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IDAHO PUBLIC  
UTILITIES COMMISSION



**DONOVAN E. WALKER**  
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December 30, 2021

**VIA ELECTRONIC MAIL**

Jan Noriyuki, Secretary  
Idaho Public Utilities Commission  
11331 West Chinden Blvd., Building 8  
Suite 201-A  
Boise, Idaho 83714

Re: Case No. IPC-E-21-30  
MC6 Hydro LLC – MC6 Hydro Project  
Idaho Power Company's Application re the Second Amendment to the  
Energy Sales Agreement

Dear Ms. Noriyuki:

Attached for electronic filing please find Idaho Power Company's Petition for Reconsideration in the above entitled matter. If you have any questions about the attached documents, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Donovan E. Walker". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Donovan E. Walker

DEW:cld  
Enclosures

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION	)	
OF IDAHO POWER COMPANY'S FOR	)	CASE NO. IPC-E-21-30
APPROVAL OR REJECTION OF THE	)	
SECOND AMENDMENT TO THE ENERGY	)	IDAHO POWER COMPANY'S
SALES AGREEMENT WITH MC6 HYDRO	)	PETITION FOR
LLC FOR THE SALE AND PURCHASE OF	)	RECONSIDERATION
ELECTRIC ENERGY FROM THE MC6	)	
HYDRO PROJECT.	)	
_____	)	

Idaho Power Company ("Idaho Power" or "Company"), petitioner herein, pursuant to RP 33, 325, and 331, et seq., and *Idaho Code* § 61-626, hereby respectfully petitions the Idaho Public Utilities Commission ("Commission" or "IPUC") for reconsideration of Final Order No. 35256, dated December 9, 2021, issued in Case No. IPC-E-21-30 ("the Order"). Idaho Power seeks reconsideration regarding that portion of the Order that directs modifications to the amended ESA pertaining to the use of two sets of avoided cost rates, the implementation of the 90/110 rule, and the nameplate capacity. This Petition is based upon the following:

**I. LEGAL STANDARD**

A party must seek reconsideration prior to initiating an appeal to the Idaho Supreme Court. *Idaho Code* § 61-627. An issue not presented to the Commission on reconsideration will not be considered on appeal. *Key Transp. Inc. v. Trans Magic Airlines*

*Corp.*, 96 Idaho 110, 524 P.2d 1338 (1974). “The purpose of an application for rehearing is to afford an opportunity to the parties to bring to the attention of the Commission in an orderly manner any question theretofore determined in the matter and thereby afford the Commission an opportunity to rectify any mistake made by it before presenting the same to this Court.” *Washington Water Power Co., v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979)(citing *Idaho Underground Water Users Ass’n v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965); *Consumers Co. v. Public Utilities Comm’n*, 40 Idaho 772, 236 P. 732 (1925)).

The Commission may grant reconsideration by reviewing the existing record, by submission of briefs, memoranda, written comments, interrogatories, and statements or by evidentiary hearing. RP 331, 332.

## **II. BACKGROUND**

Idaho Power and MC6 Hydro LLC (“MC6 or “Seller”) entered into an ESA on April 23, 2018, for the purchase and sale of energy produced by the Facility. The MC6 Hydro Project (“Facility”) is a Qualifying Facility pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The ESA was approved by the Commission in Case No. IPC-E-18-09, Order No. 34106, on July 12, 2018. The Parties entered into an Amendment to the ESA on June 21, 2019, to amend the Scheduled First Energy Date and Schedule Operation date in the ESA due to the unexpected passing away of one of the principal developers of the project. This First Amendment to the ESA was approved by the IPUC in Order No. 34425 issued on August 23, 2019. A replacement Appendix D was required to add an additional year (2040) due to the change in Scheduled Operation Date.

As a result of the COVID-19 pandemic, the Facility was unable to obtain its generator unit from the manufacturer in Wuhan, China in a timely manner causing a Force

Majeure event, which necessitated a change in the Scheduled Operation Date to April 5, 2021. The project received and installed a generator with a Nameplate Capacity of 2.3 megawatts (“MW”) that is 0.2 MW larger than the 2.1 MW generator listed in the ESA.

MC6 subsequently requested a change to the time period for making adjustments to the Net Energy Amounts in the ESA such that the Seller can make adjustments by the 25<sup>th</sup> day of the month preceding the month for which a change is requested. The Commission has previously approved several similar amendments to changes in the time period for adjusting the Net Energy Amounts. On August 26, 2021, Idaho Power filed an application with the Commission for approval or rejection of the Second Amendment to the ESA. The Second Amendment executed by Idaho Power and MC6 provided for changes to the ESA to allow changes to the Net Energy Amount by the 25<sup>th</sup> day of the month, and changes to the ESA to update the stated nameplate capacity of the generator from 2.1 MW to 2.3 MW.

