

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE FORMAL ) CASE NO. IPC-E-20-28**  
**COMPLAINT OF WOOD HYDRO AGAINST )**  
**IDAHO POWER COMPANY ) NOTICE OF SETTLEMENT**  
**) STIPULATION**  
**)**  
**) NOTICE OF MODIFIED**  
**) PROCEDURE**  
**)**  
**)**  
**) ORDER NO. 34929**

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On June 25, 2020, Wood Hydro, LLC (“Wood Hydro”) filed a formal complaint against Idaho Power Company (“Idaho Power” or “Company”) alleging Idaho Power improperly withheld payments due to Wood Hydro under a Firm Energy Sales Agreement (“FESA”) for the Mile 28 hydroelectric (“Mile 28 Hydro”) qualifying facility (“QF”).

On July 13, 2020, the Commission issued a Summons to Idaho Power directing the Company to respond to the formal complaint within 21 days.

On August 3, 2020, Idaho Power filed an Answer and Cross-Complaint. The Cross-Complaint is directed against Wood Hydro, Enel Green Power North America, Inc. (“Enel”) for the Rock Creek #2 QF, and Central Rivers Power US, LLC (“Central Rivers”) for the Lowline #2 QF (collectively, “QF Parties”).

On August 27, 2020, the Commission issued Summonses to Central Rivers and Enel, giving each company 21 days to respond to Idaho Power’s Cross-Complaint. The Commission also issued a Notice of Cross-Complaint, which aligned Wood Hydro’s time to reply with that of Central Rivers and Enel. Order No. 34764.

On September 17, 2020, Enel and Central Rivers filed separate Motions to Dismiss and Wood Hydro filed a Reply.

On October 1, 2020, Idaho Power filed an Answer to Cross-Respondents’ Motions to Dismiss.

On November 9, 2020, Idaho Power filed a Joint Motion to Stay.

On November 24, 2020, the Commission issued a Notice of Stay. Order No. 34846.

On January 25, 2021, the Company filed a Settlement Stipulation and Motion to Approve Settlement Stipulation.

### **THE DISPUTE**

The QF Parties each have separate but similar 35-year levelized rate PURPA QF contracts with Idaho Power. Idaho Power claimed that the QF Parties each failed to deliver their forecasted annual generation and therefore Idaho Power was entitled to damages under the terms of the respective contracts because the generation shortfall was a “permanent curtailment” of energy deliveries by the QFs. Idaho Power originally claimed that Mile 28 Hydro owed \$1,163,125 (to be offset by 90% to \$116,312 pursuant to a term of Mile 28’s FESA if the QF resumed generation within one year). Idaho Power originally claimed that Enel owed \$4,059,472 for Rock Creek #2. Idaho Power originally claimed that Central Rivers owed \$3,616,983 for Lowline #2. Central Rivers and Enel each objected to Commission jurisdiction to settle the contract disputes.

### **NOTICE OF SETTLEMENT STIPULATION**

YOU ARE HEREBY NOTIFIED that the QF Parties and the Company have agreed to settle the dispute for the following amounts: \$14,000 for Mile 28, \$44,000 for Lowline #2, and \$50,000 for Rock Creek # 2. If approved by the Commission, the Company has agreed these amounts would be accepted in full satisfaction of the Lump Sum Repayment amounts calculated by the Company for the historic periods of non-generation that are in dispute. Commission approval of the settlement stipulation is a condition precedent to the stipulation becoming effective.

YOU ARE FURTHER NOTIFIED that the Company and QF Parties represent that the settlement is a reasonable resolution of the issues and its approval, without material change, would be in the public interest.

YOU ARE FURTHER NOTIFIED that the QF Parties and the Company agreed to interpret “permanent curtailment” as used in each QF’s FESA to mean “a failure to deliver Net Energy for the entire remaining term of the FESA, and failure to deliver for a period of time less than the entire remaining term will not be a permanent curtailment.”

