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IDAHO PUBLIC  
UTILITIES COMMISSION

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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-23-02  
Bypass Hydro Project  
Idaho Power Company's Application re Energy Sales Agreement with  
North Side Energy Company, Inc.

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,

A handwritten signature in black ink that reads "Megan Goicoechea Allen".

Megan Goicoechea Allen

MGA:cld  
Enclosures

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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-23-02
APPROVAL OR REJECTION OF AN	)	
ENERGY SALES AGREEMENT WITH	)	IDAHO POWER COMPANY'S
NORTH SIDE ENERGY COMPANY, INC.	)	REPLY COMMENTS
FOR THE SALE AND PURCHASE OF	)	
ELECTRIC ENERGY FROM THE BYPASS	)	
HYDRO PROJECT.	)	
	)	
	)	
	)	

COMES NOW, Idaho Power Company ("Idaho Power" or "Company") and, pursuant to Idaho Public Utilities Commission's ("Commission") Rule of Procedure<sup>1</sup> 203, the Notice of Modified Procedure, Order No. 35676, and Order No. 35720, hereby respectfully submits the following Reply Comments in response to Comments of the Commission Staff ("Staff") in this case.

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<sup>1</sup> Hereinafter cited as RP.

## I. INTRODUCTION

1. Idaho Power appreciates Staff's thorough review and assessment of the Company's proposed replacement Energy Sales Agreement ("ESA" or "Agreement") between Idaho Power and North Side Energy Company, Inc. ("North Side" or "Seller"), for energy generated by the Bypass Hydro Project, which is a qualifying facility ("QF" or "Facility") under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

2. In reviewing the Agreement, Staff focused on the following: Section B-7 Designated Network Resource ("DNR"), Facility nameplate capacity, capacity payments, avoided cost rates, and Article XXIII Modification. Staff did not identify any issues related to capacity payments or avoided cost rates. As to the other matters, Staff recommended the parties update the Agreement as follows:

- (1) Updating the incomplete statement contained in Section B-7;
- (2) Correcting the Facility nameplate capacity and explaining the difference between the Facility nameplate capacity (9999 kW) and the net nameplate capacity (9960 kW) in Appendix B;
- (3) Updating Article XXIII Modification to achieve two objectives: (1) the modified Facility operates under a correct and accurate contract that describes the characteristics and parameters of the modified Facility; and (2) the rates paid to the QF and recovered from ratepayers, starting from the first operation date after the Facility is modified, reflect the proper and authorized rate of the modified Facility; and
- (4) Including recovery of Net Power Supply Expenses ("NPSE") in the Power Cost Adjustment ("PCA") based on proper and authorized rates starting from the first operation date of any facility after it has been modified.

3. Idaho Power requested and was granted an extension of time to March 31, 2023, to file these Reply Comments to allow the Company additional time to work with the QF parties and Staff to reach consensus upon acceptable contract language that meets Staff recommendations in this case as well as the Commission's direction on these

same issues set forth in Order No. 35705, also issued on March 13, 2023, in the case pertaining to the Lowline #2 Hydro Project (Case No. IPC-E-22-28).<sup>2</sup>

## II. REPLY COMMENTS

4. Both Staff's recommendations in the instant case and the Commission's Order in Case No. IPC-E-22-28, 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, Staff's recommendations and the Commission's directive in Order No. 30575 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 which the Commission determined did not fully address its concerns.

5. 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.

6. 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, 2023 with subsequent follow-up to discuss the issues and to exchange

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<sup>2</sup> *In the Matter of Idaho Power Company's Application for Approval or Rejection of an Energy Sales Agreement with Lower Lowling, LLC for the Sale and Purchase of Electric Energy from the Lowline #2 Hydro Project, Case No. IPC-E-22-28, Order No. 35705 (Mar. 13, 2022).*

information and ideas with a goal of implementing the Commission's intent in both cases and in ESAs 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 ESA. Additionally, Idaho Power and the Seller have amended additional provisions as recommended by Staff's comments.

7. Filed herewith and included herein as Attachment 1 is the fully executed First Amendment to the Agreement Between Northside Energy Company, Inc. and Idaho Power Company ("First Amendment"), for the Bypass facility, which was entered into by the parties to incorporate the recommendations from Staff's March 13, 2023 Comments. More specifically, to address the issues identified by Staff and the Commission with regard to Article XXIII Modification, 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.

8. Additionally, 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."

9. The First Amendment submitted herewith also addresses the other issues identified by Staff as follows. The Parties agreed to amend Section B-1 of the ESA correcting the nameplate capacity to 9999 kW, which matches the manufacturer's nameplate stamping, while explaining that the Maximum Capacity Amount is a net of 9960 kW because of station use. The First Amendment also addresses the incomplete statement in Section B-7 regarding the Designated Network Resource requirements related to an existing project entering into a replacement ESA.

### **III. CONCLUSION**

10. 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. Idaho Power believes the attached and executed First Amendment makes the necessary changes to the Agreement required to implement Staff's recommendations and Idaho Power respectfully requests that the Commission approve the Agreement between Idaho Power and Northside Energy, 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 31st day of March 2023.