On October 27, 2021, Commission Staff (“Staff”) filed its Comments. Staff recommended approval of the provisions reflected in the Second Amendment, but also recommended that the Commission require additional changes to the ESA. Staff recommended inclusion of additional specific language in the ESA addressing modification of the Facility including a termination provision. Staff also recommended adopting two sets of avoided cost rates, based upon the updated nameplate capacity: one rate for all generation under 2.1 MW (the original contractual rate) and an updated avoided cost rate from the time of execution of the Second Amendment for any generation over 2.1 MW. Staff also recommended corresponding modification to the implementation of the 90/110 rule based on two sets of avoided cost rates.

On November 4, 2021, Idaho Power filed Reply Comments objecting to the inclusion of the additional provisions regarding project modifications and objecting to the

recommended adoption of two sets of avoided cost rates and implementation of the 90/110 rule based on two sets of avoided cost rates, both due to the nameplate capacity of the installed generator being 200 kW more than what the project had initially identified in the ESA.

On December 9, 2021, the Commission issued Final Order No. 35256, approving the Second Amendment to allow a five-day advanced notification to adjusted monthly Estimated Net Energy Amounts and to update the nameplate capacity to reflect the installed capacity of the generator. However, the Commission also directed,

IT IS HEREBY ORDERED that the Parties' amended ESA is approved with the following modifications:

1. The amended ESA will use two sets of avoided cost rate between the Company and Seller: any hourly generation equal to or less than 2.1 MWhs will use the avoided cost rates contained in the ESA and approved in Order No. 34106: any hourly generation above 2.1 MWhs will use the avoided cost rates from the SAR Method approved in Order No. 35052.
2. The 90/110 Rule will be implanted based on two sets of avoided cost rates.

The Company is directed to submit an updated or amended Replacement ESA consistent with this Order.

Order No. 35256, p 6.

### **III. PETITION FOR RECONSIDERATION**

Idaho Power respectfully asks the Commission to grant reconsideration in this matter and set a procedural schedule whereby the Commission may take and consider additional factual information provided by MC6, the QF party, and take additional written submissions from the Parties (Staff, Idaho Power, and MC6) regarding the following items and issues related to those portions of Final Order No. 35256 pertaining to two avoided

cost rates, the implementation of the 90/110 rule, and the nameplate capacity of the Facility.

**A. Nameplate Capacity** - Final Order No. 35256 approved the provisions in the Second Amendment changing the Nameplate Capacity of the Facility from 2.1 MW (in the original ESA) to 2.3 MW. Subsequent to the issuance of Final Order No. 35256, Idaho Power contacted MC6 and the QF informed Idaho Power that it did not wish to implement the bifurcated rate structure in another Amendment or Replacement Contract. MC6 stated that they have run testing on the hydro turbine with their available water and do not believe the Facility is capable of generation over 2.1 MW. MC6 was not certain whether the Facility could be re-certified to a Nameplate Capacity of 2.1 MW, but wished to potentially pursue this option as opposed to bifurcating the avoided cost rates as directed by Final Order No. 35256.

Alternatively, MC6 would like the Commission to consider limiting the provision of generation from the Facility in the ESA to 2.1 MW. Idaho Power proposes that this could potentially be accomplished within the ESA - as an alternative to implementing a bifurcated rate structure - by utilizing an existing term and related mechanism within the ESA - the Maximum Capacity Amount. For example: the stated Nameplate Capacity of the Facility could be stated as 2.3 MW, but the Maximum Capacity Amount could be stated as 2.1 MW. By operation of the existing provisions in the ESA (and perhaps a small addition of a couple of extra sentences) the Facility would be limited to generating only up to the Maximum Capacity Amount, 2.1 MW, regardless of its stated Nameplate Capacity, and would not be compensated for any deliveries that exceed that Amount. Idaho Power respectfully requests additional opportunity on reconsideration for the Parties to consider these options and additional opportunity to provide such information to the Commission.

**B. Materiality Threshold** - Idaho Power submitted in its Reply Comments to this matter that the potential difference and rate impact represented by a 200 kW variation in the nameplate capacity was de minimus in relation to the administrative burden of amending, tracking, maintaining, paying, and implementing a bifurcated rate and 90/110 provision. Idaho Power also suggested that it was common for a certain amount of manufacturing variance to occur from the specifications sent to the manufacturer as to what is actually delivered, installed, and operates. Based upon the number of times the issue of a small variance in the Nameplate Capacity has come up, either in Replacement ESAs or in New ESAs, and the significant amount of time, effort, and controversy that has been generated by such, Idaho Power proposes that the Commission consider a Materiality Threshold, for example: any variation of less than 1 MW (or some other threshold) in actual Nameplate Capacity from that stated in the ESA is considered immaterial and does not require rate adjustment to the ESA.

