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March 31, 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 Compliance Filing 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  
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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 ) COMPLIANCE FILING  
AND PURCHASE OF ELECTRIC ENERGY )  
FROM THE LOWLINE #2 HYDRO )  
PROJECT. )  
\_\_\_\_\_ )

COMES NOW, Idaho Power Company ("Idaho Power" or "Company"), pursuant to Idaho Public Utilities Commission ("Commission") Order No. 35705, hereby respectfully submits the following compliance filing pertaining to the Energy Sales Agreement ("Agreement") between the Company and Lower Lowline LLC ("Seller") for energy generated by the Lowline #2 Hydro Project, a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

## I. BACKGROUND

1. Idaho Power appreciates the Commission's thorough review and assessment of the Company's proposed replacement Energy Sales Agreement between Idaho Power and Seller. In Order No. 35705, issued on March 13, 2023, the Commission addressed, in part, Staff's recommendations in that case related to Article XXIII "Modifications" as well as Idaho Power's proposed revisions in response. In recognition of Staff's desire for clarity and consistency, the Company had proposed a modification to Article XXIII to add more explicit language in an effort to ensure the contract description matches actual facility parameters and more clearly incorporate the Commission's orders addressing the different types of facility modifications. However, the Commission found that the Company's proposal did not fully address its concerns and, as a result, directed the Company to make specific amendments to the Agreement and provide a compliance filing within 15 days of its Order.

2. The 15-day compliance deadline was extended to March 31, 2023, to allow the Company additional time to work with the QF parties and Staff to reach consensus upon acceptable contract language that meets the Commission's directives in this case as well as the overlapping recommendations set forth in Staff's Comments in the case pertaining to the Bypass Hydro Project (Case No. IPC-E-23-02), which were also issued on March 13, 2023.<sup>1</sup>

## II. THE FIRST AMENDMENT

3. Both the Commission's Order in the instant case and Staff's

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<sup>1</sup> *In the Matter of Idaho Power Company's Application for Approval or Rejection of an Energy Sales Agreement with Northside Energy Company, Inc. for the Sale and Purchase of Electric Energy from the Bypass Hydro Project, Case No. IPC-E-23-02.*

recommendations in Case No. IPC-E-23-02, raised concerns that the existing provision in the Company's standard PURPA Agreement related to possible QF modifications may not adequately cover the range of possible scenarios involving Facility modifications. Likewise, both the Commission and Staff identified shortcomings with the Company's proposed revisions to the contract language, which sought to more clearly incorporate the Commission's orders regarding the different types of facility modifications but was determined by the Commission in the present case to not fully address its concerns.

4. More specifically, the Commission determined that additional language needed to be added to the Agreement to ensure that the QF is paid the proper and authorized rate as of the first operation date after Facility modification and that the description of the Facility reflected in the final amendment describe the Facility as actually modified.

5. In an effort to reach alignment on the contract language and amendments pertaining to Facility modifications and related issues, the Company met with Staff, QF Seller representatives from Lowline and Bypass Hydro, and counsel for IdaHydro on March 23<sup>rd</sup> with subsequent follow-up to discuss the issues and exchange information and ideas with a goal of implementing the Commission's intent in both cases and in Energy Sales Agreements moving forward. As a result of these efforts, Staff and the Company, as well as the Seller, have agreed on modifications to Article XXIII of the Agreement.

6. Filed herewith as Attachment 1 is the fully executed First Amendment to the Agreement Between Seller and Idaho Power Company ("First Amendment"), which was entered into by the parties to incorporate the direction from, and comply with, Commission

Order No. 35705. More specifically, to address the issues identified by the Commission, the First Amendment amends the language of Article XXIII regarding Facility modification to ensure: (1) that the QF is paid the proper and authorized rate as of the first operation date after Facility modification; and (2) that the description of the Facility reflected in the final amendment describes the Facility as actually modified to include provisions that address: (i) Language that restricts the Seller from modifying the Facility from the as-built description of the Facility included in Exhibit B, without promptly notifying the Company of that intent; and (ii) Language that requires the Seller to provide notification of planned modifications (such as fuel change or capacity size change) to the as-built description.

7. In addition, the First Amendment adds language to ensure that both Parties agree to: (1) amend the contract reflecting the facility as actually modified, and (2) adjust payments to the QF such that the final amounts reflect the proper authorized rates of the facility as actually modified and as of the date when energy is first delivered as a modified facility. In particular, this adjustment provision is meant to address the Commission's directive that Idaho Power "only include net power supply expense in the Company's Power Cost Adjustment that reflects the proper authorized rate for all energy delivered as of the first operation date as a modified Facility."

