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Attorney for the Commission Staff

BEFORE  THE  IDAHO  PUBLIC  UTILITIES  COMMISSION

IN THE MATTER OF THE APPLICATION OF )

IDAHO POWER COMPANY FOR APPROVAL)CASE  NO.  IPC-E-98-14

OF THE THIRD AMENDMENT TO FIRM)

ENERGY SALES AGREEMENT FOR THE)

MAGIC RESERVOIR HYDROELECTRIC)COMMENTS OF THE

GENERATING PROJECT.)COMMISSION STAFF

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COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on November 18, 1998, submits the following comments.

On November 6, 1998, Idaho Power Company (Idaho Power; Company) filed an Application seeking approval of a Third Amendment to a Firm Energy Sales Agreement between Idaho Power and Magic Reservoir Hydroelectric, Inc. (MRHI).  The amendment seeks to modify the requirements for escrow accounts as security provisions for overpayment liability.

In Order No. 21690 in Case No. U-1006-292 (-292 Case) which established security provisions for overpayment liability in contracts between Idaho electric utilities and developers of qualifying cogeneration/small power production facilities (QFs), the Commission determined that QF developers would establish escrow accounts with Idaho financial institutions to reserve monies for future maintenance expenses and to mitigate the risks associated with low water conditions for hydroelectric plants.  In compliance with the -292 Order, the above-described accounts were established for the Magic Reservoir Hydroelectric Project..

Since the Commission initially established the requirement for escrow accounts, many local banks have opted to exit the business of providing escrow account services of the nature required by the Commission’s orders.  For the past several years, according to Idaho Power, the only bank willing to provide the service has been Wells Fargo Bank.  Idaho Power has now been advised by several QF developers that Wells Fargo also desires to cease providing escrow services for the maintenance reserve accounts and low water reserve accounts for QFs.

In response to a notice from Wells Fargo Bank that it would no longer provide the required escrow services, MRHI contacted Idaho Power and proposed an alternative escrow account arrangement that they represent is acceptable to First Security Bank and which would provide Idaho Power with assurance that the payments into and out of the two accounts will be properly accounted for and will be available to provide monies for maintenance expenses and to mitigate reductions of cash flow caused by periods of low water.

The amendment for which Idaho Power seeks approval would replace the existing escrow accounts for the Magic Reservoir Project with the simplified escrow arrangement proposed by MRHI.  Under the existing agreement, two separate escrow accounts must be maintained, and disbursements from either account must be approved by the bank managing the escrow accounts.  In contrast, under the proposed Third Amendment, funds from the maintenance reserve account and low water reserve account would be mingled in a single account with separate accounting for each of the two reserve amounts.  Permitted withdrawals from the single account requires two signatures, either by the two Idaho Power signatories or by one Idaho Power signatory and one MRHI signatory.  This permits Idaho Power to monitor and control disbursements from the account.  The bank would no longer be involved in determining whether funds should be disbursed from the account.

STAFF COMMENTS

Staff believes the alternative escrow account arrangements as outlined in the Third Amendment are reasonable.  In fact, Staff believes the alternative arrangements are superior to the original arrangements.

Under the existing arrangement, funds are disbursed from the account by the escrow account manager (bank) upon request by the project owner, subject to the owner supplying acceptable documentation of need.  Under the new arrangement, Idaho Power will now have some ability to control disbursements from the account.  Staff views this as a preferred arrangement because it believes Idaho Power will have a greater interest than a bank in insuring that the funds are properly used.

If the difficulty in obtaining required escrow services is as great as reported by Idaho Power, many more amendments similar to the one proposed here are likely.

Staff recommends approval of the Third Amendment to the contract.

DATED at Boise, Idaho, this            day of December 1998.

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Scott Woodbury

Deputy Attorney General

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