herein.

14. The Parties agree that no part of this Stipulation or the formulae and methods used in developing the agreements herein or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case.

15. The obligations of the Parties are subject to the Commission's approval of this Settlement Stipulation in accordance with its terms and conditions and upon such approval being upheld on appeal, if any, by a court of competent jurisdiction. All terms and conditions of this Settlement Stipulation are subject to, and expressly contingent upon, approval by the Commission without material change or modification, and only after such approval and expiration of the period for rehearing and appeal of such approval, or in the case of an appeal challenging such approval upon affirmance on appeal.

16. Procedure Before the Commission: The Parties will submit this Settlement Stipulation to the Commission and recommend approval in its entirety. The Parties shall support this Settlement Stipulation before the Commission and shall not appeal a Commission order approving the Settlement Stipulation or an issue resolved by the Settlement Stipulation. If this Settlement Stipulation is challenged by anyone who is not a Party, then each Party reserves the right to file testimony, cross-examine witnesses, and put on such case as they deem appropriate to respond fully to the issues presented, including the

right to raise issues that are incorporated in the settlements embodied in this Settlement Stipulation. Notwithstanding this reservation of rights, the Parties agree that they will continue to support the Commission's adoption of the terms of this Settlement Stipulation.

17. Procedure Before Idaho Supreme Court: The Supreme Court granted a suspension of the appeal to allow the parties to complete negotiation of settlement, and the Court's order establishes that the suspension will remain in effect until March 21, 2022. On March 16, 2022, Coleman Hydro filed a stipulated motion to continue the suspension of proceedings on appeal. To the extent that it becomes necessary to further continue the suspension of the appeal before a Commission order approving or rejecting this Settlement Stipulation is issued and becomes final and non-appealable, the parties agree to cooperate in good faith to request that the Court continue such suspension. Idaho Power and the Commission will agree to stipulate to continuation such suspension or to allow Coleman Hydro to represent to the Court that the suspension motion is uncontested. If the Commission unconditionally approves this Settlement Stipulation and Energy Sales Agreement, as amended by the First Amendment to the Energy Sales Agreement, Coleman Hydro will voluntarily dismiss its appeal before Supreme Court promptly upon expiration of the rights of any person to petition for reconsideration and/or appeal such order, and all Parties will stipulate to such dismissal with each party to bear its own costs and fees. If the Commission does not unconditionally approve this Settlement Stipulation and

the Energy Sales Agreement, as amended by the First Amendment to the Energy Sales Agreement: (a) this Settlement Stipulation and the First Amendment to the Energy Sales Agreement will automatically terminate and be of no legal effect upon rejection by the Commission; (b) Coleman Hydro may move the Supreme Court to lift the suspension of the appeal, and no Party will oppose such a motion to lift the stay of the appeal; (c) All Parties expressly reserve the right to revert to their prior positions before the Court in the appeal of Order Nos. 34870 & 34991.

18. This Settlement Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

#### **IV. PROCEDURE**

19. Pursuant to RP 274, the Commission has discretion to determine the manner with which it considers a proposed settlement. In this matter, the Parties have reached agreement on a final resolution to this case. This Settlement Stipulation is reasonable and in the public interest. The Parties request that the Commission approve the Settlement Stipulation without further proceedings.


20. In the alternative, should the Commission determine that further proceedings are required to consider the Settlement Stipulation, pursuant to RP 201, the Parties believe the public interest does not require a hearing to consider the issues presented by this Motion and request it be processed as expeditiously as possible by Modified Procedure, without waiving the right to a hearing on the previously disputed matters in this proceeding should the Commission reject the Settlement Stipulation.

**V. REQUESTED RELIEF**

NOW, THEREFORE, the Parties respectfully request that the Commission enter its Order approving the Settlement Stipulation and the Energy Sales Agreement, as amended by the First Amendment to the Energy Sales Agreement, between Idaho Power and Coleman Hydro without material change or condition, and without further proceedings.

Respectfully submitted this 5th day of May 2022.