### **III. CONCLUSION**

8. Idaho Power appreciates the Commission's review and consideration of the issues in this case and the opportunity to make this compliance filing to address the Commission's concerns. Idaho Power believes the attached and executed First Amendment makes the necessary changes to the Agreement required to implement the Commission's directives and respectfully requests that the Commission approve the

Agreement between Idaho Power and Seller, the First Amendment thereto, and declare that all payments for purchases of energy thereunder be allowed as prudently incurred expenses for ratemaking purposes.

Respectfully submitted this 31<sup>st</sup> day of March 2023.

A handwritten signature in black ink that reads "Megan Goicoechea Allen". The signature is written in a cursive, flowing style.

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MEGAN GOICOECHEA ALLEN  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31<sup>st</sup> day of March 2023, I served a true and correct copy of the foregoing Idaho Power Company's Compliance Filing 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](mailto: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](mailto:lzamora@tfcanal.com)



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Christy Davenport  
Legal Administrative Assistant

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

**IDAHO POWER COMPANY**

**ATTACHMENT 1**



**FIRST AMENDMENT TO THE POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**IDAHO POWER COMPANY**  
**AND**  
**LOWER LOWLINE, LLC**

This First Amendment to the Power Purchase Agreement (“First Amendment”) is effective as of March 30, 2023 (“Effective Date”) and is entered into by and between Idaho Power Company, an Idaho corporation (“Idaho Power”) and Lower Lowline, LLC (“Seller”), (individually a “Party” and collectively the “Parties”).

WHEREAS, Idaho Power entered into the Energy Sales Agreement (“ESA”) with the Seller on October 13, 2022, for the purchase and sale of energy under the Idaho Public Utilities Commission’s (“Commission”) implementation of the Public Utility Regulatory Policies Act of 1978 (“PURPA”). This 2022 ESA is a replacement contract. The parties have an existing PURPA contract that was entered into on September 12, 1986, and runs its full term on April 30, 2023. Idaho Power filed the 2022 replacement ESA with the Commission for approval or rejection on November 9, 2022. Case No. IPC-E-22-28.

WHEREAS, the Commission issued Order No. 35705 on March 13, 2023, approving the ESA with an effective date of May 1, 2023, conditioned upon the Parties amending the Article XXIII of the ESA regarding modification of the Facility and ESA to ensure: (1) that the QF is paid the proper and authorized rate as of the first operation date after Facility modification; and (2) that the description of the Facility reflected in the final amendment describe the Facility as actually modified to include provisions that address: (1) Language that restricts the Seller from modifying the Facility from the as-built description of the Facility include in Exhibit B, without promptly notifying the Company of that intent; and (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. The Commission further instructed that such language needed to ensure that both Parties agree to: (1) amend the contract reflecting the facility as actually modified, and (2) adjust payments to the QF such that the final amounts reflect the proper authorized rates of the facility as actually modified and as of the date when energy is first delivered as a modified facility. The Commission also stated, “the Commission directs the Company [Idaho Power] to only include net power supply expense in the Company’s Power Cost Adjustment that reflects the proper authorized rate for all energy delivered as of the first operation date as a modified Facility.” Order No. 35705, p 4.

WHEREAS, the Parties desire to enter into this First Amendment to the PPA to address the conditions required by Commission and submit the same for the Commission’s approval of the ESA with this First Amendment.

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 the PPA, as amended, by this reference to the same extent as if these recitals were set forth in full at this point.

2. **Amendment.**

A. Appendix B - Section B-1 of Appendix B of the ESA shall be amended as follows: (new language is underlined, and deleted language uses ~~strikethrough~~).

“... The Lowline #2 hydro facility is located on the Snake River, near Twin Falls, Idaho. The project includes the installation of a single 2790 kW ~~vertical~~ horizontal Kaplan turbine generating unit. ...”

B. Article XXIII - Article XXIII of the ESA is hereby deleted in its entirety and replaced with the following provisions:

ARTICLE XXIII: FACILITY 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.

23.2 The Seller will not modify the Facility from the description set forth in Appendix B without prior notification to Idaho Power. A proposed modification to the Facility that would change the Facility as described in Appendix B is referred to herein as a “Proposed Facility Modification.” Proposed Facility Modification does not include additions or expansions to the Facility that result in an increase to the Maximum Capacity Amount, which are addressed in section 23.6. The Seller may not begin construction of any Proposed Facility Modification(s) unless and until the following requirements have been met:

- (i) Seller has promptly notified Idaho Power of the Proposed Facility Modification(s) prior to initiating the modification design, specification, purchasing and construction process;
- (ii) Seller has provided Idaho Power with detailed plans regarding the Proposed Facility Modification(s), including proposed revisions to the as-built description of the Facility set forth in Exhibit B; and
- (iii) The Proposed Facility Modification has been reviewed by Idaho Power and a determination made to either pursue amendment as a Proposed Facility Modification pursuant to sections 23.3 and 23.4 or as an expansion or additional project pursuant to Section 23.6.

