



An IDACORP Company

RECEIVED
Monday, July 1, 2024 2:06:58 PM
IDAHO PUBLIC
UTILITIES COMMISSION

MEGAN GOICOECHEA ALLEN
Corporate Counsel
mgoicoecheaallen@idahopower.com

July 1, 2024

VIA ELECTRONIC MAIL

Commission Secretary
Idaho Public Utilities Commission
11331 West Chinden Blvd., Building 8
Suite 201-A
Boise, Idaho 83714

Re: Case No. IPC-E-24-27
Head of U Canal Project
Idaho Power Company's Application for Approval of a Second Amendment
to the Energy Sales Agreement for the Sale and Purchase of Electric Energy
from the Head of U Canal Hydro Project

Dear Commission Secretary:

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

MAG:cd
Enclosures

MEGAN GOICOECHEA ALLEN (ISB No. 7623)
DONOVAN E. WALKER (ISB No. 5921)
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-2664
Facsimile: (208) 388-6936
mgoicoecheaallen@idahopower.com
dwalker@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-24-27
APPROVAL OF A SECOND AMENDMENT)	
TO THE ENERGY SALES AGREEMENT)	APPLICATION
FOR THE SALE AND PURCHASE OF)	
ELECTRIC ENERGY FROM THE HEAD OF)	
U CANAL PROJECT.)	
_____)	

Idaho Power Company (“Idaho Power” or “Company”), in accordance with Idaho Public Utilities Commissions (“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 for an order approving the Second Amendment (“Second Amendment”) to the Energy Sales Agreement (“ESA”) between Idaho Power and North Side Energy Company (“Seller”) under which Seller sells

¹ Hereinafter cited as RP.

and Idaho Power purchases electric energy generated by the Seller's Head of U Canal Project ("Facility" or "Project"), which is a PURPA Qualifying Facility.

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

I. BACKGROUND

1. Idaho Power and the Seller (jointly, "Parties") entered into an ESA on April 23, 2014, for the purchase and sale of energy produced by the Facility and a First Amendment to the ESA on February 5, 2020, to amend Section 6.2.3 to include a change to Seller's adjustment and notification of estimated net energy amounts. The ESA, which has a 20-year term with non-levelized, seasonal hydro published avoided cost rates, was approved by the Commission in Order No. 33102 issued in Case No. IPC-E-14-07 on August 21, 2014, and the First Amendment thereto was approved in Case No. IPC-E-20-08 on April 17, 2020, in Order No. 34632.

2. The ESA, as amended, determines the Project's eligibility for seasonal hydro rates based on a calendar year. The Seller, however, would like to modify the evaluation period for determining eligibility for seasonal hydro avoided cost pricing so that each year's period would start on June 1 and end on May 31 of the following year. This is consistent with a request recently made by another PURPA QF, which was approved by the Commission on August 31, 2023, in Order No. 35908 issued in Case No. IPC-E-23-19.

3. In addition, the ESA, as amended, contains a provision, Article XXIII Modification, that the Commission has identified in other cases as requiring revisions to address scenarios involving Facility modifications to ensure, *inter alia*: the modified Facility operates under a correct and accurate contract that describes the characteristics

and parameters of the modified Facility and the rate paid to the Facility 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.

4. As a result of these circumstances, the Parties desire to enter into the Second Amendment to the ESA, as amended, to: (1) modify the evaluation period for the Project's eligibility for seasonal hydro rates consistent with the change recently authorized by the Commission for another PURPA QF; and (2) revise Article XXIII Modification in conformity with the language recently approved by the Commission.

5. The Second Amendment to the ESA to effectuate these changes, which are more fully describe below, was executed by the Parties on June 12, 2024, and is subject to the Commission's approval. A copy of the Second Amendment is attached to this Application as Attachment 1.

II. THE SECOND AMENDMENT

6. Except as expressly provided in the Second Amendment, the conditions, obligations, rates, and other terms of the ESA, as amended, remain in full force and effect.

Seasonal Hydro Eligibility Period

7. Consistent with Order No. 35908, which authorized a new measuring year for determining eligibility for seasonal hydro rates so that each year's period would start on June 1 and end on May 31 instead of a traditional calendar year (January 1 through December 31), the Second Amendment revises Articles I, III, and VII of the ESA to correspond with the new measuring timeframe for qualifying seasonal hydro as set forth below (new language is underlined, and deleted language uses strikethrough).

i. **ARTICLE I: DEFINITIONS** of the ESA, as amended, deletes existing paragraphs 1.38, "Seasonal Hydro Facility," and 1.39, "Seasonal Hydro Facility Eligibility

Test Periods,” in their entirety and replaces them with revised provisions incorporating the following changes:

