

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER RAPER
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL**

DATE: DECEMBER 18, 2015

**SUBJECT: JOINT MOTION BY IDAHO POWER AND HIDDEN HOLLOW
ENERGY TO APPROVE SETTLEMENT AND DISMISS COMPLAINT,
CASE NO. IPC-E-12-18**

In July 2012, Hidden Hollow Energy 2 filed a complaint against Idaho Power Company alleging that Idaho Power had acted unlawfully in terminating a Power Purchase Agreement (PPA) for a landfilled gas project at Ada County's Hidden Hollow Landfill. Hidden Hollow generally alleged that two force majeure events had occurred which negated Hidden Hollow's failure to produce and sell energy to Idaho Power.¹ In its complaint, Hidden Hollow requested that the Commission order Idaho Power to retract the termination of the PPA and return \$144,000 in delay liquidated damages to Hidden Hollow.

The Commission issued a Summons and Idaho Power timely answered the complaint in August 2012. Hidden Hollow initiated discovery and then the parties informally asked that action on the complaint be stayed.

On December 18, 2015, the parties filed a "Joint Motion to Approve Settlement Stipulation for Dismissal [of the Complaint] with Prejudice." Under the settlement, the Power Purchase Agreement is terminated; Idaho Power agreed to return the deposit to Hidden Hollow and that the complaint be dismissed.

¹ The two force majeure events were related to Hidden Hollow's failure to obtain a timely air quality permit and the County's contract with Dynamis Energy. The Dynamis contract undermined the available fuel source for Hidden Hollow's landfill gas project by allegedly directing trash stock to Dynamis for burning.

The parties assert that settlement is in the public interest because it avoids protracted and costly litigation involving multiple claims of force majeure and the collection of liquidated damages. Hidden Hollow also remains in litigation with Ada County regarding certain items that were the subject of Hidden Hollow's complaint before the Commission. First Amended Motion at 3-4. The parties further insist that the settlement is reasonable and in the public interest because it "conclusively terminates a long-term [PPA] that contains terms and conditions that have subsequently been found by the Commission to be no longer just and reasonable nor in the public interest for new [PPA] going forward. . . ." *Id.* at 4.

COMMISSION DECISION

Based upon the parties settlement does the Commission find that the settlement is reasonable and in the public interest?

Does the Commission approve the settlement, and the dismissal of the underlying complaint without further proceedings?

/s/ Don Howell

Don Howell
Deputy Attorney General

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