

RECEIVED
Wednesday, January 11, 2023 3:07:22 PM
IDAHO PUBLIC
UTILITIES COMMISSION

MEGAL GOICOECHEA ALLEN
Corporate Counsel
mgoicoecheaallen@idahopower.com

January 11, 2023

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-22-28
Lower Lowline, LLC – Lowline #2 Hydro Project
Idaho Power Company's Application re Energy Sales Agreement

Dear Ms. Noriyuki:

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

Very truly yours,



Megan Goicoechea Allen

MGA:cld
Enclosures

DONOVAN E. WALKER (ISB No. 5921)
MEGAN GOICOECHEA ALLEN (ISB No. 7623)
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-5317
Facsimile: (208) 388-6936
dwalker@idahopower.com
mgoicoecheaallen@idahopower.com

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-22-28
APPROVAL OR REJECTION OF AN)	
ENERGY SALES AGREEMENT WITH)	IDAHO POWER COMPANY'S
LOWER LOWLINE LLC, FOR THE SALE)	REPLY COMMENTS
AND PURCHASE OF ELECTRIC ENERGY)	
FROM THE LOWLINE #2 HYDRO)	
PROJECT.)	
)	
)	
)	

COMES NOW, Idaho Power Company ("Idaho Power" or "Company") and, pursuant to Idaho Public Utilities Commission's ("Commission") Rule of Procedure¹ 203 and the Notice of Modified Procedure, Order No. 35620, hereby respectfully submits the following Reply Comments in response to Comments of the Commission Staff ("Staff") in this case.

¹ Hereinafter cited as RP.

I. INTRODUCTION

The Company appreciates Staff's thorough analysis of the replacement Energy Sales Agreement ("ESA") between the Company and Lower Lowline LLC ("Lowline #2") for energy generated by the Lowline #2 Hydro Project, a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and offers these comments to discuss Staff's recommendation for a modification of the ESA as a condition of approval. While the Company believes the proposed ESA complies with PURPA and the Commission's orders directing the implementation of PURPA in Idaho, it understands Staff's desire for clarity and consistency and is willing to add more explicit language as proposed herein in an effort to ensure the contract description matches actual facility parameters.

In reviewing the ESA, Staff focused on the following: (1) eligibility for and the amount of capacity payments; (2) the 90/110 rule with at least five-day advance notice for adjusting Estimated Net Energy Amounts; (3) avoided cost rates; and (4) Article XXIII "Modifications" of the ESA. As to the first three matters, Staff concluded that the replacement ESA included the necessary Idaho-specific provisions in compliance with prior Commission orders and that the avoided cost rates were accurate.

With respect to the final review item, Staff acknowledges that Article XXIII "addresses a potential situation in which the Seller seeks to modify the Facility that may require a change in rates." Staff Comments, p. 3. It recommended, however, that Article XXIII be amended to address the potential circumstances in which "the actual modification deviates from the proposed and approved modification," citing to Order No. 35506 from

II. BACKGROUND

Staff's recommendation that the parties update the ESA's modification provision stemmed from the Commission's recent decision in a case filed by PacifiCorp d/b/a/ Rocky Mountain Power ("PacifiCorp") for approval or rejection of a power purchase agreement ("PacifiCorp PPA") with a PURPA QF (Case No. PAC-E-22-08, Order No. 35506). In that case, Staff's review of the PacifiCorp PPA noted, among other concerns, the lack of detailed provisions to adequately address potential modifications to the facility and overlooked the requirement for Commission approval before any modification becomes valid.³ While Idaho Power understands Staff's concerns with, and recommendations for, the PacifiCorp PPA, it believes the Lowline #2 ESA is distinguishable and does not lack the provisions regarding modification that were at issue in that case.

