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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)
COMPANY’S APPLICATION FOR) **CASE NO. IPC-E-21-28**
APPROVAL OR REJECTION OF THE)
FOURTH AMENDMENT TO THE ENERGY)
SALES AGREEMENT WITH RIVERSIDE) **COMMENTS OF THE**
INVESTMENTS I, LLC FROM THE FARGO) **COMMISSION STAFF**
DROP HYDRO PROJECT)

STAFF OF the Idaho Public Utilities Commission (“Staff”), by and through its Attorney of record, Dayn Hardie, 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 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 under the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

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.

The Fourth Amendment modifies when the Seller must notify the Company of its intent to revise future monthly estimated NEA. Currently, Section 6.2.3 of the ESA grants the Seller the option to adjust the monthly estimated NEA with at least one-month advance notice. 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 25th 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 25th day falls on a weekend or holiday, written notice must be received by the Company by the last business day before the 25th 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 25th or the last business day prior to September 25th." *Id.* at 3, § 6.2.3.

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, including Order Nos. 34263, 34870, and 34937.

There are non-substantive typographical errors in the proposed Fourth Amendment: the Fourth Amendment is referred to as the First Amendment multiple times. Idaho Power responded through email communication on September 3, 2021, that because these are non-substantive typographical errors that do not change the effectiveness or the substance of the revisions, the Company does not plan to re-file the Amendment. Instead, the Company will correct them via handwritten changes to the Amendment. While Staff believes this is acceptable,

Staff recommends updating the Amendment to correct the mistakes and to include an additional provision based on the discussions below.

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 RECOMMENDATIONS

Staff recommends that the Commission approve the Amendment with five-day notification contingent upon including the additional provision and correcting the typographical errors discussed above. If approved by the Commission, Staff also recommends that after the Amendment is updated and signed by both parties, the Commission require the Company to file the updated Amendment with the Commission as a compliance filing.

Respectfully submitted this ^{13th} day of October 2021.



Dayn Hardie
Deputy Attorney General

Technical Staff: Yao Yin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 13th DAY OF OCTOBER 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-21-28, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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