

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION**            )  
**OF IDAHO POWER COMPANY FOR**                )  
**APPROVAL OR REJECTION OF THE**             )  
**THIRD AMENDMENT TO THE ENERGY**         )  
**SALES AGREEMENT WITH RIVERSIDE**           )  
**INVESTMENTS I, LLC FROM THE MORA**        )  
**DROP HYDRO PROJECT**                         )

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**CASE NO. IPC-E-21-29**

**ORDER NO. 35254**

On August 26, 2021, Idaho Power Company (“Company”) applied to the Commission requesting approval or rejection of the Third Amendment to its Energy Sales Agreement (“ESA”) with Riverside Investments I, LLC (“Seller”). Seller sells energy to the Company from the Mora Drop Hydro Project (“Facility”). The Facility is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

On October 6, 2021, the Commission issued a Notice of Application and Modified Procedure, providing notice of public comment and Company reply deadlines. Order No. 35191. Commission Staff (“Staff”) filed comments and the Company filed reply comments.

Having reviewed the record, we now approve the Third 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 June 30, 2006, for the purchase and sale of energy from the Facility. Order No. 30008. In 2014, the Commission approved the Company’s First Amendment to the ESA, which changed the definition of the Mid-Columbia Market Energy Cost in the ESA consistent with a Commission-approved stipulation. *See* Order Nos. 33184 and 33053. In 2016, the Commission approved the Company’s Second

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. Order No. 33575.

### **PROPOSED AMENDMENT**

The Third Amendment modifies when the Seller must notify the Company to revise future monthly Estimated NEA. Currently, Section 6.2.3 requires the Seller to notify the Company at least one-month before the Seller revises a given month’s Estimated NEA. The Third 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 25th day of the month that is prior to the month to be revised.” Third Amendment at 1, § 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 1-2, § 6.2.3. The Third Amendment modifies when the Seller must notify the Company of their intent to revise future monthly Estimated NEA. Section 6.2.3 of the ESA currently grants the Seller the option to adjust the monthly Estimated NEA within a specified time span.

The Third 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 25th or the last business day prior to September 25th.” *Id.* at 2, § 6.2.3.

### **STAFF COMMENTS**

Staff recommended the Commission approve the language in the Third 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 commented that the Company correct “non-substantive typographical errors” in the Third Amendment. *Id.* at 2. For example, Staff pointed out that “the ‘Third Amendment’ is erroneously referred to as the ‘First Amendment’ multiple times.” *Id.* Staff represented that the Company replied informally via email that it planned to correct the errors via handwritten changes to the Third Amendment rather than refile it. Staff recommended that the Company update the Third Amendment to correct the mistakes.

Staff also recommended that the Company add a provision to its ESA to address modifications to the Facility during the contract term (“Provision”). *Id.* at 3. Staff noted that the Provision had been included in recent PURPA contracts filed by the Company. Staff recommended that the Commission reject the Third Amendment if the parties did not include the Provision in their ESA. *Id.*

### **COMPANY REPLY COMMENTS**

The Company disagreed with Staff’s recommendation to update the ESA by adding the Provision. *Reply Comments* at 3. The Company represented that the Seller preferred not to add the Provision 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 Third Amendment. *Id.*

The Company stated that it believed Staff’s proposal to add the Provision exceeded the “scope of the review and consideration of the Third Amendment and is inconsistent with Commission practice regarding changes to a previously approved PURPA ESA”. *Id.* The Company further explained that it was not appropriate to add provisions to contracts whenever parties sought an amendment and, especially, when such a provision is unrelated to the requested amendment. *Id.* at 4.

The Company expressed its willingness to include the Provision in any new contracts but that it objected to adding it to a previously approved ESA because of the Commission’s review of an amendment to an unrelated provision. *Id.*

### **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, 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 Third 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 Third Amendment modifying the advance notice required for the monthly Estimated NEA.

The Commission further finds it reasonable to allow the Company to correct the non-substantive typographical errors via handwritten changes to the Third 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 Third 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.

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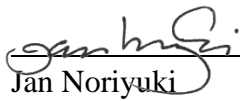
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8<sup>th</sup> day of December 2021.

  
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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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