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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)
APPROVAL OR REJECTION OF THE THIRD)
AMENDMENT TO ITS ENERGY SALES)
AGREEMENT WITH MC6 HYDRO LLC)
_____)
CASE NO. IPC-E-21-30
REDACTED COMMENTS OF
THE COMMISSION STAFF

STAFF OF the Idaho Public Utilities Commission, by and through its Attorney of record, Riley Newton, 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 Second Amendment to its Energy Sales Agreement (“ESA”) with MC6 Hydro, LLC (“MC6” or “Seller”). MC6 sells energy generated by the MC6 hydro facility (“Facility”) to the Company. 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 July 21, 2018, for the purchase and sale of energy from the Facility in Case No. IPC-E-18-09, Order No. 34106. On June 21, 2019, the Commission approved the Company’s First Amendment to the Scheduled First Energy Date and Scheduled Operation date in the ESA due to the unexpected passing away

of one of the principal developers of the project. Order No. 34425. The Commission also allowed the delayed damages to be calculated from the original Scheduled Operation Date of July 30, 2019. *Id.*

The Application indicates that, as a result of the COVID-19 pandemic, the Facility was unable to obtain its generator unit from Wuhan, China, causing a Force Majeure event, which changed the Operation Date to April 5, 2021. Application at 2. The project received and installed a generator with a Nameplate Capacity of 2.3 megawatts (“MW”), which is 0.2 MW larger than the 2.1 MW generator capacity listed in the ESA. Accordingly, the Second Amendment provides for a change to Appendix B, Article B-1 of the ESA so that the designated nameplate rating of the generator is 2.3 MW rather than 2.1 MW.

The Second Amendment also modifies when the Seller must notify the Company to revise future monthly Estimated Net Energy Amounts (“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 Second 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.” *Id. at 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. The Second 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.*

STAFF REVIEW

Staff’s review has focused on the five-day advanced notice, potential modifications to the Facility, the delay damages, the change in nameplate capacity, the avoided cost rates, the 90/110 Rule, and a lapsed period of operation under incorrect rates. Staff recommends that the 5-day advanced notice be approved and that the Company and the Seller use the following two sets of avoided cost rates.¹ First, any hourly generation equal to or less than 2.1 megawatt hours (“MWhs”) will use the avoided cost rates contained in the ESA and approved in Order

¹ Both sets of avoided cost rates are based on the 2026 first deficit year, and thus, this new Facility will receive capacity payments in 2026 for all its generation outputs.

No. 34106. Second, any hourly generation above 2.1 MWhs will use the avoided cost rates effective August 11, 2021, when the Second Amendment was signed by both parties. Staff also recommends implementing the 90/110 Rule based on two sets of avoided cost rates.

5-day Advanced Notice

Staff recommends the five-day advanced notice be approved 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 provision has been authorized in prior Commission Orders Nos. 34263, 34870 and 34937.

Potential Modifications to Facility

Staff also notes that the ESA does not contain any provision to address modifications to the Facility during the contract term. Therefore, Staff recommends updating the Second 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.

The ESA includes an update to the facility and it is reasonable to do the same for any future modification.

Delay Damages

Order No. 34425 allowed delayed damages to be calculated from the original Scheduled Operation Date of July 30, 2019. Idaho Power examined each month in the delay period between the original Scheduled Operation Date and the actual Operation Date and recognized that no delay damages were triggered. Staff has analyzed the two phases in the delay period (i.e.,

the Force Majeure phase and the Non-Force Majeure phase) and believes no delay damages were triggered in either phase.

Force Majeure Phase

On February 10, 2020, MC6 Hydro notified Idaho Power of a subsequent Force Majeure event—the delayed shipment of its turbine and generator from Wuhan, China, due to the novel coronavirus epidemic. On March 13, 2020, MC6 provided additional information. On March 20, 2020, Idaho Power notified MC6 Hydro that it accepted the request for a Force Majeure event due to the delayed shipment. Idaho Power considered the Force Majeure event to end when the generator and turbine arrived at the project construction site, by September 30, 2020.

A Force Majeure event suspends performance of the obligations under the contract for the duration of the event. As a result, MC6 Hydro’s obligation to meet the scheduled operation date—and Idaho Power’s obligation to calculate delay damages for delays in the date—were suspended while the Force Majeure events were ongoing. *See* Response to Staff’s Production Request No. 1. Staff believes no delay damages should be collected during the Force Majeure phase.

Non-Force Majeure Phase

For months during the Non-Force Majeure phase, no delay damages were triggered due to two reasons: (1) the contract’s monthly estimated generation amounts were zero from November through February of each year; and (2) the Delay Price is less than zero for the remaining months.

“Delay Damages” in the ESA are defined as “[c]urrent month’s Initial Year Monthly Estimated Net Energy Amount as specified in paragraph 6.2.1 as of the Effective Date divided by the number of days in the current month multiplied by the number of days in the Delay Period in the current month multiplied by the current month’s Delay Price.” *See* ESA at 2, Case No. IPC-E-18-09. Because the Initial Year Monthly Estimated NEA are zero from November through February, delay damages would be zero for these months.

Delay Price in the ESA is defined as “[t]he current month’s Mid-Columbia Market Energy Cost minus the current month’s All Hours Energy Price as specified in Appendix D of this Agreement. If this calculation results in a value less than zero (“0”), the result of this

calculation will be zero (“0”).” *Id.* Based on this definition, delay damages are calculated to be zero during months for the remaining months. *See* Response to Staff’s Production Request No. 1. Therefore, Staff believes no delay damages should be collected during the Non-Force Majeure phase.

