

Peter J. Richardson
ISB No. 3195
Richardson Adams, PLLC
515 N. 27th Street
P.O. Box 7218
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonadams.com
Attorneys for the Industrial Customers of Idaho Power

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)
COMPANY'S APPLICATION FOR) CASE NO. IPC-E-21-33
APPROVAL OR REJECTION OF AN)
ENERGY SALES AGREEMENT WITH)
IDAHO POWER COMPANY AND J.R.) REPLY COMMENTS OF THE J. R.
SIMPLOT COMPANY FOR THE SALE AND) SIMPLOT COMPANY
PURCHASE OF ELECTRIC ENERGY FROM)
THE SIMPLOT-POCATELLO CSPP PROJECT)

COMES NOW, The J. R. Simplot Company, hereinafter referred to as "Simplot" and pursuant to Order No. 35212 of the Idaho Public Utilities Commission ("Commission"), and hereby files its Reply Comments in response to the Comments lodged by the Commission's Staff on November 23, 2021.

The PUC Staff filed comments generally supportive of approval of the proposed energy sales agreement (ESA) between Simplot and the Idaho Power Company (Idaho Power).

However, the Staff also recommended the inclusion of the following paragraph in the ESA, which would upset the duly negotiated and executed ESA by both Idaho Power and Simplot:

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.

Staff offered no legal or practical justification for its recommendation other than a representation that such clause has been included in some other PURPA contracts filed by Idaho Power. Staff's argument fails because it rests on no legal or contractual principal and it upsets the arrangement that has been negotiated and agreed to by the parties.

Staff asserts that that agreement "does not contain any provision to address modifications to the Facility." However, Article 23 of the Agreement contains a provision for approval by both parties (and subsequent Commission approval) for any modifications to the ESA. In addition, the ESA at Appendix B contains the following detailed description of the project:

The facility generates electric energy with the waste heat from an exothermic reaction that occurs in the production of sulfuric acid in the J.R. Simplot Company's Don Plant fertilizer production facility. The turbo generator is a General Electric synchronous generator with a three-phase nameplate rating of 18.87 MVA at 13.2 kV three phase, 60 hertz, driven by steam turbine. The nameplate capacity rating of the generator is 15.9 MW. The waste heat steam captured from the exothermic reaction moves through a 625 PSIG header leading to the turbo generator described above. After production of electricity in the generator, the steam is then used for processes in the fertilizer production facility in topping cycle cogeneration process. Facility Nameplate Capacity: 15.9 MW Var Capability (Both leading and lagging) Leading is 0.9 Lagging is 0.9 Qualifying Facility Category (Small Power Production or Cogeneration): Cogeneration Primary Energy Source (Hydro, Wind, Solar, Biomass, Waste, Geothermal): Waste Fueled or Non-Fueled Rate (Generator primarily fueled with fossil or non-fossil fuel): Non-Fueled

Any changes to the project that are contemplated in Staff's proposed language would already be adequately addressed as a required amendment to Appendix B to the ESA. In addition, any such changes would have to be approved by the Commission pursuant to ESA Article 23. Thus, Staff's recommendation, in addition to unreasonably authorizing the agreement's unilateral termination by Idaho Power, is unnecessarily redundant as the contract does already address modifications.

Simplot also substantively objects to the inclusion of this proffered clause due to the fact that it provides Idaho Power with the unilateral (“at its sole determination”) right to terminate the contract and impose termination damages on Simplot. Granting the counterparty to a contract the unilateral and unfettered right to terminate is contrary to the spirit and intent of the agreement negotiated between Idaho Power and Simplot. The agreement is already enforceable by its terms and the consequences for any breach by Simplot (and related remedies for Idaho Power for such a breach) are already adequately addressed by the contract’s terms.

DATED this 30th day of November 2021



Peter J. Richardson
RICHARDSON ADAMS, PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of November 2021, a true and correct copy of the within and foregoing REPLY COMMENTS OF THE J.R. SIMPLOT COMPANY in Docket No. IPC-E-21-33 was served electronically to:

IDAHO POWER COMPANY

Donovan Walker

ldwalker@idahopower.com
dockets@idahopower.com
energycontracts@idahopower.com

COMMISSION STAFF

Riley Newton

riley.netwon@puc.idaho.gov

COMMISSION SECRETARY

Jan Noriyuki

jan.noriyuki@puc.idaho.gov
secretary@puc.idaho.gov

A handwritten signature in blue ink, appearing to read "Peter Richardson", written over a horizontal line.

Peter Richardson
RICHARDSON ADAMS, PLLC