- 1.38 “Seasonal Hydro Facility” – As described in ~~accordance with~~ Commission Order 32802, a hydroelectric generating Facility that delivers to Idaho Power total Net Energy of at least 55% of its ~~calendar year~~ annual Net Energy during the months June, July, and August. The annual period used for the evaluation of whether a Facility meets this requirement will be the 12 months commencing June 1 and ending May 31 of each year.
- 1.39 “Seasonal Hydro Facility Eligibility Test Periods” – Beginning with the first full ~~calendar~~ year (June 1 - May 31) after the Operation Date, each five (5) ~~calendar~~ year (June 1- May 31) consecutive period. If the term of this Agreement results in the last period not having a full five (5) ~~calendar~~ years, then the last period will be equal to the time from the end of the last full five (5) ~~calendar~~ year consecutive period and the expiration date of this Agreement.

ii. **ARTICLE III: WARRANTIES** of the ESA, as amended, deletes existing paragraph 3.4, “Seasonal Hydro Facility Qualifications,” in its entirety and replaces it with a revised provision incorporating the following change:

- 3.4 Seasonal Hydro Facility Qualifications – Seller warrants that the Facility is a Seasonal Hydro Facility as that term is defined in paragraph 1.38 of this Agreement. After initial qualification, Seller will take such steps as may be required to maintain the Seasonal Hydro Facility status during the full term of this Agreement. Seller’s failure to achieve Seasonal Hydro Facility status for at least three (3) ~~calendar~~ years during any Seasonal Hydro Facility Eligibility Test Period will result in this Facility being reclassified as a Non-Seasonal Hydro Facility for the remaining Term of this Agreement. Idaho Power reserves the right to review the Seasonal Hydro Facility status of this Facility and associated support and compliance documents at any time during the term of this Agreement.

iii. **ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT** of the ESA, as amended, deletes existing paragraph 7.6, “Seasonal Hydro Facility eligibility,” including subparagraphs 7.6.1, “Annual eligibility audits,” 7.6.1.1, 7.6.1.2, and 7.6.1.3, in

their entirety and replaces them with revised versions incorporating the following changes:

7.6 Seasonal Hydro Facility eligibility - If the Facility fails to satisfy the Seasonal Hydro Facility Qualifications specified in paragraph 3.4, this Facility shall be reclassified as a Non-Seasonal Hydro Facility for the remaining term of the Agreement and the Non-Seasonal Hydro Facility Energy Prices specified in Appendix F will be applicable.

7.6.1 Annual eligibility audits – On or before ~~February~~ July 15th of the year following the first full ~~calendar~~ June 1 – May 31 year after the Operations Date and for every ~~calendar~~ year thereafter, Idaho Power will divide the total Net Energy received from the Facility for the months of June, July, and August by the total Net Energy received for the previous ~~calendar~~ June 1 – May 31 year to establish a percentage of energy deliveries for the months of June, July and August. Any reduction in energy deliveries due to Forced Outages, planned or unplanned maintenance, Force majeure or any other reduction in energy deliveries will result in reduction of both the numerator and the denominator in this calculation, therefore no adjustment to this calculation is required for these events.

7.6.1.1 If this percentage is greater than or equal to fifty-five percent (55%) it will be deemed that the Facility has met the requirements to be classified as a Seasonal Hydro Facility for that previous ~~calendar~~ year.

7.6.1.2 If this percentage is less than fifty-five percent (55%), Idaho Power will provide notification to the project of the Facility's failure to meet the Seasonal Hydro Facility requirements for the previous ~~calendar~~ year and the monthly energy payments for that previous ~~calendar~~ year will be recalculated to reflect the Non-Seasonal Hydro Facility energy prices as contained within Appendix F of this Agreement. Any overpayments will be collected from the Facility in equal monthly payments over the remaining months of the current ~~calendar~~ June 1 – May 31 year. If the Facility fails to meet the Seasonal Hydro Facility requirements for the second to last ~~calendar~~ June 1 – May 31 year of the Contract Term, then the monthly energy payments for the remaining term of the

contract will be priced according to the Non-Seasonal Hydro Facility Energy Prices specified in Appendix F.

7.6.1.3 If the Facility fails to achieve this percentage of fifty-five percent (55%) for at least three (3) calendar years during any Seasonal Hydro Facility Eligibility Test Period the Facility will be reclassified as a Non-Seasonal Hydro Facility for the remaining term of this Agreement and the Non-Seasonal Hydro Facility Energy Prices specified in Appendix F will replace the Seasonal Hydro Facility Energy Prices specified in Appendix E for use in all calculations in this Agreement for the remaining term of the Agreement.