Though Staff Comments in the instant case did not include a discussion of the underlying rationale, Staff's Comments in Case No. PAC-E-22-08 provide additional details of the potential circumstances at issue including description of the two types of facility modifications: (1) occurs when the completed project deviates from what was approved in the contract; and (2) occurs after the project is built where modifications are made to the originally built project.⁴ The first type of modification was addressed by the Commission in Case No. IPC-E-21-26, Order No. 35239, with the Commission's determination that, to help avoid errors of facility size with respect to new PURPA

² *In the Matter of Rocky Mountain Power's Application for Approval or Rejection of the Power Purchase Agreement with Amy Family Holdings, LLC*, Case No. PAC-22-08, Order No. 35506 (Aug. 19, 2022).

³ *Id.*, Comments of the Commission Staff, p. 4-6 (Jul. 29, 2022).

⁴ *Id.*

contracts, a provision should be included that “requir[es] the QF to submit an ‘as-built’ description of the facility by the first operation date. If the ‘as-built’ description does not match the description in the original approved contract, the contract should be amended to reflect the ‘as-built’ description.”⁵ The second type of modification, changes to an existing project, provided the basis for Staff’s recommendation in PAC-E-22-08 to include a provision that any major modifications causing the project to deviate from the as-built description⁶ will trigger an amendment requiring Commission approval.

Regardless of the type of modification, Staff’s efforts to ensure that potential changes to a qualifying facility are adequately accounted for in the contract help achieve the ultimate goal of preventing overpayments of avoided cost of capacity. Idaho Power agrees with this objective and does not object to adding more explicit language to the ESA as proposed herein to ensure it clearly and comprehensibly reflects the Commission’s intent.

III. COMPARITIVE ANALYSIS

PacifiCorp PPA – Case No. PAC-E-22-08

The underlying context for the PacifiCorp example relied on by Staff is important as the amendments directed by the Commission in that case were intended to remedy the perceived deficiencies based on the specific language of that contract. That situation is readily distinguishable from the language in the Lowline #2 ESA at issue in this case insofar as Article XXIII directly addresses modification and already contains the provisions found to be lacking in the PacifiCorp PPA. Perhaps most significantly, the PacifiCorp PPA

⁵ *In the Matter of the Application of Idaho Power Company for Approval or Rejection of an Energy Sales Agreements with Michael Branchflower, for the Sale and Purchase of Electric Energy from the Trout-Co Hydro Project*, Case No. IPC-E-21-26, Order No. 35239, p. 5 (Nov. 30, 2021).

⁶ Staff noted the description of the facility as built was included in Exhibit B to the PPA.

did not include a separate modification provision but addressed modifications indirectly through the default provisions. The only other reference to modification in the initial PacifiCorp PPA related to the need for a signed writing in order to modify the agreement; Section 21 “Entire Agreement” provided: “No modification of this Agreement is effective unless it is in writing and executed by both Parties.”

In their comments on PacifiCorp’s application Staff noted that the PPA, as initially drafted, neglected the significance of Commission approval of modifications and, additionally, would allow a QF to modify its facility, including increasing its capacity and output, without modifying the contract. Staff was concerned that the failure to clearly address these matters in the PPA could result in the QF being compensated for potential increases in output due to facility upgrades regardless of the need for additional capacity.

The Commission agreed with Staff’s concerns and recommendation to include additional detail to address the potential for facility modifications. In pertinent part, it directed that the PPA be amended to include the following:

1. Language that restricts the Seller from modification of the Facility from the as-built description of the Facility included in Exhibit B, without promptly notifying the Company of that intent.
2. Language that requires the Seller to provide notification of planned modifications (such as fuel change or capacity size change) to the as-built description.
3. Language that the Parties will need to amend the contract again to reflect the actual modification and seek approval from the Commission if the actual modification deviates from the proposed modification.

See Order No. 35506, p. 4. Additionally, the Commission instructed PacifiCorp to replace “[n]o modification of this Agreement is effective unless it is in writing and executed by both Parties” in Section 21 of the PPA with “No modification of this Agreement is effective

unless it is in writing and executed by both Parties and subsequently approved by the Commission.”

To comply with the Commission’s order PacifiCorp filed an Amended PPA to address facility modifications, Company notification of modification obligations, and expressly state that modifications to the PPA required Commission approval, which the Commission approved in Order No. 35554 on October 7, 2022.