**IDAHO POWER COMPANY**



DONOVAN E. WALKER  
Attorney for Idaho Power Company

**COLEMAN HYDROELECTRIC, LLC**



GREGORY M. ADAMS  
Attorney for Coleman Hydroelectric, LLC

**COMMISSION STAFF**



DAYN HARDIE.  
Attorney for Commission Staff

**CERTIFICATE OF SERVICE**

I HEREBY certify that I have on this 5<sup>th</sup> day of May 2022, served the foregoing Joint Settlement Stipulation and Motion, by email where listed, to the following:

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Commission Secretary  
Idaho Public Utilities Commission  
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By:



Donovan Walker

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-20-27**

**IDAHO POWER COMPANY**

**ATTACHMENT 1**

**FIRST AMENDMENT  
TO THE  
ENERGY SALES AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY  
AND  
COLEMAN HYDRO LLC**

This First Amendment of the Energy Sales Agreement (“First Amendment”) is entered into on this 30<sup>th</sup> day of April 2022, by and between Idaho Power Company, an Idaho corporation (“Idaho Power”), and Coleman Hydro LLC, a limited liability company (“Seller”) (individually a “Party” and collectively the “Parties”).

WHEREAS, Idaho Power and the Seller hold an Energy Sales Agreement (“ESA”) dated June 19<sup>th</sup>, 2020, for the purchase and sale of generation produced by the Coleman Hydro PURPA Qualifying Facility (“Facility”). The ESA contains Idaho Public Utilities Commission (“Commission”) avoided cost prices effective June 1, 2019, that were published by Order No. 34350; and

WHEREAS, the Commission Order No. 34683 dated May 29, 2020, published the new avoided cost rates effective June 1, 2020; and

WHEREAS, the Commission Order No. 34870 dated December 17, 2020, approved the ESA “conditioned upon on the Company and Seller updating the ESA’s published avoided cost rates consistent with Order No. 34683.”; and

WHEREAS, the Commission Order No. 34991 dated April 5, 2021, denied Seller’s request to revise Final Order No. 34870 upon reconsideration, and on May 11, 2021, Coleman Hydro filed a Notice of Appeal to the Idaho Supreme Court; and

WHEREAS, before the filing of briefs at the Idaho Supreme Court Idaho Power, Seller, and Commission Staff initiated settlement discussions. Based upon the settlement discussions; as a compromise of the respective positions of the parties; in order to provide certainty and to avoid the uncertainties and cost of litigation before the Commission, courts, and other administrative bodies; and consistent with the Settlement Stipulation between Idaho Power, Seller, and Commission Staff; Idaho Power and Seller desire to amend the ESA to include the avoided cost rates agreed to in the Settlement Stipulation, as well as various other amended terms of the ESA.

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 ESA by this reference to the same extent as if these recitals were set forth in full at this point.
2. **Pricing - Appendix E and F.** Appendix E and F of the ESA shall be deleted in their entirety



and replaced with the following new Appendix E and F:

APPENDIX E

SEASONAL HYDRO FACILITY ENERGY PRICES

(Prices based on the Nameplate Capacity Amount of 750 kW, Non-Fueled Rates)

E-1 Base Energy Heavy Load Purchase Price – For all Base Energy received during Heavy Load Hours, Idaho Power will pay the non-levelized energy price in accordance with the Settlement Stipulation between Idaho Power, Seller, and IPUC Staff, with seasonalization factors applied:

Year	Season 1 - (73.50 %) Mills/kWh	Season 2 - (120.00 %) Mills/kWh	Season 3 - (100.00 %) Mills/kWh
2022	22.85	37.31	31.09
2023	24.19	39.50	32.92
2024	26.10	42.61	35.51
2025	28.32	46.23	38.53
2026	66.93	109.28	91.06
2027	68.60	111.99	93.33
2028	70.51	115.12	95.93
2029	71.75	117.14	97.62
2030	73.01	119.21	99.34
2031	74.24	121.22	101.02
2032	76.30	124.57	103.81
2033	78.16	127.60	106.34
2034	79.97	130.56	108.81
2035	81.68	133.36	111.13
2036	83.54	136.39	113.66
2037	85.41	139.45	116.21
2038	87.22	142.41	118.68
2039	88.97	145.27	121.06
2040	91.08	148.71	123.92
2041	92.69	151.34	126.12
2042	94.47	154.24	128.53
2043	96.80	158.04	131.70
2044	99.46	162.38	135.32

