

DECISION MEMORANDUM

**TO: COMMISSIONER ANDERSON
COMMISSIONER LODGE
COMMISSIONER HAMMOND
COMMISSION SECRETARY
LEGAL**

**FROM: MICHAEL DUVAL
YAO YIN**

DATE: APRIL 25, 2023

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

BACKGROUND

On March 13, 2023, the Commission issued Order No. 35705, requiring the Parties to amend the proposed energy sales agreement (“ESA”) as a Compliance Filing within 15 days.

On March 17, 2023, Idaho Power filed Motion for Extension of Time to Make Compliance Filing to extend the deadline for the Company to make its compliance filing to March 31, 2023.

On March 24, 2023, the Commission issued Order No. 35722, granting the Company’s Motion and extend the deadline for the compliance filing to March 31, 2023.

On March 31, 2023, the Company filed the Compliance Filing.

On April 7, 2023, the Company filed an Errata to the Compliance Filing and provided a Replacement First Amendment to the ESA to correct typographical errors in the original Compliance Filing.

STAFF ANALYSIS

Staff reviewed the Replacement First Amendment and recommends that the Commission approve it. Staff believes the four requirements for the amended ESA from Order No. 35705 have been met including:

- **Requirement 1:** 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.
- **Requirement 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.
- **Requirement 3:** Language that requires Parties to amend the contract reflecting the Facility as actually modified.
- **Requirement 4:** Language that ensures that the ESA’s payment structure allows payment for only the proper authorized rates of the Facility as actually modified and as of the date when energy is first delivered as a modified Facility.

Specifically, Requirement 1 is met by paragraph 23.2 of the Replacement First Amendment contained in the Compliance Filing. Paragraph 23.2 states: “The Seller will not modify the Facility from the description set forth in Appendix B without prior notification to Idaho Power,” which applies to both Proposed Facility Modifications (which do not include additions or expansions) and proposed additions or expansions.

Requirement 2 is met by paragraph 23.2(ii) for Proposed Facility Modifications or the notification of planned modifications as additions or expansions from the Seller. Paragraph 23.2(ii) states: “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 Appendix B” which is one of the conditions that the Seller needs to meet to begin construction of any Proposed Facility Modifications.

Requirement 3 is met by paragraph 23.5, which states:

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 paragraph, 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 paragraphs 23.3 and 23.4.

Requirement 4 is met by paragraph 23.4.1 for Proposed Facility Modifications or paragraph 23.6 for proposed additions or expansions. For Proposed Facility Modifications, paragraph 23.4.1 states:

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.

Although Requirement 4 mandates proper authorized rates to be used from the date when energy is first delivered as a modified Facility, paragraph 23.4.1 requires correct rates to be used from the *completion date of the modification*, which is typically earlier than when energy is first delivered. For proposed additions or expansions, paragraph 23.6 states: “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 Qualified Facility under then-applicable laws and regulations.” Staff believes the “then applicable laws and regulations” referenced in paragraph 23.6 includes proper rates that will be applied from the date when energy is first delivered.

STAFF RECOMMENDATION

Staff recommends that the Commission approve the ESA with the Replacement First Amendment and declare that all payments for purchases of energy under the ESA and the Replacement First Amendment be allowed as prudently incurred expenses for ratemaking purposes.

COMMISSION DECISION

Does the Commission wish to approve the ESA with the Replacement First Amendment?



Michael Duval
Deputy Attorney General



Yao Yin
Utilities Analyst

Udmemos/IPC-E-22-28 Decision Memo