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**DONOVAN E. WALKER**  
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February 11, 2022

**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 Compliance Filing re Second Amendment 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".

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	)	COMPLIANCE FILING RE:
SALES AGREEMENT WITH MC6 HYDRO	)	SECOND AMENDMENT
LLC FOR THE SALE AND PURCHASE OF	)	
ELECTRIC ENERGY FROM THE MC6	)	
HYDRO PROJECT.	)	
_____	)	

Idaho Power Company ("Idaho Power") hereby respectfully submits to the Idaho Public Utilities Commission ("IPUC" or "Commission") the accompanying edits to the Second Amendment to the Energy Sales Agreement ("ESA") between Idaho Power and MC6 Hydro LLC, ("MC6" or "Seller") under which Idaho Power purchases electric energy generated by the MC6 Hydro project ("Facility") located near the city of Hagermen, Idaho ("Second Amendment"). This Second Amendment is submitted in compliance with Commission's Final Order on Reconsideration No. 35296, where the Commission approved changes to the ESA to allow for limitation of the instantaneous delivery of generation from the Facility to 2.1 MW instead of using a bifurcated rate.

Idaho Power, Seller, and IPUC Staff ("Staff") have consulted and agreed to modifications reflected in the Second Amendment as reasonable changes to implement the generation delivery limitation instead of the bifurcated rate structure.

## **I. INTRODUCTION AND 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.

On December 30, 2021, Idaho Power filed a Petition for Reconsideration seeking reconsideration regarding those portions of Order No. 35256 directing 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. On January 6, 2022, MC6 filed a Petition for Cross-Reconsideration, generally joining in Idaho Power's requested Reconsideration. Staff filed its Answer to Petition for Reconsideration on January 6, 2022, in which Staff generally agreed with the Company's proposal to limit the amount of instantaneous delivery of generation from the Facility to 2.1 MW instead of implementing the changes required to use a bifurcated rate structure. On January 21, 2022, the Commission issued its Final Order on Reconsideration, approving the limitation of the instantaneous delivery of generation from the Facility to 2.1 MW instead of using a bifurcated rate, and directing additional changes, as recommended by Staff to Appendix B-4 and paragraph 6.2 of the ESA.

## **II. THE SECOND AMENDMENT**

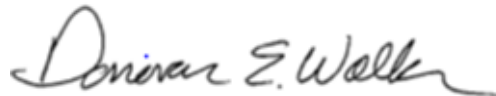
On February 7, 2022, Idaho Power and MC6 entered into a replacement Second Amendment that incorporated the previously approved provisions from the Commission's

Final Order No. 35256 allowing a five-day advanced notification to adjusted monthly Estimated Net Energy Amounts and approving an update to the nameplate capacity to reflect the installed capacity of the generator. The replacement Second Amendment also contains the additional required language adjustments to Appendix B, Articles B-1 and B-4; and Articles 6.1, 7.7.1, and 7.7.2 that were necessary to implement the approved limitation of the instantaneous delivery of generation from the Facility to 2.1 MW instead of using a bifurcated rate. Although Order No. 35296 specifically references changes to Appendix B-4 and paragraph 6.2, Idaho Power, Seller, and Staff consulted regarding the proper and necessary language adjustments to the ESA required to implement the delivery limitation and agreed upon the changes set forth in the Second Amendment as compliant with Order No. 35296. Included as Attachment 1 hereto is the replacement Second Amendment.

### **III. REQUEST FOR RELIEF**

Idaho Power respectfully requests that the Commission issue an order accepting the Second Amendment between Idaho Power and the Seller included as Attachment 1 in compliance with Order No. 35296.

Respectfully submitted this 11<sup>th</sup> day of February 2022.



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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 Compliance Filing Re: Second Amendment upon the following named parties by the method indicated below, and addressed to the following:

Riley Newton  
Deputy Attorney General  
Idaho Public Utilities Commission  
P.O. Box 83720  
Boise, ID 83720-0074

Emailed to:  
[Riley.newton@puc.idaho.gov](mailto:Riley.newton@puc.idaho.gov)

Ted Sorenson  
MC6 Hydro LLC  
711 E Turtle Point Dr.  
Ivins, UT 84738

Emailed to:  
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C. Tom Arkoosh  
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Christy Davenport, Legal Assistant

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-21-30**

**IDAHO POWER COMPANY**

**ATTACHMENT 1**



**SECOND AMENDMENT  
TO THE  
ENERGY SALES AGREEMENT  
BETWEEN  
IDAHO POWER COMPANY  
AND  
MC6 HYDRO LLC**

This Second Amendment of the Energy Sales Agreement (“Second Amendment”) is entered into on this 7th day of February 2022, by and between Idaho Power Company, an Idaho corporation (“Idaho Power”), and MC6 Hydro LLC, an Idaho limited liability company (“MC6 Hydro” or “Seller”) (individually a “Party” and collectively the “Parties”).