E-2 Base Energy Light Load Purchase Price – For all Base Energy received during Light Load Hours, Idaho Power will pay the non-levelized energy price in accordance with the Settlement Stipulation between Idaho Power, Seller, and IPUC Staff, with seasonalization factors applied:

Year	Season 1 - (73.50 %) Mills/kWh	Season 2 - (120.00 %) Mills/kWh	Season 3 - (100.00 %) Mills/kWh
2022	17.50	28.57	23.81
2023	18.84	30.76	25.64
2024	20.75	33.87	28.23
2025	22.97	37.50	31.25
2026	61.58	100.54	83.78
2027	63.24	103.26	86.05
2028	65.16	106.38	88.65
2029	66.40	108.40	90.34
2030	67.66	110.47	92.06
2031	68.89	112.49	93.74
2032	70.95	115.84	96.53
2033	72.80	118.87	99.06
2034	74.62	121.83	101.53
2035	76.33	124.62	103.85
2036	78.19	127.66	106.38
2037	80.06	130.72	108.93
2038	81.87	133.68	111.40
2039	83.62	136.53	113.78
2040	85.73	139.98	116.64
2041	87.34	142.60	118.84
2042	89.12	145.50	121.25
2043	91.44	149.30	124.42
2044	94.11	153.65	128.04

E-3 All Hours Energy Price – The price to be used in the calculation of the Surplus Energy Price and Delay Damage Price shall be the non-levelized energy price in accordance with the Settlement Stipulation between Idaho Power, Seller, and IPUC Staff, with seasonalization factors applied:

Year	Season 1 - (73.50 %) Mills/kWh	Season 2 - (120.00 %) Mills/kWh	Season 3 - (100.00 %) Mills/kWh
2022	20.47	33.42	27.85
2023	21.81	35.61	29.68
2024	23.72	38.72	32.27
2025	25.94	42.35	35.29
2026	64.55	105.39	87.82
2027	66.21	108.10	90.09
2028	68.13	111.23	92.69
2029	69.37	113.25	94.38
2030	70.63	115.32	96.10
2031	71.86	117.33	97.78
2032	73.92	120.68	100.57
2033	75.77	123.72	103.10
2034	77.59	126.68	105.57
2035	79.30	129.47	107.89
2036	81.16	132.51	110.42
2037	83.03	135.57	112.97
2038	84.84	138.52	115.44
2039	86.59	141.38	117.82
2040	88.70	144.82	120.68
2041	90.31	147.45	122.88
2042	92.09	150.35	125.29
2043	94.41	154.15	128.46
2044	97.08	158.50	132.08

APPENDIX F

NON-SEASONAL HYDRO FACILITY ENERGY PRICES

(Prices based on the Nameplate Capacity Amount of 750, Non-Fueled Rates)

F-1 Base Energy Heavy Load Purchase Price – For all Base Energy received during Heavy Load Hours, Idaho Power will pay the non-levelized energy price in accordance with the Settlement Stipulation between Idaho Power, Seller, and IPUC Staff, with seasonalization factors applied :

Year	Season 1 - (73.50 %) Mills/kWh	Season 2 - (120.00 %) Mills/kWh	Season 3 - (100.00 %) Mills/kWh
2022	22.85	37.31	31.09
2023	24.19	39.50	32.92
2024	26.10	42.61	35.51
2025	28.32	46.23	38.53
2026	52.13	85.10	70.92
2027	53.57	87.46	72.89
2028	55.26	90.23	75.19
2029	56.28	91.88	76.57
2030	57.32	93.58	77.98
2031	58.32	95.22	79.35
2032	60.14	98.19	81.82
2033	61.76	100.83	84.02
2034	63.33	103.40	86.17
2035	64.80	105.79	88.16
2036	66.41	108.42	90.35
2037	68.03	111.07	92.56
2038	69.58	113.61	94.68
2039	71.07	116.04	96.70
2040	72.92	119.06	99.21
2041	74.26	121.24	101.04
2042	75.77	123.70	103.09
2043	77.82	127.05	105.88
2044	80.20	130.94	109.12

