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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF IDAHO POWER COMPANY FOR ) CASE NO. IPC-E-21-29**  
**APPROVAL OR REJECTION OF THE )**  
**THIRD AMENDMENT TO THE ENERGY )**  
**SALES AGREEMENT WITH RIVERSIDE ) COMMENTS OF THE**  
**INVESTMENTS I, LLC FOR THE SALE AND ) COMMISSION STAFF**  
**PURCHASE OF ELECTRIC ENERGY FROM )**  
**THE MORA DROP HYDRO PROJECT )**  
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**STAFF OF** the Idaho Public Utilities Commission, by and through its Attorney of record, John R. Hammond, Jr., Deputy Attorney General, submits the following comments.

**BACKGROUND**

On August 26, 2021, Idaho Power Company (“Company”) applied with the Commission requesting approval or rejection of the Third Amendment to its Firm Energy Sales Agreement (“Third Amendment”) with Riverside Investments I, LLC (“Seller”) that 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”).

The Commission approved the Company’s Firm Energy Sales Agreement (“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. The Company and Seller have now entered the Third Amendment to the ESA to provide for notice of NEA monthly adjustments, by the 25th of each month.

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 25<sup>th</sup> day of the month that is prior to the month to be revised.” Third Amendment at 1, § 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 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 25<sup>th</sup> or the last business day prior to September 25<sup>th</sup>.” *Id.* at 2, § 6.2.3.

## **STAFF ANALYSIS**

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 Third Amendment: the Third Amendment is referred to as the First Amendment multiple times. The Company 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 Third Amendment. While Staff believes this is

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

Staff notes neither the Third Amendment nor the ESA contains any provision addressing modifications to the Facility during the contract term. Therefore, Staff recommends updating the Third Amendment by including the following provision, which has been included in recent PURPA contracts filed by the Company with the Commission:

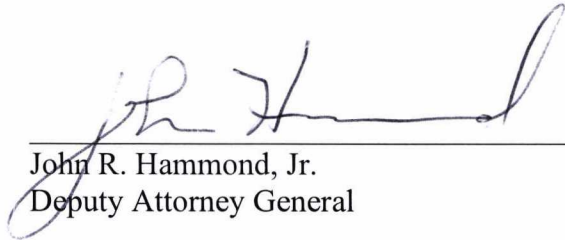
Any modifications to the Facility, including but not limited to the generator or turbine, that (1) increases or decreases the Facility Nameplate Capacity, or (2) changes the Qualifying Facility Category, or (3) changes the Primary Energy Source or (4) changes to the generator fuel and subsequently the 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.

In the alternative, if the above provision is not included in the Third Amendment, Staff recommends that the Third Amendment be rejected.

#### **STAFF RECOMMENDATION**

Staff recommends that the Commission approve the Third Amendment with five-day notification contingent upon including the additional provision about modifications to the Facility and correcting the typographical errors discussed above. Staff also recommends that after the Third Amendment is updated and signed by both parties, the Commission require the Company to file the updated Third Amendment with the Commission as a compliance filing. In the alternative, Staff recommends the Commission reject the Third Amendment if the provision that addresses modifications to the Facility is not included.

Respectfully submitted this 27<sup>th</sup> day of October 2021.



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John R. Hammond, Jr.  
Deputy Attorney General

Technical Staff: Yao Yin

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 27<sup>th</sup> DAY OF OCTOBER 2021, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-21-29, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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