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IDAHO PUBLIC
UTILITIES COMMISSION



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February 16, 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-23-03
Tamarack CSPP Project
Idaho Power Company's Application re Second Amendment to the Energy
Sales Agreement

Dear Ms. Noriyuki:

Attached for electronic filing is Idaho Power Company's Application 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

DONOVAN E. WALKER (ISB No. 5921)
MEGAN GOICOECHEA ALLEN (ISB No. 7623)
Idaho Power Company
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P.O. Box 70
Boise, Idaho 83707
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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-23-03
APPROVAL OF A SECOND AMENDMENT)	
OF THE ENERGY SALES AGREEMENT)	APPLICATION FOR APPROVAL
FOR THE SALE AND PURCHASE OF)	OF SECOND AMENDMENT TO
ELECTRIC ENERGY FROM THE)	ENERGY SALES AGREEMENT
TAMARACK CSPP PROJECT.)	
)	
)	
)	

Idaho Power Company (“Idaho Power”), in accordance with Idaho Public Utilities Commission (“Commission”) Rule of Procedure¹ 52 and the applicable provisions of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), hereby respectfully applies to the Idaho Public Utilities Commission (“Commission”) for an order approving the Second Amendment (“Amendment”) to the Energy Sales Agreement (“ESA”) for the sale and purchase of electric energy generated by the 6.25 MW Tamarack CSPP project, which is a PURPA Qualifying Facility (“QF”). The Second Amendment updates the name of the Seller to the ESA based on it recently consolidating its operations under a single entity.

In support of this Application, Idaho Power represents as follows:

¹ Hereinafter cited as RP.

I. INTRODUCTION AND BACKGROUND

1. Idaho Power and Evergreen Energy, LLC (“Evergreen Energy”) entered into an ESA on March 27, 2018 for the sale and purchase of electric energy generated by the 6.25 MW Tamarack CSPP project located in Adams County, Idaho. This ESA was approved by the Commission in Case No. IPC-E-18-04, Order No. 34075 issued on May 30, 2018.

2. On March 10, 2021, Idaho Power and Evergreen Energy entered into a First Amendment to the ESA to change the notification requirement for revising future monthly Estimated Net Energy Amounts from one-month advanced notice to a five-day advanced notice. The Commission approved the First Amendment in Case No. IPC-E-21-05, Order No. 35065 issued on June 8, 2021.

3. In December 2022, Evergreen Energy advised Idaho Power that it desired to consolidate its operations and merge into a single entity with Tamarack Mill, LLC (“Tamarack Mill”), which had the same ownership as Evergreen Energy. Pursuant to Part 2 of the Idaho Model Entity Transactions Act (Idaho Code §§30-22-201 through 30-22-206), the plan of merger involved Evergreen Energy merging with Tamarack Mill as the surviving entity, and Evergreen Energy ceasing to exist once the merger became effective on January 1, 2023.

4. As a result of this merger, Idaho Power, Evergreen Energy, Tamarack Mill entered into a Consent, Assignment, and Assumption Agreement, effective as of December 31, 2022, pursuant to which Evergreen Energy assigned and Tamarack Mill assumed the ESA, as amended, and the rights and obligations of Evergreen Energy thereunder, with Idaho Power’s consent. A copy of the Consent, Assignment, and Assumption Agreement is attached to this Application as Attachment 1.

5. In consideration of the merger and assignment, the parties agreed to amend the ESA as described below to ensure it correctly identifies the Seller.

II. THE AMENDMENT

6. The Second Amendment provides for changing the name of the Seller as contained within the ESA, as amended, from Evergreen Energy to Tamarack Mill as follows:

2. **Amendment.** In the entirety of the ESA, any reference to “Evergreen Energy, Inc” shall be replaced with “Tamarack Mill, LLC” from and after the date of completion of the merger described in the recitals above (i.e., January 1, 2023); provided, however, that any (i) action or obligation performed by Evergreen Energy, Inc.; (ii) notice sent or received by Evergreen Energy, Inc.; (iii) consent given or not given by Evergreen Energy, Inc.; (iv) representation or warranty made by Evergreen Energy, Inc., or (v) sums paid or incurred by Evergreen Energy, Inc., under the ESA, as amended, prior to the consummation of the merger or assumption of Evergreen Energy, Inc.’s obligations under the ESA, as amended, by Tamarack Mill, LLC, shall not fail, be deemed untrue, or be deemed ineffective, as applicable, because the reference to Evergreen Energy, Inc. is now replaced with Tamarack Mill, LLC pursuant to this Section.

7. The Second Amendment to the ESA reflecting the name of the surviving entity of the merger was executed by the parties to be effective on December 31, 2022. The change is only intended to update information, and the Second Amendment does not otherwise change any of the obligations of the parties set forth in the ESA as amended. A copy of the Second Amendment is attached to this Application as Attachment 2 and as set forth therein is subject to the Commission’s approval.

