

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF IDAHO POWER ) CASE NO. IPC-E-21-28**  
**COMPANY’S APPLICATION FOR )**  
**APPROVAL OR REJECTION OF THE )**  
**FOURTH AMENDMENT TO THE ) ORDER NO. 35267**  
**ENERGY SALES AGREEMENT WITH )**  
**RIVERSIDE INVESTMENTS I, LLC FROM )**  
**THE FARGO DROP HYDRO PROJECT )**  
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On August 26, 2021, Idaho Power Company (“Company”) applied to the Commission requesting approval or rejection of the Fourth Amendment (“Amendment”) to its Energy Sales Agreement (“ESA”) with Riverside Investments I, LLC (“Riverside” or “Seller”). Riverside sells energy to the Company from the Fargo Drop Hydro Project (“Facility”). The Facility is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

On September 22, 2021, The Commission issued a Notice of Application and set deadlines for interested persons to comment on the Application and for the Company to reply. Order No. 35175. Staff filed comments to which the Company replied. No other comments were received.

Having reviewed the record, we now approve the Fourth Amendment as discussed below.

**BACKGROUND**

Under PURPA, electric utilities must purchase electric energy from QFs at purchase or “avoided cost” rates approved by the Commission. 16 U.S.C. § 824a-3; *Idaho Power Co. v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013). The Commission has established two methods for calculating avoided costs, depending on the size of the QF project: (1) the surrogate avoided resource method, used to establish “published” avoided cost rates; and (2) the integrated resource plan method, to calculate avoided cost rates for projects exceeding published rate limits. *See* Order No. 32697 at 7-22.

The Commission approved the Company’s ESA with the Seller on February 1, 2012, for the purchase and sale of energy from the Facility. Order No. 32451. 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 March 2016, the Commission

approved the Company's Second Amendment to change any references in the ESA from "Riverside Investments, LLC" to "Riverside Investments I, LLC." *See* Order No. 33521. In August 2016, the Commission approved 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. 33574.

### **PROPOSED AMENDMENT**

The Fourth Amendment modifies when the Seller must notify the Company of their 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 Fourth Amendment states that "[a]fter the Operation Date, the Seller may revise any future monthly estimated NEA 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 Attachment 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 2-3, § 6.2.3.

The Amendment provides this example: "... if the Seller would like to revise the Estimated [NEA] 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.* at 3, § 6.2.3.

### **STAFF COMMENTS**

Staff recommended the Commission approve the language in the Amendment modifying the monthly notification requirements. In support of this recommendation, Staff recognized that a five-day advanced notice can "improve the accuracy of input used for short-term operational planning" and that similar amendments have recently been approved by the Commission. Staff Comments at 2 (citing Order Nos. 34263, 34870 and 34937).

Staff further recommended that the Company correct "non-substantive typographical errors" in the Amendment. Staff noted that the Company replied informally that it would correct the errors via handwritten changes to the Amendment rather than refile it. Staff recommended that the Company update the Amendment to correct the mistakes and incorporate an additional provision addressing modifications to the Facility during the term of the ESA. Staff noted that the modification provision has been included in recent PURPA contracts filed by the Company.<sup>1</sup>

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<sup>1</sup> Although similar amendments were proposed in Case Nos. IPC-E-21-27, IPC-E-21-29, IPC-E-21-30, and IPC-E-21-31, Staff's comments in this case did not include a recommendation to reject the Amendment if the Facility modification provision was not

## COMPANY REPLY COMMENTS

The Company disagreed with Staff's recommendation to update the ESA by adding the Facility modification provision. The Company represented that the Seller preferred that the Provision not be added to the ESA but that "it would accept the additional provision if its objection was going to cause a significant delay to the approval" of the Amendment.

The Company stated that it believed Staff's proposal to add the Provision exceeded the "scope of the review and consideration of the Fourth Amendment and is inconsistent with Commission practice regarding changes to previously approved PURPA ESAs." The Company further explained that it would be inappropriate to add provisions to contracts whenever parties seek an amendment and, especially, when such a provision is unrelated to the amendment requested.

The Company expressed willingness to include the Facility modification provision in any new contracts but objected to adding it to a previously approved ESA in the process of the Commission's review of an Amendment unrelated to the suggested provision.

## COMMISSION FINDINGS AND DISCUSSION

The Commission has jurisdiction over this matter under Title 61 of the Idaho Code. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503. The Commission also has authority under PURPA and Federal Energy Regulatory Commission ("FERC") regulations to set avoided cost rates, to order electric utilities to enter fixed-term obligations for the purchase of energy from QFs, and to implement FERC rules. The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

The Commission has reviewed the record, including the Application, proposed Fourth Amendment, Staff's comments, and the Company's reply. The Commission has previously approved a five-day advanced notification requirement to adjust monthly Estimated NEA. Based on our review, we find it fair, just, and reasonable to approve the Company's Fourth Amendment modifying the advance notice required for the monthly Estimated NEA.

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included. The recommendation to reject the proposed modification was included in the comments of Case No. IPC-E-21-29 and IPC-E-21-31.

The Commission further finds it reasonable to allow the Company to correct the non-substantive typographical errors via handwritten changes to the Fourth Amendment rather than refiling it.


We find Staff's recommendation to require the parties to include a facility modification provision outside the scope of this case. However, we find it to be a reasonable provision to consider including in any new ESA or ESA renewal.

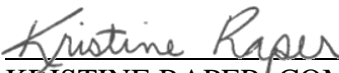
**ORDER**

IT IS HEREBY ORDERED that the Fourth Amendment to the ESA changing the deadline—from a one-month advanced notice to a five-day advanced notice—for when the Seller must notify the Company of their intent to revise future monthly Estimated NEA is approved.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order about any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

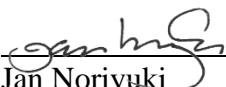
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 21<sup>st</sup> day of December 2021.

  
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PAUL KJELLANDER, PRESIDENT

  
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KRISTINE RAPER, COMMISSIONER

  
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ERIC ANDERSON, COMMISSIONER

ATTEST:

  
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Jan Noriyuki  
Commission Secretary

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