Modifications

8. In addition to modifying the evaluation period for the Project's eligibility for seasonal hydro rates, the Second Amendment incorporates the revised language for Article XXIII "Modifications" that was previously approved by the Commission, see e.g. Case Nos. IPC-E-23-02, IPC-E-23-15, by replacing the existing article in its entirety with the following:

ARTICLE XXIII: MODIFICATIONS

- 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 paragraph 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 Appendix 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 paragraphs 23.3 and 23.4 or as an expansion or additional project pursuant to paragraph 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 paragraph 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 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.
- 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 Qualified Facility 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 Qualified Facility 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 Article 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 Article 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.

- 23.8 No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

III. MODIFIED PROCEDURE

9. 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 testimony and exhibits as appropriate in such hearing.

IV. COMMUNICATIONS AND SERVICE OF PLEADINGS

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

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

11. Idaho Power respectfully requests that the Commission issue an order approving the Second Amendment to the Energy Sales Agreement between Idaho Power and the Seller as submitted herewith without change or condition.

Respectfully submitted this 1st day of July, 2024.

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

MEGAN GOICOECHEA ALLEN
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 2024, 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:

Commission Secretary Idaho Public Utilities Commission 11331 W. Chinden Blvd., Bldg No. 8 Suite 201-A (83714) PO Box 83720 Boise, ID 83720-0074	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input type="checkbox"/> FAX <input type="checkbox"/> FTP Site <input checked="" type="checkbox"/> Email
---	--

Courtesy Copy:

Alan Hansten - awh@northsidecanal.com



Christy Davenport
Legal Administrative Assistant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-23-27**

IDAHO POWER COMPANY

ATTACHMENT 1

**SECOND AMENDMENT
TO THE
ENERGY SALES AGREEMENT
FOR THE
HEAD OF U CANAL PROJECT**

This Second Amendment of the Firm Energy Sales Agreement (“Second Amendment”) is effective as of this 12th day of June 2024 (“Effective Date”), and is entered into by and between Idaho Power Company, an Idaho corporation (“Idaho Power”), and North Side Energy Company Inc., an Idaho corporation (“Seller”) (individually a “Party” and collectively the “Parties”).

WHEREAS, Idaho Power and Seller entered into an Energy Sales Agreement (“Agreement”) on April 23, 2014, for the purchase and sale of energy produced by the Head of U Canal Hydro Project (“Project”), which is a Qualifying Facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) located near Jerome, Idaho, and a First Amendment to the Agreement on February 05, 2020, to amend Section 6.2.3 to include a change to Seller’s adjustment and notification of estimated net energy amounts. The Agreement, which has a 20-year term with non-levelized, seasonal hydro published avoided cost rates, was approved by the Idaho Public Utilities Commission (“Commission”) on August 21, 2014, in Order No. 33102, and the First Amendment thereto was approved on April 17, 2020, in Order No. 34632; and

WHEREAS, the Agreement, as amended, determines the Project’s eligibility for seasonal hydro rates based on a calendar year, which is a concept that was recently reconsidered by the Commission based on a request from another PURPA QF to modify the evaluation period for determining eligibility for seasonal hydro avoided cost pricing so that each year’s period would start on June 1, and end on May 31 of the following year, a request that was approved by the Commission on August 31, 2023, in Order No. 35908; and

WHEREAS, the Agreement, as amended, contains a provision, Article XXIII Modification, that has recently been identified by the Commission in several other PURPA agreements as requiring revisions to address scenarios involving potential Facility modifications; and

WHEREAS, based on the foregoing, the Parties now desire to enter into this Second Amendment to the Agreement to: (1) modify the evaluation period for the Project’s eligibility for seasonal hydro rates consistent with the change recently authorized by the Commission for another PURPA QF, which is effectuated by the revisions to Articles I, III, and VII of the Agreement, as amended, as set forth below and to: (2) revise Article XXIII Modification in conformity with the language recently approved by the Commission.

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

2. **Amendments.**

A. **ARTICLE I: DEFINITIONS** of the Agreement, as amended, is hereby revised by deleting existing paragraphs 1.38, “Seasonal Hydro Facility,” and 1.39, “Seasonal Hydro Facility Eligibility Test Periods,” in their entirety and replacing with the following:

1.38 **“Seasonal Hydro Facility”** – As described in Commission Order 32802, a hydroelectric generating Facility that delivers to Idaho Power total Net Energy of at least 55% of its annual Net Energy during the months June, July, and August. The annual period used for the evaluation of whether a Facility meets this requirement will be the 12 months commencing June 1 and ending May 31 of each year.

