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IDAHO PUBLIC
UTILITIES COMMISSION



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October 28, 2021

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-21-27
Riverside Investments I, LLC – Arena Drop Hydro Project
Idaho Power Company's Application re the Fourth Amendment to the
Energy Sales Agreement

Dear Ms. Noriyuki:

Attached for electronic filing is Idaho Power Company's Reply Comments in the above entitled matter. If you have any questions about the attached documents, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Donovan E. Walker". The signature is fluid and cursive.

Donovan E. Walker

DEW:cld
Enclosures

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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-21-27
APPROVAL OR REJECTION OF THE)
FOURTH AMENDMENT TO THE ENERGY) REPLY COMMENTS OF
SALES AGREEMENT WITH RIVERSIDE) IDAHO POWER COMPANY
INVESTMENTS 1, LLC FROM THE ARENA)
DROP HYDRO PROJECT)
_____)

Idaho Power Company (“Idaho Power” or “Company”), in response to the comments filed by Commission Staff (“Staff”), hereby respectfully submits the following Reply Comments.¹

I. INTRODUCTION AND BACKGROUND

On August 26, 2021, Idaho Power filed an application with the Commission for approval or rejection of the Fourth Amendment (“Amendment”) to its Energy Sales

¹ Notice of Modified Procedure, Order No. 35177, indicates that Company reply comments are due within 28 days of the service date of that Order, which was October 25, 2021. Idaho Power respectfully requests leave to file these reply comments a couple of days late. These reply comments are nearly identical to those filed last week for a companion project, Fargo Drop, Case No. IPC-E-21-28. Thus far, Staff has the same recommendation, and the Company has the same reply comments for this matter: Arena Drop, IPC-E-21-27; Fargo Drop, Case No. IPC-E-21-28; Mora Drop, IPC-E-21-29; and Rock Creek #1, IPC-E-21-31.

Agreement (“ESA”) with Riverside Investments I, LLC (“Riverside” or “Seller”). Riverside sells energy to the Company from the Arena Drop Hydro Project (“Facility”). The Facility is a qualifying facility under the Public Utility Regulatory Policies Act of 1978. The Fourth Amendment that was executed by the Company and Riverside (“Parties”) is to allow the Facility to adjust the monthly Net Energy Amount (“NEA”) by the 25th of each month. Specifically, Section 6.2.3 of the ESA provides the Seller with the option to adjust the monthly estimated NEA within a specified time period. After the execution and approval of the ESA, the Seller requested a change to the time period for making the NEA adjustments, such that they can make adjustments by the 25th day of the month preceding the month for which a change is requested. The Commission has previously approved similar amendments to other energy sales agreements to incorporate the same change.

On October 18, 2021, Commission Staff (“Staff”) recommended approval of the provision reflected in the Parties’ Fourth Amendment, but also recommended the Commission require *additional* changes to the ESA:

Staff notes the ESA does not contain any provision addressing modifications to the Facility during the contract term. Therefore, Staff recommends updating the Amendment by including the following provision, which has been included in recent PURPA contracts filed by the Company with the Commission:

Any modifications to the Facility, including but not limited to the generator or turbine, that (1) increases or decreases the Facility Nameplate Capacity, or (2) changes the Qualifying Facility Category, or (3) changes the Primary Energy Source or (4) changes to the generator fuel and subsequently the Fueled Rate or Non-Fueled Rate, will require a review of the Agreement terms, conditions and pricing and Idaho Power, at its sole determination, may adjust the pricing or terminate the Agreement. If the Agreement is terminated because of said modifications, the Seller will be responsible for any Termination Damages.

Staff Comments, p 3.

II. IDAHO POWER REPLY COMMENT

The Company appreciates Staff's analysis, review, and recommendation to approve the five-day notification provision as provided in the Fourth Amendment. However, the Company disagrees with Staff's recommendation to update the Fourth Amendment by including an additional provision in the ESA to address modifications of the Facility during the term of the contract. ("Staff Provision").

Idaho Power contacted Riverside about Staff's Comments and recommendation, and inquired as to whether Riverside was in agreement to add the Staff Provision to the Fourth Amendment. Riverside indicated that it would prefer that the Staff Provision not be added to the Amendment, but stated it would accept the additional provision if its objection was going to cause a significant delay to the approval of the Fourth Amendment.

Riverside requested an amendment to the ESA so that they could adjust the monthly NEA at any point up to the 25th day of the preceding month. Idaho Power has received similar such requests from several other QFs, has executed the same change reflected in this Fourth Amendment in amendments to the ESAs with other QFs, and received approval from the Commission in each case without modifying other sections of the ESA or updating other sections of the ESA to current "standards". The Company believes that Staff's recommendation to update the ESA by adding the Staff Provision goes beyond the scope of the review and consideration of the Fourth Amendment and is inconsistent with Commission practice regarding changes to a previously approved PURPA ESA.

Further, absent a particular reason to do so, it is not appropriate to open up contracts for a *de novo* review and inclusion of new provisions simply because an amendment is requested. Idaho Power has over 100 Commission approved contracts that have been executed over the past 35 years. Many of these contracts will have

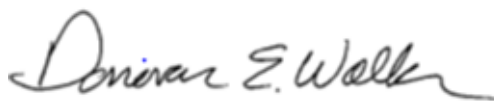
numerous provisions that have changed over the years, and that may not have been contemplated when the ESA was originally entered agreed to by parties. The Company does not believe it is proper to open up PURPA contracts whenever an amendment is requested and require the parties to update other sections of the contract to the most current language, especially when these other sections have nothing to do with the amendment requested by the Seller.

The Company is willing to include the Staff Provision in any new contracts, and has included such a provision in several, but Idaho Power objects to adding this Provision to a previously approved ESA in the context of the Commission's review of a contract amendment to an unrelated provision.

III. CONCLUSION

The Company believes Staff's recommendation to add a facility modification provision is outside the scope of this Fourth Amendment. The Fourth Amendment as written, is consistent with past amendments to the monthly NEA which the Commission has approved for several QFs without changes to additional provisions. Idaho Power respectfully requests that the Commission issue an order approving the Fourth Amendment without modification, and without inclusion of the additional Staff Provision regarding Facility modifications.

Respectfully submitted this 28th day of October 2021.



DONOVAN E. WALKER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October 2021, 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:

Terry Daugherty
Riverside Investments I, LLC
Riverside Hydro I, LLC
P.O. Box 328
Adrian, OR 97901

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Riley Newton
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Idaho Public Utilities Commission
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Christy Davenport, Legal Assistant