23.3 Idaho Power will review any Proposed Facility Modification(s) and “as-built” descriptions to determine whether amendment of the Agreement is appropriate as set forth in Section 23.4. In reviewing any Proposed Facility

Modification(s) or actual modifications reflected in the as-built description, Idaho Power shall consider the following information: (i) The nature, scope, and extent of the proposed or actual modification(s); (ii) The impact, if any, on the applicable avoided cost rates or other relevant terms and conditions; and (iii) Such other information as may reasonably be necessary including the effect on any other provisions hereof which may be impacted by the proposed or actual modification. Proposed modifications could result in several possible actions including but not limited to: no change to Appendix B, and thus no further action; an amendment to conform Appendix B to the modified Facility; an amendment to adjust the pricing and other relevant terms and conditions; or a termination and new Agreement.

23.4 Based on its review, Idaho Power, at its sole determination in accord with the provisions of the Public Utility Regulatory Policies Act of 1978 and any amendments thereto (“PURPA”) and subject to Commission approval, may choose to enter into an amendment of the Agreement to adjust the pricing or other relevant terms and conditions as necessary, including Appendix B;

23.4.1 If Idaho Power determines that it is appropriate to revise the Agreement, the Parties will enter into a written amendment to the Agreement revising the relevant terms, conditions, description in Appendix B, and, if necessary, pricing, referred to herein as the “Facility Modification Amendment”. The Facility Modification Amendment will be submitted to the Commission for approval. If the pricing is adjusted, the Parties will agree on and include in the amendment a pricing true-up mechanism to ensure that the correct rates apply to the modified Facility from the completion date of the modification.

23.4.2 If the Commission determines that the Proposed Facility Modification would require termination of the Agreement, the Seller may abandon the Proposed Facility Modification or accept the termination. If the Seller accepts the termination, Seller will be responsible for Termination Damages, if any, and the Parties may negotiate a new agreement based on the Facility as modified.

23.5 In addition to prior notification of any modifications to the Facility from the description set forth in Appendix B, no later than thirty (30) days following the date of substantial completion of such modification, and prior to the first operation date of such modification, Seller must provide Idaho Power with an “as-built” description of the modified Facility in the form set forth in Appendix B of this Agreement; provided that the Facility, as reflected in the “as-built” description to be provided under this section, may not deviate from the Facility Modification Amendment, except, in each case, to the extent such further modification(s) are authorized under a subsequent written amendment to this Agreement that is executed by the Parties and approved by the Commission. If the “as-built” description deviates from

the then-approved Appendix B, Idaho Power will review it and follow the process described in sections 23.3 and 23.4.

- 23.6 Idaho Power is not required to purchase any Net Energy above the Maximum Capacity Amount. If Seller builds an expansion or additional project such that the expansion, or additional project would be deemed a single QF or the same site under FERC regulations, Seller may not require Idaho Power (and Idaho Power will have no obligation to purchase pursuant to this Agreement) the output of any such expansion, or additional facility under the terms, conditions and prices in this Agreement. Instead, Seller may exercise any rights to enter into a new agreement for the sale of such incremental energy from such additional facility that is a QF under then-applicable laws and regulations.
- 23.7 Idaho Power is not obligated to and shall not make any incremental payment to Seller as a result of any modification, addition, or expansion of the Facility if such modification was not authorized and approved by the Commission pursuant to the provisions of this Section 23. Should the Seller modify, construct additions, and/or expand the Facility without notification to Idaho Power nor the authorization and approval of the Commission pursuant to the provisions of this Section 23, any incremental payments to Seller resulting from and subsequent to the modification, addition, and/or expansion of the Facility that deviate from the description in Appendix B shall be unauthorized and immediately due and owing back to Idaho Power. Failure to repay, or reasonably offset future payments made to Seller designed to repay and recoup any unauthorized payment amounts will be deemed a material breach of this Agreement.

3. **Commission Approval.** The obligations of the Parties under this First Amendment are subject to the Commission's approval of this First Amendment and such approval being upheld on appeal, if any, by a court of competent jurisdiction.

4. **Effect of Amendment.** Except as expressly amended by this First Amendment, the terms and conditions of the PPA remain unchanged.

5. **Capitalized Terms.** All capitalized terms used in this First Amendment and not defined herein shall have the same meaning as in the PPA.

6. **Scope of Amendment.** This First 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 hereof.

7. **Authority.** Each Party represents and warrants that as of the Effective Date: (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 PPA, and (iii) it has the requisite authority to execute this First Amendment.

8. **Counterparts.** This First 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.

IDAHO POWER COMPANY

LOWER LOWLINE, LLC

By: Ryan N. Adelman

By: Louis Zamora

Name: Ryan N. Adelman

Name: Louis Zamora

Title: VP, Power Supply

Title: Project Manager