YOU ARE FURTHER NOTIFIED that Rock Creek #2 and Lowline #2 do not waive their objections to the Commission’s subject matter jurisdiction.

YOU ARE FURTHER NOTIFIED that under Commission Rules, “Proponents of a proposed settlement carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.” IDAPA 31.01.01.275

**NOTICE OF MODIFIED PROCEDURE**

YOU ARE FURTHER NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter, and that it will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Commission’s Rules of Procedure, IDAPA 31.01.01.201 through .204. The Commission notes that Modified Procedure and written comments have proven to be an effective means for obtaining public input and participation.

YOU ARE FURTHER NOTIFIED that any person or party desiring to state a position on this Application **must file a written comment in support or opposition with the Commission within fourteen (14) days of the service date of this order.** The comment must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this Application shall be sent electronically, unless email is not available, to the Commission, the Company, and QF Parties at the email addresses reflected below:

**For the Idaho Public Utilities  
Commission:**

Commission Secretary  
Idaho Public Utilities Commission  
P.O. Box 83720  
Boise, ID 83720-0074  
Email: [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov)

Street Address for Express Mail:

11331 W. Chinden Blvd.  
Building 8, Suite 201-A  
Boise, Idaho 83714

**For Idaho Power:**

Donovan E. Walker  
Energy Contracts  
Idaho Power Company  
1221 West Idaho Street 83702  
P.O. Box 70  
Boise, ID 83707-0070  
Email: [dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[dockets@idahopower.com](mailto:dockets@idahopower.com)  
[energycontracts@idahopower.com](mailto:energycontracts@idahopower.com)

**For Central Rivers:**

Preston N. Carter  
Givens Pursley LLP  
601 W. Bannock St.  
Boise, ID 83702  
Email:  
[prestoncarter@givenspursley.com](mailto:prestoncarter@givenspursley.com)

**For Wood Hydro:**

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[Erin.cecil@arkoosh.com](mailto:Erin.cecil@arkoosh.com)

**For Enel:**

Gregory M. Adams  
Richardson Adams PLLC  
515 N. 27<sup>th</sup> St.  
Boise, ID 83702  
Email: [greg@richardsonadams.com](mailto:greg@richardsonadams.com)

Comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via email may do so by accessing the Commission's home page located at [www.puc.idaho.gov](http://www.puc.idaho.gov). Click the "Case Comment Form" and complete the comment form using the case number as it appears on the front of this document. These comments must also be sent to the Applicant.

**YOU ARE FURTHER NOTIFIED that interested persons must file any reply comments within 21 days of the service date of this order.**

YOU ARE FURTHER NOTIFIED that if no written comments or protests are received within the time limit set, the Commission will consider this matter on its merits and enter its order without a formal hearing. If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.


**ORDER**

IT IS HEREBY ORDERED that the proposed settlement shall be reviewed under the Commission's Rules of Modified Procedure. Interested persons have fourteen (14) days from the service date of this order to file comments on the proposed settlement. Interested persons shall have twenty-one (21) days from the service date of this order to file reply comments.

IT IS FURTHER ORDERED that parties continue to comply with Order No. 34781, issued September 17, 2020. All pleadings should be filed with the Commission electronically and

shall be deemed timely filed when received by the Commission Secretary. *See* Rule 14.02. Service between parties should also be accomplished electronically. Voluminous discovery-related documents may be filed and served on CD-ROM or a USB flash drive.

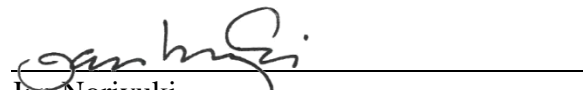
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 23<sup>rd</sup> day of February, 2021.

  
PAUL KJELLANDER, PRESIDENT

  
KRISTINE RAPER, COMMISSIONER

  
ERIC ANDERSON, COMMISSIONER

ATTEST:

  
Jan Noriyuki  
Commission Secretary

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