III. PROCEDURE

8. Given the limited scope of the Second Amendment, Idaho Power believes the Commission can approve the amendment without further process. Alternatively, should the Commission determine that further process is required, Idaho Power believes

that a technical hearing is not necessary to consider the issues presented herein and respectfully requests that this Application be processed under Modified Procedure; i.e., by written submissions rather than by hearing. RP 201, *et seq.* If, however, the Commission determines that a technical hearing is required, the Company stands ready to prepare and present its testimony in such hearing.

IV. COMMUNICATIONS AND SERVICE OF PLEADINGS

9. Communications and service of pleadings, exhibits, orders, and other documents relating to this proceeding should be sent to the following:

Donovan E. Walker
Megan Goicoechea Allen
IPC Dockets
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
dwalker@idahopower.com
mgoicoecheaallen@idahopower.com
dockets@idahopower.com

Energy Contracts
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
energycontracts@idahopower.com

V. REQUEST FOR RELIEF

10. Idaho Power respectfully requests that the Commission issue an order approving the Second Amendment to the Energy Sales Agreement for the Tamarack CSPP project submitted herewith without change or condition.

Respectfully submitted this 16th day of February 2023.



MEGAN GOICOECHEA ALLEN
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February 2023, I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

Tamarack Mill, LLC, IdaPine Mills, LLC
Evergreen Energy, Inc
Rodney Krogh
PO Box 340
Kooskia, ID 83539

Hand Delivered
 U.S. Mail
 Overnight Mail
 Fax
 Email: markkrogh@frontier.net



Christy Davenport, Legal Assistant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-23-03**

IDAHO POWER COMPANY

ATTACHMENT 1

CONSENT, ASSIGNMENT, AND ASSUMPTION AGREEMENT

This CONSENT, ASSIGNMENT, AND ASSUMPTION AGREEMENT (the "Agreement") is entered into to be effective as of the 31st day of December, 2022 ("Effective Date") between and among Idaho Power Company ("IPC"), Evergreen Energy, Inc., an Idaho corporation ("Assignor"), and Tamarack Mill, LLC, an Idaho limited liability company ("Assignee").

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IPC, Assignor, and Assignee hereby agree as follows:

- Acknowledgement.** IPC and Assignor acknowledge that they are parties to the Energy Sales Agreement dated March 27, 2018 (as amended, the "Assigned Agreement"). In connection with a pending acquisition transaction between Assignor and Assignee, Assignor desires to assign the Assigned Agreement and its rights and obligations under the Assigned Agreement to Assignee, and Assignee desires to accept the rights and assume the obligations of the Assignor under the Assigned Agreement, all in accordance with the terms and subject to the conditions set forth in this Agreement, and effective at the time set forth in this Agreement.
- Consent to Assignment; Effectiveness.** Subject to the terms and conditions of this Agreement, IPC hereby consents to the assignment of the Assigned Agreement to Assignee and accepts the substitution of Assignee to perform under the Assigned Agreements in lieu of Assignor. The foregoing consent by IPC and assignment and delegation by Assignor and Assignee shall be effective as of the Effective Date in light of the pending closing (the "Closing") of a transaction or series of transactions pursuant to which Assignor shall consolidate its operations and merge with Assignee pursuant to Part 2 of the Idaho Model Entity Transactions Act (Idaho Code §§30-22-201 through 30-22-206), with the merging entity being Assignor and the surviving entity being Assignee, such that Assignor ceases to exist when the merger becomes effective on January 1, 2023; provided, however, that if such Closing shall not have occurred on or prior to January 2, 2023, this Agreement shall be of no force or effect and shall be deemed terminated.
- Representations and Warranties of Assignor and Assignee.** Assignor hereby represents and warrants to IPC that there is no action or omission of Assignor as of immediately prior to the Effective Date that would constitute a material breach or default (assuming the giving of notice and the passage of any time required for the act or omission to constitute a default) of Assignor under the Assigned Agreement. Assignor and Assignee each represent and warrant to IPC that Assignee can perform and has the legal and financial capacity to perform the obligations of Assignor under the Assigned Agreement and that such performance does not conflict with any obligations of Assignee. The foregoing representations and warranties shall be deemed continuing representations and warranties of Assignor and Assignee from the Effective Date through the Closing, and Assignor or Assignee shall notify IPC immediately if any such representation or warranty shall be false or misleading at any time prior to the Closing.
- Acceptance of Assignment and Assumption.** Effective as of the Closing, Assignee accepts the assignment and delegation by Assignor of the rights, obligations, and liabilities under the Assigned Agreement, agrees to be bound by all of the terms of the Assigned Agreement, and agrees to assume all of the obligations and liabilities of Assignor under the Assigned Agreement, whether arising prior to or subsequent to the Closing. Assignee agrees that it will be a party to the Assigned Agreement as of the Closing and that henceforth all references to Assignor in the Assigned Agreement will be deemed to refer to Assignee.
- Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties thereto and their respective successors and permitted assigns.
- Amendments.** This Agreement cannot be amended, supplemented, or modified except by an agreement in writing which makes specific reference to this Agreement, and which is signed by the party against which enforcement of any such amendment, supplement, or modification is sought.
- Further Assurances.** Assignor and Assignee agree that upon request of IPC, at any time and from time to time, each will do, execute, acknowledge, and deliver, or will cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances, and assurances as may be reasonably required to evidence further the assignment and assumption contemplated by this Agreement.
- Miscellaneous.** This Agreement shall not alter, modify, or amend the terms of the Assigned Agreement other than as set forth in this Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Idaho. This Agreement may be executed in counterparts, each of which shall be considered an original, and which together constitute one and the same instrument.

