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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF IDAHO POWER</b>	)	
<b>COMPANY'S APPLICATION FOR</b>	)	<b>CASE NO. IPC-E-21-27</b>
<b>APPROVAL OR REJECTION OF THE</b>	)	
<b>FOURTH AMENDMENT TO THE ENERGY</b>	)	
<b>SALES AGREEMENT WITH RIVERSIDE</b>	)	<b>COMMENTS OF THE</b>
<b>INVESTMENTS I, LLC FROM THE ARENA</b>	)	<b>COMMISSION STAFF</b>
<b><u>DROP HYDRO PROJECT</u></b>	)	

**STAFF OF** the Idaho Public Utilities Commission, by and through its Attorney of record, Riley Newton, Deputy Attorney General, submits the following comments.

**BACKGROUND**

On August 26, 2021, Idaho Power Company ("Company") applied to the Commission requesting approval or rejection of the Fourth Amendment ("Proposed Amendment") to its Energy Sales Agreement ("ESA") with Riverside Investments I, LLC ("Seller"). Seller 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 ("PURPA").

The Commission approved the Company's ESA with the Seller on April 1, 2010, for the purchase and sale of energy from the Facility. Order No. 31060. In 2014, the Commission approved the Company's First Amendment to the ESA which changed the definition of the Mid-Columbia Market Energy Cost. See Order Nos. 33184 and 33053. In 2016, the Commission approved both the Company's Second Amendment to change any references in the

ESA from “Riverside Investments, LLC” to “Riverside Investments I, LLC” and the Company’s Third Amendment to the ESA to amend Article 6.2.3 of the ESA to include a change to the notification of Net Energy Amount (“NEA”) monthly adjustments from three-month advance notice to one-month advance notice. *See* Order No. 33521.

The Proposed Amendment modifies when the Seller must notify the Company of its intent to revise future monthly Estimated NEA. Currently, Section 6.2.3 grants the Seller the option to adjust the monthly estimated NEA within a specified time span. The Proposed Amendment states that “[a]fter 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 25<sup>th</sup> day of the month that is prior to the month to be revised.” *Application Ex. 1, Fourth Amendment at 2, § 6.2.3.* If the 25<sup>th</sup> day falls on a weekend or holiday, written notice must be received by the Company by the last business day before the 25<sup>th</sup> day of the month. *Id.* at 1-2, § 6.2.3.

The Proposed Amendment provides this 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 25<sup>th</sup> or the last business day prior to September 25<sup>th</sup>.” *Id.*

## **STAFF REVIEW**

Staff recommends approval of the five-day advanced notice because monthly estimates provided closer to the time of delivery can improve the accuracy of input used for short-term operational planning. In addition, the five-day advanced notice has been authorized in prior Commission Orders, Nos. 34263, 34870 and 34937.

There are non-substantive typographical errors in the Proposed Amendment. For example, the “Fourth Amendment” is erroneously referred to as the “First Amendment” multiple times. Idaho Power responded through email on September 3, 2021, that since non-substantive typographical errors do not change the effectiveness or the substance of the revisions, the Company does not plan to re-file the Proposed Amendment. Instead, the Company will correct them via handwritten changes to the Proposed Amendment. Staff believes this could be appropriate at this stage but recommends that the Company file an updated Amendment as a compliance filing correcting the mistakes along with adding the additional provision discussed below.

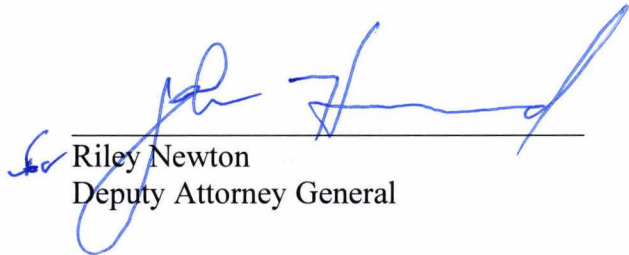
Staff also notes that the ESA does not contain any provision to address modifications to the Facility during the contract term. Therefore, Staff recommends including the following provision, which has been included in recent PURPA contracts filed by the Company:

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 RECOMMENDATIONS**

Staff recommends that the Commission approve the Proposed Amendment contingent upon including the additional provision and correcting the typographical errors discussed above. If approved, Staff further recommends that the Commission require the Company to file the updated, signed Amendment with the Commission as a compliance filing.

Respectfully submitted this  day of October 2021.

  
Riley Newton  
Deputy Attorney General

Technical Staff: Yao Yin

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 18<sup>TH</sup> DAY OF OCTOBER 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-21-27, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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