1.39 **“Seasonal Hydro Facility Eligibility Test Periods”** – Beginning with the first full year (June 1 - May 31) after the Operation Date, each five (5) year (June 1- May 31) consecutive period. If the term of this Agreement results in the last period not having a full five (5) years, then the last period will be equal to the time from the end of the last full five (5) year consecutive period and the expiration date of this Agreement.

B. **ARTICLE III: WARRANTIES** of the Agreement, as amended, is hereby revised by deleting existing paragraph 3.4, “Seasonal Hydro Facility Qualifications,” in its entirety and replacing with the following:

3.4 **Seasonal Hydro Facility Qualifications** – Seller warrants that the Facility is a Seasonal Hydro Facility as that term is defined in paragraph 1.38 of this Agreement. After initial qualification, Seller will take such steps as may be required to maintain the Seasonal Hydro Facility status during the full term of this Agreement. Seller’s failure to achieve Seasonal Hydro Facility status for at least three (3) years during any Seasonal Hydro Facility Eligibility Test Period will result in this Facility being reclassified as a Non-Seasonal Hydro Facility for the remaining Term of this Agreement. Idaho Power reserves the right to review the Seasonal Hydro Facility status of this Facility and associated support and compliance documents at any time during the term of this Agreement.

C. **ARTICLE VII: PURCHASE PRICE AND METHOD OF PAYMENT** of the Agreement, as amended, is hereby revised by deleting existing paragraph 7.6, “Seasonal Hydro Facility eligibility,” including subparagraphs 7.6.1, “Annual eligibility audits,” 7.6.1.1, 7.6.1.2, and 7.6.1.3, in their entirety and replacing with the following:

7.6 Seasonal Hydro Facility eligibility – If the Facility fails to satisfy the Seasonal Hydro Facility Qualifications specified in paragraph 3.4, this Facility shall be reclassified as a Non-Seasonal Hydro Facility for the remaining term of the Agreement and the Non-Seasonal Hydro Facility Energy Prices specified in Appendix F will be applicable.

7.6.1 Annual eligibility audits – On or before July 15th of the year following the first full June 1 – May 31 year after the Operations Date and for every year thereafter, Idaho Power will divide the total Net Energy received from the Facility for the months of June, July, and August by the total Net Energy received for the previous June 1 – May 31 year to establish a percentage of energy deliveries for the months of June, July and August. Any reduction in energy deliveries due to Forced Outages, planned or unplanned maintenance, Force majeure or any other reduction in energy deliveries will result in reduction of both the numerator and the denominator in this calculation, therefore no adjustment to this calculation is required for these events.

7.6.1.1 If this percentage is greater than or equal to fifty-five percent (55%) it will be deemed that the Facility has met the requirements to be classified as a Seasonal Hydro Facility for that previous year.

7.6.1.2 If this percentage is less than fifty-five percent (55%), Idaho Power will provide notification to the project of the Facility's failure to meet the Seasonal Hydro Facility requirements for the previous year and the monthly energy payments for that previous year will be recalculated to reflect the Non-Seasonal Hydro Facility energy prices as contained within Appendix F of this Agreement. Any overpayments will be collected from the Facility in equal monthly payments over the remaining months of the current June 1 – May 31 year. If the Facility fails to meet the Seasonal Hydro Facility requirements for the second to last June 1 – May 31 year of the Contract Term, then the monthly energy payments for the remaining term of the contract will be priced according to the Non-Seasonal Hydro Facility Energy Prices specified in Appendix F.

7.6.1.3 If the Facility fails to achieve this percentage of fifty-five percent (55%) for at least three (3) years during any Seasonal Hydro Facility Eligibility Test Period the Facility will be reclassified as a Non-Seasonal Hydro Facility for the remaining term of this Agreement and the Non-Seasonal

Hydro Facility Energy Prices specified in Appendix F will replace the Seasonal Hydro Facility Energy Prices specified in Appendix E for use in all calculations in this Agreement for the remaining term of the Agreement.

D. ARTICLE XXIII: MODIFICATION of the Agreement is hereby deleted in its entirety and replaced with the following:

ARTICLE XXIII: MODIFICATIONS

- 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 paragraph 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 Appendix 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 paragraphs 23.3 and 23.4 or as an expansion or additional project pursuant to paragraph 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 paragraph 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 accordance 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 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.

- 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 Qualified Facility 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 Qualified Facility 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 Article 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 Article 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.
- 23.8 No modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.

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 Agreement, as amended, 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 Agreement, as amended.

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 (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 Agreement, 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

NORTH SIDE ENERGY COMPANY INC.

By: Ryan N. Adelman

By: Alan Hansten

Name: Ryan Adelman

Name: Alan Hansten

Title: Vice President, Power Supply

Title: Secretary-Treasurer