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MEGAN GOICOCHEA ALLEN  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31<sup>st</sup> day of March 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:

**Commission Staff**

Riley Newton  
Deputy Attorney General  
Idaho Public Utilities Commission  
11331 W. Chinden Blvd., Bldg No. 8,  
Suite 201-A (83714)  
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Hand Delivered  
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 FAX  
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Alan W. Hansten, General Manager  
North Side Energy Company  
921 N. Lincoln Ave.  
Jerome, ID 83338

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Email – [awh@northsidecanal.com](mailto:awh@northsidecanal.com)



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Christy Davenport, Legal Assistant

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-23-02**

**IDAHO POWER COMPANY**

**ATTACHMENT 1**



**FIRST AMENDMENT TO THE POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**IDAHO POWER COMPANY**  
**AND**  
**NORTHSIDE ENERGY COMPANY, INC.**

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 Northside Energy Company, Inc. (“Seller”), (individually a “Party” and collectively the “Parties”).

WHEREAS, Idaho Power entered into an Energy Sales Agreement (“ESA”) with the Seller on January 3, 2023, 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 2023 ESA is a replacement contract. The parties have an existing PURPA contract that was entered into on November 12, 1986 and runs its full term on May 31, 2023. Idaho Power filed the 2023 replacement ESA with the Commission for approval or rejection on January 19, 2023. Case No. IPC-E-23-02.

WHEREAS, the Commission Staff filed comments regarding the ESA on March 13, 2023, recommending several updates to the ESA which include the following: (1) update the incomplete statement in Section B-7; (2) correct the facility nameplate capacity and explain the difference between the facility nameplate and net nameplate in Appendix B; (3) update Article XXIII Modification to achieve two objectives (a) the modified Facility operates under a correct and accurate contract that describes the characteristics and parameters of the modified Facility; and (b) the rate paid to the QF and recovered from ratepayers, starting from the first operation date after the Facility is modified, reflect the proper and authorized rate of the modified Facility; and (4) include recovery of Net Power Supply Expenses in the Power cost Adjustment based on proper and authorized rates starting from the first operation date of any facility after it has been modified.

WHEREAS, the Parties desire to enter into this First Amendment to the PPA to address the updates recommended by Commission Staff 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. Section B-7** - Section B-7 of Appendix B of the ESA is hereby amended to state: (new language is underlined, and deleted language uses ~~strikethrough~~).

~~This Facility is an Idaho Power DNR pursuant to an existing Firm Energy Sales Agreement. If this Agreement is 1) executed and approved by the Commission and 2) a GIA has been executed by both parties and 3) the Seller is in compliance with all requirements of that GIA. Idaho Power cannot accept or pay for generation from this Facility if the Facility has not achieved the status of being an Idaho Power DNR. Federal Energy Regulatory Commission (“FERC”) rules require Idaho Power to prepare and submit the application to achieve DNR status for this Facility. Because much of the information Idaho Power needs to prepare the DNR application is specific to the Seller’s Facility, Idaho Power’s ability to file the DNR application in a timely manner is contingent upon timely receipt of the required information from the Seller. Prior to Idaho Power beginning the process to enable Idaho Power to submit a request for DNR status for this Facility, the Seller shall have 1) filed a Generation Interconnection application, 2) submitted all information required by Idaho Power to complete the application, and 3) either executed this Agreement or, at a minimum, provided Idaho Power with confirmation of the Seller’s intent to complete this Agreement in a timely manner. Seller’s failure to provide complete and accurate information in a timely manner can significantly impact Idaho Power’s ability and cost to attain the DNR designation for the Seller’s Facility and the Seller shall bear the costs of any of these delays that are a result of any action or inaction by the Seller. This Facility is an Idaho Power DNR pursuant to an existing Firm Energy Sales Agreement. If this Agreement is 1) executed and approved by the Commission and 2) a GIA has been executed by both parties and 3) the Seller is in compliance with all requirements of that GIA, then the DNR status should continue.~~

**B. Facility Nameplate** - Section B-1 of Appendix B of the ESA is hereby amended to state: (new language is underlined, and deleted language uses ~~strikethrough~~).

A 35-year Firm Energy Sales Agreement for the Bypass Hydro Facility was executed on November 12, 1986. The Facility started delivering energy to Idaho Power in April of 1988. The 1986 agreement expires on May 31, 2023.

The Facility has 3 generators with nameplate ratings of 3333 kW each at 4160 volts, three phase, 60 hertz driven by Kaplan S-Type turbines. The Nameplate Capacity is 9999 kW, however t~~The net generator nameplate~~ capacity amount that can be delivered to Idaho Power less station service is 3320 kW per generator unit or 9960 kW total for the Facility, which is the Maximum Capacity Amount. See, Section B-4 below. These 3 generators are the original generators that were installed prior to April 1988.

Facility Nameplate Capacity: ~~9960~~9999 kW

Qualifying Facility Category (Small Power Production or Cogeneration): Small Power Production

Primary Energy Source (Hydro, Wind, Solar, Biomass, Waste, Geothermal): Hydro

Fueled or Non-Fueled Rate (Generator primarily fueled with fossil or non-fossil fuel): Non-Fueled.

**C. Article XXIII: Facility Modification** - 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

NORTHSIDE ENERGY COMPANY, INC.

By: Ryan N. Adelman

By: Alan Hansten

Name: Ryan N. Adelman

Name: Alan Hansten

Title: VP, Power Supply

Title: General Manager