**WITNESSETH:**

WHEREAS, Idaho Power and the Seller entered into an Energy Sales Agreement (“ESA”) on April 23, 2018, (the “Agreement”) for the purchase and sale of generation produced by the MC6 Hydro PURPA Qualifying Facility (“Project”) that was approved by the Idaho Public Utilities Commission’s (“IPUC”) in Order No. 34106 issued on July 12, 2018;

WHEREAS, the ESA was amended on June 21, 2019, to change the Scheduled First Energy Date and Scheduled Operation Date in the ESA due to the unexpected passing away of one of the principle 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;

WHEREAS, due to the Covid-19 pandemic, the Project was unable to obtain its generator unit from Wuhan, China resulting in a Force Majeure event. Because of the Force Majeure event, the Project’s actual Operation Date did not occur until April 5, 2021;

WHEREAS, the Force Majeure event related to the Covid-19 pandemic resulted in the Project receiving and installing a generator with a Nameplate Capacity of 2.3 megawatts (“MW”), which is 0.2 MW larger than the 2.1 MW generator listed in the ESA;

WHEREAS, Seller and Idaho Power desire to amend Article 6.2.3 of the Agreement to include a change to the notification of Net Energy Amount monthly adjustments from one-month advanced notice to the 25<sup>th</sup> day of the month that is prior to the month to be revised. If the 25<sup>th</sup> day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25<sup>th</sup> day of the month;

WHEREAS, Seller and Idaho Power desire to amend Article 6.1 and 7.7 and Appendix B-4 to further define the Maximum Capacity Amount;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto agree as follows:

1. **Incorporation of Recitals.** The above-stated recitals are incorporated into and made a part of this Agreement, as amended, by this reference to the same extent as if these recitals were set forth in full at this point.

2. **Definitions.** Appendix B, Article B-1 Description of Facility shall be deleted, and the following Article B-1 shall be substituted in its stead:

B-1 DESCRIPTION OF FACILITY

2.3 MW synchronous generator, Francis turbine, .9 to 1.1 power factor

Nameplate Capacity: 2.3 MW

3. **Definitions.** Appendix B, Article B-4 Maximum Capacity Amount shall be deleted, and the following B-4 shall be substituted in its stead:

B-4 MAXIMUM CAPACITY AMOUNT:

The Maximum Capacity Amount is 2.1 MW. This value is the maximum generation that potentially could be delivered by the Seller's Facility to the Idaho Power electrical system at any moment in time.

4. **Definitions.** Article 6.1 Net Energy Purchase and Delivery shall be deleted, and the following 6-1 shall be substituted in its stead:

6.1 Net Energy Purchase and Delivery - Except when either Party's performance is excused as provided herein, Idaho Power will purchase and Seller will sell all of the Net Energy to Idaho Power at the Point of Delivery. All Inadvertent Energy produced by the Facility will also be delivered by the Seller to Idaho Power at the Point of Delivery. At no time within any hour will the Seller's Facility generation deliveries to Idaho Power exceed the Maximum Capacity Amount specified in Appendix B.

5. **Definitions.** Article 6.2.3 shall be deleted in its entirety and the following section shall be substituted in its stead:

6.2.3 Seller's Adjustment of Estimated Net Energy Amounts After the Operation Date - After 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. If the 25<sup>th</sup> day of the month falls on a weekend or holiday, then written notice must be received on the last business day prior to the 25<sup>th</sup> day of the month. For 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>.

a.) This revision must be submitted using the electronic portal provided by Idaho Power if available. If the electronic portal is not available, then written notice must be provided to Idaho Power by electronic notice (electronic mail) as agreed by both Parties.

- b.) If the Seller does not update the electronic portal or provide written notice of changes to the Estimated Net Energy Amounts, then it will be deemed to be an election of no change from the most recently provided monthly Estimated Net Energy Amounts. Except as otherwise provided in the Agreement, Idaho Power is unable to accept any requested changes to the Estimated Net Energy Amounts if the date and time that Idaho Power receives the requested change is after the deadline.

6. **Definitions.** Article 7.7.1 and 7.7.2 Inadvertent Energy shall be deleted, and the following 7.7.1 and 7.7.2 shall be substituted in its stead:

7.7 Inadvertent Energy –

7.7.1 Inadvertent Energy is electric energy produced by the Facility which the Seller delivers to Idaho Power at the Point of Delivery that:

- a.) exceeds ten thousand (10,000) kW multiplied by the hours in the specific month in which the energy was delivered. (For example, January contains 744 hours. 744 hours times 10,000 kW = 7,440,000 kWh. Energy delivered in January in excess of 7,440,000 kWh in this example would be Inadvertent Energy.) or
- b.) exceeds the Maximum Capacity Amount (in kW) in any hour.

7.7.2 Although Seller intends to design and operate the Facility to generate no more than the Maximum Capacity Amount and no more than ten (10) average MW monthly and therefore does not intend to generate and deliver Inadvertent Energy, Idaho Power will accept Inadvertent Energy but will not purchase or pay for Inadvertent Energy.

7. **Commission Approval.** The obligations of the Parties under this Second Amendment are subject to the IPUC's approval of this Second Amendment and such approval being upheld on appeal, if any, by a court of competent jurisdiction. The Parties will submit this Second Amendment to the IPUC and request approval or rejection in its entirety pursuant to RP 274.

8. **Effect of Amendment.** Except as expressly amended by this Second Amendment, the Agreement shall remain in full force and effect.

9. **Capitalized Terms.** All capitalized terms used in this Second Amendment and not defined herein shall have the same meaning as used in the Agreement.

10. **Scope of Amendment.** This Second Amendment shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, executors, administrators, successors, and assigns, who are obligated to take any action which may be necessary or proper to carry out the purpose and intent thereof.

11. **Authority.** Each Party represents and warrants that (i) it is validly existing and in good standing in the state in which it is organized, (ii) it is the proper party to amend the Agreement, and (iii) it has the requisite authority to execute this Second Amendment.

12. **Counterparts.** This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Second Amendment to be duly executed as of the date above written.

MC6 HYDRO LLC

By: 

Name: Ted S. Sorenson

Title: Manager

Date: 1/31/22

IDAHO POWER COMPANY

By: 

Name: Ryan N. Adelman

Title: VP, Power Supply

Date: 2/7/22