Change in Nameplate Capacity

The proposed Second Amendment changes the nameplate capacity from 2.1 MW to 2.3 MW. Staff recommends approval of this change because the installed generator is 2.3 MW.

Avoided Cost Rates

Because the installed generator is 0.2 MW larger than originally approved, Staff believes it reasonable to recognize the original avoided cost rates in the ESA for the original nameplate capacity of 2.1 MW and use the avoided cost rates that were effective when the Second Amendment was signed for the incremental 0.2 MW. Staff specifically recommends the following two sets of avoided cost rates be used between the Company and the Seller. First, 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. Second, any hourly generation above 2.1 MWhs will use the avoided cost rates (in Attachment A) effective August 11, 2021, when the Second Amendment was signed by both parties.

90/110 Rule

Staff recommends implementing the 90/110 Rule by blending two sets of All Hours Energy Price contained within the two sets of avoided cost rates described above: one set of All Hours Energy Price for any hourly generation equal to or less than 2.1 MWhs and one set of All Hours Energy Price for any hourly generation above 2.1 MWhs.

To calculate the blended All Hours Energy Price, the Company will multiply the total amount generated equal to or less than 2.1 MWhs for each hour by the first set of All Hours Energy Price. Then, the Company will determine the total amount generated above 2.1 MWhs for each hour and multiply it by the second set of All Hours Energy Price. The blended All Hours Energy Price is calculated by dividing the sum of the two amounts by the total generation for that month. Last, the blended rate will be compared against 85 percent of the market price,

and the lower number will be applied to the energy generated outside the 90/110 band for that month.

Lapsed Period Operating under Incorrect Rates

The Facility has been operating since April 5, 2021, with rates contained under the ESA that does not have a two-part rate reflecting the higher nameplate capacity. Staff is not concerned because the hourly generation amount has not exceeded 2.1 MWhs over the past 6 months. However, the Facility did [REDACTED] making it likely that the Facility will generate above 2.1 MWhs in an hour again. This generation data reinforces Staff's recommendation that the facility should operate with the two-part rate to ensure the Seller is compensated fairly and accurately.


STAFF RECOMMENDATIONS

Staff recommends the Commission approve the Second Amendment contingent upon including the following updates:

1. Include the provision that addresses modifications to the Facility;
2. Adopt two sets of avoided cost rates described above; and
3. Implement the 90/100 Rule based on two sets of avoided cost rates.

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 28 day of October 2021.



Riley Newton
Deputy Attorney General

Technical Staff: Yao Yin

[i:umisc/comments/ipce21.30mnyy](https://www.irs.gov/umisc/comments/ipce21.30mnyy) comments

Year	Base Energy Heavy Load Purchase Price (Mills/kWh)			Base Energy Light Load Purchase Price (Mills/kWh)			All Hours Energy Price (Mills/kWh)		
	Season 1	Season 2	Season 3	Season 1	Season 2	Season 3	Season 1	Season 2	Season 3
2021	22.91	37.40	31.17	17.56	28.66	23.89	20.53	33.51	27.93
2022	23.47	38.32	31.93	18.12	29.59	24.65	21.09	34.43	28.69
2023	22.78	37.20	31.00	17.43	28.46	23.72	20.40	33.31	27.76
2024	21.74	35.49	29.57	16.39	26.75	22.29	19.35	31.60	26.33
2025	22.99	37.53	31.28	17.64	28.80	24.00	20.61	33.65	28.04
2026	46.49	75.90	63.25	41.14	67.17	55.97	44.11	72.02	60.01
2027	47.97	78.32	65.26	42.62	69.58	57.98	45.59	74.43	62.03
2028	49.86	81.41	67.84	44.51	72.67	60.56	47.48	77.52	64.60
2029	51.71	84.42	70.35	46.36	75.69	63.07	49.33	80.53	67.11
2030	52.87	86.32	71.93	47.52	77.58	64.65	50.49	82.43	68.69
2031	54.23	88.54	73.79	48.88	79.81	66.51	51.85	84.65	70.55
2032	56.05	91.51	76.26	50.70	82.78	68.98	53.67	87.62	73.02
2033	57.71	94.22	78.52	52.36	85.48	71.24	55.33	90.33	75.28
2034	59.05	96.41	80.34	53.70	87.67	73.06	56.67	92.52	77.10
2035	60.29	98.43	82.03	54.94	89.70	74.75	57.91	94.54	78.79
2036	61.48	100.37	83.64	56.13	91.64	76.36	59.10	96.48	80.40
2037	62.36	101.80	84.84	57.00	93.07	77.56	59.97	97.92	81.60
2038	64.09	104.63	87.19	58.74	95.90	79.91	61.71	100.74	83.95
2039	65.08	106.25	88.54	59.73	97.51	81.26	62.70	102.36	85.30
2040	66.29	108.23	90.19	60.94	99.50	82.91	63.91	104.35	86.96
2041	67.48	110.16	91.80	62.12	101.43	84.52	65.09	106.28	88.56


CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 28th DAY OF OCTOBER 2021, SERVED THE FOREGOING **REDACTED COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. IPC-E-21-30, BY E-MAILING A COPY THEREOF, TO THE FOLLOWING:

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