Idaho Power and Lowline #2 ESA – Case No. IPC-E-22-28

The Company understands and appreciates Staff’s concern regarding the potential for overpayments of avoided cost of capacity due to overgeneration, which Staff and the Commission believed was not adequately addressed in the initial PacifiCorp PPA in Case No. PAC-E-22-08 and resulted in the Commission directing amendments to meet certain requirements. In contrast, unlike the initial PacifiCorp PPA, the Lowline #2 ESA includes a particularized, detailed modification provision. Article XXIII “Modification” states:

The Seller will promptly notify Idaho Power if they are intending to modify the Facility prior to initiating the modification design, specification purchasing and construction process. 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. No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

Notably, this provision directly contemplates potential modifications of the Facility and addresses the areas of concern identified by Staff and the Commission including the requirement of notification to the Company of intent to modify, the

possibility that facility modification could result in pricing adjustment or termination of the ESA, and the requirement for Commission approval of modifications.

Thus, while the Company agrees with Staff that modifications to an approved facility, particularly those that change the output of the facility, could be problematic, it believes that these concerns are sufficiently addressed under the current contract language. Though the Company believes that the ESA as written adequately accounts for the potential circumstance identified by Staff in its recommendation (in which the actual modification deviates from the proposed and approved modification), it is willing to amend Article XXIII of the ESA to more clearly and explicitly address the Commission's orders addressing the different types of facility modifications including reformatting that provision for clarity. The Company's proposed modification to Article XXIII is attached to these Reply Comments as Exhibit A, in red-line format.

IV. CONCLUSION

Idaho Power appreciates Staff's review and consideration of the issues in this case and the opportunity to offer these Reply Comments to address Staff's recommendations. While the Company believes that the potential circumstances identified by Staff are already sufficiently addressed under the current contract language, it is willing to add more explicit language to ensure clarity and consistency as set forth herein. Subject to that revision if the Commission deems it appropriate, Idaho Power respectfully requests that the Commission issue an order consistent with Staff's recommendations to accept the ESA between Idaho Power and Lowline #2 and declare that all payments for purchases of energy under the ESA between Idaho Power and Lowline #2 be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 11th day of January 2023.

A handwritten signature in black ink that reads "Megan Goicoechea Allen". The signature is written in a cursive style with a large initial 'M' and 'A'.

MEGAN GOICOECHEA ALLEN
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January 2023, I served a true and correct copy of the within and foregoing Idaho Power Company's Reply Comments upon the following named parties by the method indicated below, and addressed to the following:

Michael Duval
Deputy Attorney General
Idaho Public Utilities Commission
11331 W. Chinden Blvd., Bldg No. 8,
Suite 201-A (83714)
PO Box 83720
Boise, ID 83720-0074

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 FTP Site
 Email: michael.duval@puc.idaho.gov

Louis Zamora
Twin Falls Canal Company
P.O. Box 326
Twin Falls, Idaho 83303

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email lzamora@tfcanal.com



Christy Davenport, Legal Assistant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-22-28**

IDAHO POWER COMPANY

ATTACHMENT 1

ARTICLE XXIII: MODIFICATION

- 23.1 No later than the First Energy Date, the Seller will provide Idaho Power with an “as-built” description of the Facility in the form set forth in Appendix B, section B-1.
- 23.2 The Seller will promptly notify Idaho Power if they are intending to modify the Facility prior to initiating the modification design, specification, purchasing and construction process. In addition to prior notification, the Seller will provide Idaho Power an “as-built” description of the Facility in the form set forth in Appendix B, section B-1, no later than thirty (30) days following the date of substantial completion of such modification.
- 23.3 Idaho Power will review any proposed Facility modifications and “as-built” descriptions. Any modifications to the Facility as described in the then-current Appendix B, 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 other relevant terms and conditions, including, as necessary, Appendix B, or terminate the Agreement. If the pricing or other terms and conditions are adjusted, the Parties will enter into an amendment to the Agreement, which will be submitted to the Commission for approval. If the Agreement is terminated because of said modifications, the Seller will be responsible for any Termination Damages.
- 24.4 No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.