AGREED AND ACCEPTED, to be effective as of the Effective Date.

IDAHO POWER COMPANY:

By: Ryan N. Adelman

Name: Ryan Adelman

Title: Vice President, Power Supply

EVERGREEN ENERGY, INC.:

By: Rodney Krogh

Name: Rodney Krogh

Title: President

TAMARACK MILL, LLC:

By: Rodney Krogh

Name: Rodney Krogh

Title: President

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-23-03**

IDAHO POWER COMPANY

ATTACHMENT 2

**SECOND AMENDMENT
TO THE
ENERGY SALES AGREEMENT
FOR THE
TAMARACK CSPP PROJECT**

This Second Amendment of the Energy Sales Agreement (“Second Amendment”) is effective as of December 31, 2022 (“Effective Date”) and is entered into by and between Idaho Power Company, an Idaho corporation (“Idaho Power”) and Evergreen Energy, Inc, an Idaho corporation (“Seller”), (individually a “Party” and collectively the “Parties”).

WHEREAS, Idaho Power entered into the Energy Sales Agreement (“ESA”) with the Seller on March 27, 2018, for the purchase and sale of energy from the Tamarack CSPP project (“Project”). The ESA was approved by the Idaho Public Utilities Commission (the “Commission”) in Case No. IPC-E-18-04, Order No. 34075, issued on May 30, 2018;

WHEREAS, the Parties executed the First Amendment of the ESA on March 10, 2021, (the “First Amendment”) to revise section 6.2.3 of the ESA to allow notification of Net Energy Amount monthly adjustments no later than the 25th day of the month prior to the month to be revised;

WHEREAS, Seller desires to consolidate its operations and merge with Tamarack Mill, LLC, an Idaho limited liability company, into a single entity pursuant to Part 2 of the Idaho Model Entity Transactions Act (Idaho Code §§30-22-201 through 30-22-206), with the merging entity being Evergreen Energy, Inc. and the surviving entity being Tamarack Mill, LLC, such that Evergreen Energy, Inc. ceases to exist when the merger becomes effective on January 1, 2023;

WHEREAS, as a result of this merger, Idaho Power, Evergreen Energy, Inc., and Tamarack Mill, LLC have entered into a Consent, Assignment, and Assumption Agreement, effective as of December 31, 2022, pursuant to which Evergreen Energy, Inc. is assigning and Tamarack Mill, LLC is assuming the ESA, as amended, and the rights and obligations of the Seller thereunder, with Idaho Power’s consent; and

WHEREAS, as a result of this merger and assignment, the Parties desire to amend the ESA as set forth herein to ensure it correctly identifies the Seller;

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 this ESA, as amended, by this reference to the same extent as if these recitals were set forth in full at this point.
2. **Amendment.** In the entirety of the ESA, any reference to “Evergreen Energy, Inc” shall be replaced with “Tamarack Mill, LLC” from and after the date of completion of the merger described

in the recitals above (i.e., January 1, 2023); provided, however, that any (i) action or obligation performed by Evergreen Energy, Inc.; (ii) notice sent or received by Evergreen Energy, Inc.; (iii) consent given or not given by Evergreen Energy, Inc.; (iv) representation or warranty made by Evergreen Energy, Inc., or (v) sums paid or incurred by Evergreen Energy, Inc., under the ESA, as amended, prior to the consummation of the merger or assumption of Evergreen Energy, Inc.'s obligations under the ESA, as amended, by Tamarack Mill, LLC, shall not fail, be deemed untrue, or be deemed ineffective, as applicable, because the reference to Evergreen Energy, Inc. is now replaced with Tamarack Mill, LLC pursuant to this Section.

3. **Commission Approval.** The obligations of the Parties under this Second Amendment are subject to the Commission's approval of this Second 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 Second Amendment, the ESA shall remain in full force and effect.

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

6. **Scope of Amendment.** This Second 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 thereof.

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 ESA, and (iii) it has the requisite authority to execute this Second Amendment.

8. **Counterparts.** This Second 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

EVERGREEN ENERGY, INC.

By: Ryan N. Adelman

By: Rodney Krogh

Name: Ryan Adelman

Name: Rodney Krogh

Title: Vice President, Power Supply

Title: President

TAMARACK MILL, LLC

By: Rodney Krogh

Name: Rodney Krogh

Title: President