F-2 Base Energy Light Load Purchase Price – For all Base Energy received during Light Load Hours, Idaho Power will pay the non-levelized energy price in accordance with the Settlement Stipulation between Idaho Power, Seller, and IPUC Staff, with seasonalization factors applied:

Year	Season 1 - (73.50 %) Mills/kWh	Season 2 - (120.00 %) Mills/kWh	Season 3 - (100.00 %) Mills/kWh
2022	17.50	28.57	23.81
2023	18.84	30.76	25.64
2024	20.75	33.87	28.23
2025	22.97	37.50	31.25
2026	46.78	76.37	63.64
2027	48.22	78.72	65.61
2028	49.91	81.49	67.91
2029	50.93	83.15	69.29
2030	51.97	84.84	70.70
2031	52.97	86.48	72.07
2032	54.79	89.45	74.54
2033	56.41	92.09	76.74
2034	57.98	94.66	78.89
2035	59.45	97.06	80.88
2036	61.06	99.69	83.07
2037	62.68	102.33	85.28
2038	64.23	104.88	87.40
2039	65.72	107.30	89.42
2040	67.57	110.32	91.93
2041	68.91	112.51	93.76
2042	70.42	114.97	95.81
2043	72.47	118.32	98.60
2044	74.85	122.21	101.84

F-3 All Hours Energy Price – The price to be used in the calculation of the Surplus Energy Price and Delay Damage Price shall be the non-levelized energy price in accordance with the Settlement Stipulation between Idaho Power, Seller, and IPUC Staff, with seasonalization factors applied:

Year	Season 1 - (73.50 %) Mills/kWh	Season 2 - (120.00 %) Mills/kWh	Season 3 - (100.00 %) Mills/kWh
2022	20.47	33.42	27.85
2023	21.81	35.61	29.68
2024	23.72	38.72	32.27
2025	25.94	42.35	35.29
2026	49.75	81.22	67.68
2027	51.19	83.57	69.65
2028	52.88	86.34	71.95
2029	53.90	87.99	73.33
2030	54.94	89.69	74.74
2031	55.94	91.33	76.11
2032	57.76	94.30	78.58
2033	59.38	96.94	80.79
2034	60.95	99.51	82.93
2035	62.42	101.91	84.92
2036	64.02	104.53	87.11
2037	65.65	107.18	89.32
2038	67.20	109.72	91.44
2039	68.69	112.15	93.46
2040	70.54	115.17	95.97
2041	71.88	117.36	97.80
2042	73.39	119.82	99.85
2043	75.44	123.17	102.64
2044	77.82	127.06	105.88

3. **Inadvertent Energy – Paragraph 7.7.** The ESA’s provision for “Inadvertent Energy” shall be amended to state that energy delivered in excess of the Facility’s Nameplate Capacity amount, as measured on any hourly basis in kwh, shall be Inadvertent Energy which Idaho Power will accept but for which Idaho Power has no obligation to pay Seller, as set forth below. Paragraph 7.7 of the ESA shall be deleted in its entirety and replaced with the new paragraph 7.7:

7.7 Inadvertent Energy –

7.7.1 Inadvertent Energy is electric energy produced by the Facility, expressed in kWh, which the Seller delivers to Idaho Power at the Point of Delivery that:

a.) exceeds ten thousand (10,000) kW multiplied by the hours in the specific month in which the energy was delivered. (For example, January contains 744 hours. 744 hours times 10,000 kW = 7,440,000 kwh. Energy delivered in January in excess of 7,440,000 kWh in this example would be Inadvertent Energy.)

-or-

b.) exceeds the amount of energy (in kWh) that can be generated in any given hour based on the Nameplate Capacity amount (in kW). (For example, with a Nameplate Capacity Amount of 750 kW, energy delivered in excess of 750 kWh in any given hour in this example would be Inadvertent Energy.)