**C. Change of Avoided Cost Rates in an Approved ESA** - Idaho Power argued in Reply Comments that the factual situation with MC6 was distinct and substantively different from previous times when the Commission has ordered a bifurcated rate in a PURPA ESA. Past bifurcated rates were implemented in Replacement ESAs, such as in what Idaho Power believes to be the first such instance of this practice with Sagebrush Hydro, Case No. IPC-E-19-38. In *Sagebrush* Idaho Power agreed with Staff, and the Commission, that when a project has upgraded, replaced, or changed the generation units or the Facility from the original configuration in the expiring contract that their eligibility for full-term capacity payment in the Replacement ESA should be limited to the original amount of Nameplate Capacity in the expiring/original ESA to be consistent with the Commission's past directives regarding eligibility for full-term capacity payments. Order No. 32697.

However, MC6 is a new QF with a new ESA and not a replacement ESA. MC6 came online and provided generation to Idaho Power pursuant to its Commission-approved ESA for several months prior to submission of the Second Amendment. The configuration of the generator was never changed. It was and remains the original generation unit that was installed at the Facility. The Second Amendment proposed to correct the designation of the Nameplate Capacity from the originally stated 2.1 MW, which was established prior to manufacture of the turbine and construction of the Facility . Splitting the project's avoided cost rate in this instance - or adding a new, updated avoided cost rate for the incremental difference of 200 kW at the point in time when the Second Amendment was signed - does not comport to the same logical reasoning and rationale as implementing a bifurcated rate for full-term capacity payment eligibility in a Replacement ESA. For MC6, or a new QF ESA, this amounts a different determination that involves overall avoided cost rate eligibility and implicates the changing of a locked-in contractual avoided cost rate during the term of the ESA, among other issues.

***D. Supporting Rationale for IPUC Decision in Final Order No. 35256*** - The Commission's determinations in Final Order No. 35256 as to implementing two sets of avoided cost rates, basing a different avoided cost rate for a 200 kW incremental portion of Nameplate Capacity on the rates in place at the time of signing the Second Amendment, and modifying the 90/110 calculations, were all ordered and directed with no reference to any underlying rationale or explanation. In the Commission Discussion and Findings section of Final Order No. 35256, the Commission stated,

The Commission finds it reasonable and in the public interest to require the Company and Seller to apply two sets of avoided cost rates previously approved in Order Nos. 34106 and 35052 in their amended ESA. Specifically, the Commission finds that the first set of avoided cost rates should apply to any hourly generation equal to or less than 2.1 MWs. See Order No. 34106. The Commission further finds



that the other set of avoided cost rates - those that were effective August 11, 2021, when both parties signed the current Amendment - should apply to any hourly generation above 2.1 MWhs. See Order No. 35052.

Final Order No. 35256, p 5.

Findings of fact in Commission orders must be supported by substantial, competent evidence to be affirmed on appeal. *Industrial Customers of Idaho Power v. Idaho PUC*, 134 Idaho 285, 288, 1 P.3d 786, 789 (2000); *Hulet v. Idaho PUC*, 138 Idaho 476, 478, 65 P.3d 498, 500 (2003). On questions of law, review is limited to the determination of whether the Commission has regularly pursued its authority. *A.W. Brown*, 121 Idaho at 815, 828 P.2d at 844; *Hulet*, 138 Idaho at 478, 65 P.3d at 500. However, the Commission's order must contain the reasoning behind its conclusions to sufficiently allow the reviewing court to determine that the Commission did not act arbitrarily. *Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 618, 917 P.2d 766, 775 (1996). Here, Final Order No. 35256 does not address the Parties' respective positions on the issues and contains no stated reasoning behind the Commission's determination to implement a bifurcated rate structure other than a statement that it is "reasonable" and "in the public interest."

#### **IV. NATURE AND EXTENT OF EVIDENCE AND ARGUMENT TO BE OFFERED ON RECONSIDERATION**

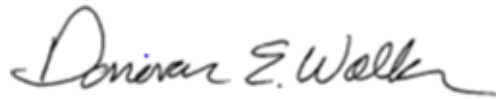
RP 331 requires that Idaho Power state the nature and extent of evidence or argument it will present or offer if reconsideration is granted. Idaho Power respectfully asks that the Commission grant reconsideration in this matter and set a procedural schedule whereby the Commission may take and consider additional factual information provided by MC6, the QF party, and take additional written submissions from the Parties (Staff, Idaho Power, and MC6) regarding the items and issues identified herein related to those portions of Final Order No. 35256 pertaining to two avoided cost rates, the

implementation of the 90/110 rule, and the nameplate capacity of the Facility. Should the Commission grant reconsideration, Idaho Power stands ready to augment the evidentiary record by additional comments, legal briefing, testimony, exhibits, and hearing, any or all of which as determined to be appropriate and at the discretion of the Commission.

**V. CONCLUSION**

Idaho Power respectfully requests that the Commission issue an order granting reconsideration of Final Order No. 35256 as set forth herein.

Respectfully submitted this 30<sup>th</sup> day of December 2021.



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DONOVAN E. WALKER  
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of December 2021 I served a true and correct copy of the within and foregoing Idaho Power Company's Petition for Reconsideration upon the following named parties by the method indicated below, and addressed to the following:

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Christy Davenport, Legal Assistant