

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION'S)	
REVIEW OF PURPA QF CONTRACT)	CASE NO. GNR-E-11-03
PROVISIONS INCLUDING THE)	
SURROGATE AVOIDED RESOURCE (SAR))	NOTICE OF PARTIAL
AND INTEGRATED RESOURCE PLANNING)	SETTLEMENT STIPULATION
(IRP) METHODOLOGIES FOR)	
CALCULATING PUBLISHED AVOIDED)	REQUEST FOR COMMENT
COST RATES.)	
)	ORDER NO. 32665

On August 15, 2012, the Commission issued a Notice scheduling a settlement conference in this case for parties to discuss two issues: (1) light load curtailment as proposed by Idaho Power Company in its Schedule No. 74 or an alternative process; and (2) power purchase agreement (PPA) terms related to delay security or liquidated damages. Order No. 32617. The participating parties met in settlement conference on August 23, and September 7, 2012.

Negotiations regarding curtailment were not fruitful. However, on October 2, 2012, a "Partial Settlement Stipulation" was filed on behalf of 13 parties in the case that generally addresses the issue of delay security and liquidated damages in PURPA power purchase agreements (PPAs). In this Notice, we invite the parties and members of the public to comment on the Partial Settlement Stipulation.

THE PARTIAL SETTLEMENT STIPULATION

As a result of the settlement discussions, 13 of the 25 parties that participated in the settlement conference signed the Partial Settlement Stipulation. The signing parties agreed that existing PPAs that have been approved by the Commission shall not be affected by the Partial Settlement Stipulation. In addition, some of the PURPA qualifying facility (QF) parties that signed the settlement are not necessarily affected by the issues contained in the Settlement Stipulation, but nevertheless do not oppose settlement of these issues. The signing parties agreed to settle the following issues and that all new PPAs approved after the date of the Partial Settlement Stipulation conform to the terms of the Stipulation.

The signing parties agreed the Settlement Stipulation represents a compromise of the position of the parties. The signing parties further assert that the Settlement Stipulation is

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reasonable and in the public interest. They urged the Commission to adopt the Settlement Stipulation without condition or modification.

1. Calculation of the Security Deposit. The Parties agree that a security deposit or performance bond (“the Security Deposit”) will be required for each new PURPA agreement (PPA; FESA) entered into after the date upon which the Commission adopts and approves this Settlement Stipulation. The purpose of the Security Deposit is to provide security for: (1) Delay Damages during the Cure Period if the QF is not in commercial operation by the Scheduled Commercial Operation Date set out in the PPA; and (2) Termination Damages if the QF cannot cure a failure to achieve commercial operation and a party seeks termination of the PPA. The Security Deposit shall be set at \$45.00 per kilowatt (kW) of nameplate capacity for each new PPA. The cash or other liquid Security Deposit will be forwarded to the utility no later than thirty (30) days after the Commission issues its final Order approving the PPA.

2. Refund of Security Deposit. If the QF has achieved commercial operation in accordance with the Scheduled Commercial Operation Date set out in the PPA, the utility will promptly refund the Security Deposit to the QF.

3. Failure to Achieve Commercial Operation – Delay Damages. In the event the QF fails to achieve commercial operation by the Scheduled Commercial Operation Date contained in the PPA, Delay Damages shall be calculated based upon the difference between market rates at the time the QF fails to achieve its Scheduled Commercial Operation Date and the avoided cost rates contained in the PPA during the Cure Period. Delay Damages, if any, during the Cure Period will be drawn from the Security Deposit held by the utility. If the Security Deposit is insufficient to defray all of the Delay Damages, then the QF will promptly pay the outstanding Delay Damages. If the QF achieves commercial operation during the cure period, any remaining Security Deposit beyond the amount of any Delay Damages shall be refunded to the QF.

4. Cure Period. The defaulting party shall have one hundred twenty (120) days from the Scheduled Operation Date to cure its default.

5. Failure to Cure. In the event the QF fails to achieve commercial operation within the Cure Period, then the non-defaulting party may, at its option, collect its Delay Damages as calculated in Paragraph No. 3 above, terminate the Agreement, and calculate its Termination Damages, if any. If the QF fails to achieve commercial operation within the cure period and the

non-defaulting party elects to terminate the Agreement, the Security Deposit may be used to: (a) first pay the Delay Damages arising during the cure period, if any; and (b) second pay Termination Damages, if any, arising after the Cure Period for the remaining term of the Agreement.

6. Termination Damages. The party claiming that the PPA is in default and seeking termination of the Agreement shall communicate its notice of default and claim for any Termination Damages to the other party within a reasonable time. The other party shall respond within fifteen (15) days. In the event of a dispute regarding the calculation of Termination Damages, either party may resort to a court of competent jurisdiction.

7. Undisputed Damages and Refunds. The utility may draw any undisputed Delay Damages or Termination Damages from the Security Deposit. In the event that the Security Deposit is insufficient to pay the undisputed damages, such undisputed damages will be paid promptly by the defaulting party. If the Security Deposit exceeds the total amount claimed as Delay Damages or Termination Damages, the utility shall promptly refund any portion of the deposit that is in excess of the claimed Delay Damages or Termination Damages.

8. Security Deposit for Existing QF Projects. The Parties agree that a Security Deposit shall not be required in situations where the parties are entering into a new PPA for an existing QF project already in commercial operation so long as the new PPA is between the same parties and there are no material changes or modifications to the existing QF project.

REQUEST FOR COMMENTS

YOU ARE HEREBY NOTIFIED that the Commission invites the parties and members of the public to provide written comments in support or opposition of the Partial Settlement Stipulation no later than October 25, 2012. Written comments concerning the Partial Settlement Stipulation should be mailed to the Commission at:

Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street
Boise, ID 83702-5918

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Comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at www.puc.idaho.gov. Click the "Comments and Questions" icon, and complete the comment form, using the case number as it appears on the front of this document.

YOU ARE FURTHER NOTIFIED that formal parties in this docket must serve their comments on other parties via electronic mail.


YOU ARE FURTHER NOTIFIED that the Commission will consider comments regarding the Partial Settlement Stipulation with the other evidence offered in this case.

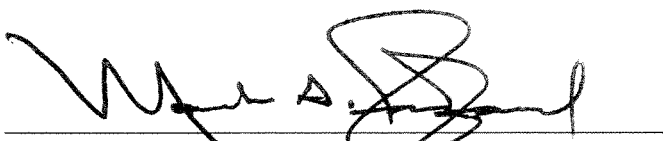
O R D E R

IT IS HEREBY ORDERED that parties desiring to submit written comments in support or opposition to the Partial Settlement Stipulation must do so no later than October 25, 2012.

IT IS FURTHER ORDERED that parties in this docket filing written comments shall serve other parties with their comments via electronic mail.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 16th
day of October 2012.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

O:GNR-E-11-03_dh2_Partial Settlement Stipulation