7.7.2 Although Seller intends to design and operate the Facility to generate no more than ten (10) average MW monthly, or no more than the energy that can be generated at the Nameplate Capacity amount continuously over any given hour, and therefore does not intend to generate and deliver Inadvertent Energy, Idaho Power will accept Inadvertent Energy, but will not purchase or pay for Inadvertent Energy.

7.7.3 Delivering Inadvertent Energy to Idaho Power for two (2) consecutive months and/or in any three (3) months during a Contract Year, due to exceeding ten thousand (10,000) kw multiplied by the hours in the specific month in which the energy is delivered (Article 7.7.1 a.) but not due to exceeding the amount of energy that can be generated in any given hour based on the Nameplate Capacity amount (Article 7.7.1 b.), will be a Material Breach of this Agreement and Idaho Power may terminate this Agreement within sixty (60) days after the Material Breach has occurred.

4. **Nameplate Capacity and Maximum Capacity Amount - Appendix B.** The “Facility Nameplate Capacity” in paragraph B-1 of Appendix B to the ESA shall hereby be changed from

800 kW to 750 kW. "800" shall be deleted and replaced with "750." The "Maximum Capacity Amount" in paragraph B-4 of Appendix B to the ESA shall remain at 800 kW. The following words shall be deleted from the first sentence of Appendix B-4: "in accordance with the GIA."

**5. Scheduled First Energy Date and Scheduled Operation Date - Appendix B.** The "Scheduled First Energy Date" and "Scheduled Operation Date" contained in Paragraph 2 shall hereby be changed to July 1, 2022, and August 1, 2022, respectively, as set forth below. Paragraph B-2 of the ESA shall be deleted in its entirety and replaced with the new paragraph B-2:

**B-3 SCHEDULED FIRST ENERGY DATE AND OPERATION DATE**

Seller has selected October 15, 2022, as the Scheduled First Energy Date.

Seller has selected November 15, 2022, as the Scheduled Operation Date.

Because the Facility is a Seasonal Hydro Facility, should the interconnection facilities be completed at a time when there is no flowing water with which to bring the project online, then the Scheduled Operation Date, or expiration of the 120-day Delay Cure Period if the Scheduled Operation Date has passed, will be delayed to the next available month during which there is water available with which to generate.

**6. Typographical Correction - Seller Name.** in the first paragraph of Page 1 of the ESA, delete "COLEMAN HYDROELECTRIC, LLC a non-profit Idaho canal company (Seller)" and replace those words with "COLEMAN HYDROELECTRIC, LLC a limited liability company (Seller)."

**7. Commission Approval.** The Parties will submit this First Amendment to the IPUC and request approval or rejection in its entirety pursuant to RP 274. The Parties agree that the effectiveness of the First Amendment to the Energy Sales Agreement is expressly conditioned upon Commission approval of the Energy Sales Agreement, as amended by the First Amendment to the Energy Sales Agreement, without material change or condition, and such approval being upheld on appeal, if any, by a court of competent jurisdiction. Should the Commission issue an order rejecting such approval, the First Amendment will be of no legal effect whatsoever; in such event of non-approval, the Parties will be restored to their prior positions under the initially submitted ESA and applicable law.

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

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

**10. 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.

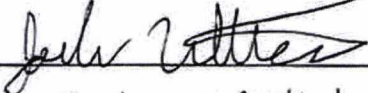


11. **Authority.** Each Party represents and warrants that (i) it is validly existing and in good standing in the state in which it is organized, (ii) it is the proper party to amend the ESA, and (iii) it has the requisite authority to execute this First Amendment.

12. **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.

COLEMAN HYDROELECTRIC, LLC

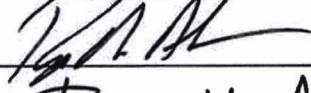
By: 

Name: Jordan Whittaker

Title: Managing Member

Date: 4/30/22

IDAHO POWER COMPANY

By: 

Name: Ryan N. Aderman

Title: VP, Power Supply

Date: 5/4/22