

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMMISSION)	
INVESTIGATION INTO THE BUY-BACK)	CASE NO. IPC-E-01-43
RATES IN THE LETTER AGREEMENT)	
ENTERED INTO BY IDAHO POWER)	
COMPANY AND ASTARIS LLC.)	ORDER NO. 29050
)	

On January 8, 2002, the Commission on its own motion initiated an investigation to examine whether the load-reduction rates contained in the Letter Agreement between Idaho Power Company and Astaris LLC are unjust, unreasonable, impose an excessive burden on ratepayers and are no longer in the public interest. Order No. 28928, *Idaho Code* § 61-502. As explained later in this Order, the Letter Agreement amended the Electric Service Agreement ("ESA") that governs the delivery of electric service to Astaris' Pocatello plant. An evidentiary hearing was held February 21-22, 2002. Following the filing of post-hearing briefs, the Commission directed the parties to attend a settlement conference to discuss the possibility of resolving this matter. Protracted negotiations ensued. On June 6, 2002, the parties signed and filed a proposed Stipulation and Settlement Agreement ("Agreement") with the Commission. In this Agreement the parties propose a settlement of all issues in this case and in District Court litigation in the Fourth Judicial District. The parties represent that this settlement is just, fair and reasonable, in the public interest, and in accordance with the law and regulatory policy of Idaho. The parties request that the Commission review the Stipulation and Settlement Agreement and adopt it by Order.

After our review of the extensive record and the provisions of the settlement, the Commission accepts the Stipulation and Settlement Agreement as a fair, just and reasonable resolution to this case.

BACKGROUND

Idaho Power is an electric utility engaged in the generation, transmission, distribution and sale of electric energy and provides retail electric service to approximately 360,000 customers in southern Idaho and eastern Oregon. Astaris LLC is a supplier of phosphorus chemicals, phosphoric acid and phosphate salts, producing a line of phosphorus and derivative products. Astaris is a 50/50 joint venture owned by FMC Corporation and Solutia Inc. Astaris

began operations as an independent company in April 2000. Relevant to this case, Astaris owned and operated an elemental phosphate processing plant in Pocatello. This plant was closed on December 10, 2001. Astaris was the largest single customer of Idaho Power, purchasing nearly 8.2% of Idaho Power's total jurisdictional energy sales under a special contract. Following cessation of production by Astaris, FMC assumed ownership of the site. FMC is currently using roughly 3 MW of power provided by Idaho Power to maintain the plant.

A. The Electric Service Agreement

On April 27, 1998, the Commission approved the Electric Service Agreement ("ESA"), dated December 30, 1997, between Idaho Power and Astaris' predecessor, FMC Corporation. The ESA is a "special contract" which allows larger customers of Idaho Power, like FMC/Astaris, to establish their electric rates and services by contract.¹ Special contracts must be submitted to and approved by the Commission. *Idaho Code* §§ 61-305, 61-307, 61-622, and 61-623. In June 2000, Astaris became the assignee of the ESA and took over operations of the Pocatello facility.

The ESA required Idaho Power to supply two blocks of electric power to Astaris' Pocatello facility. The First Block was for 120 MW per hour of "take-or-pay" power. In other words, Idaho Power would recover its full costs for providing the power and Astaris must pay for the power whether it uses it or not.

Section 5.2.1 of the ESA outlines the charges for the First Block of energy. Section 6.1.2 of the ESA, the annual charge in the First Block "Base Energy Rate" could increase or decrease based upon Idaho Power's annual Power Cost Adjustment ("PCA") mechanism.² The Second Block of power was for 130 MW and Astaris paid \$1.39 per kW-month for the contract demand under this block. Astaris' payment for the energy charge for the Second Block was based upon "all of Idaho Power's costs directly related to supplying the Second Block of

¹ Normally, rates and services for Idaho Power customers are set out in tariffs or schedules and approved by the Commission. *Idaho Code* §§ 61-305, 61-307 and 61-310.

² Because Idaho Power relies predominantly upon hydroelectric generation, its actual costs of providing electricity (power supply costs) can vary dramatically from year to year depending upon changes in streamflow and market prices. To ameliorate the adverse consequences of fluctuating power supply costs to customers and the Company, the Commission instituted a power cost adjustment mechanism in 1993. The PCA is comprised of two major components. First, the Company is allowed to recover its above normal power supply costs for the preceding 12 months, including off-system purchases used to serve Idaho system load. Second, rates are adjusted on an annual basis to compensate for the succeeding 12 months' projected or estimated power supply costs based on expected Snake River streamflows and storage. *Id.*

Energy.” FMC would also pay for all supply related and transmission-related services required to deliver Second Block power. Finally, Astaris was required to pay 0.142 cents per kWh for the amount of transmission either reserved or used to deliver any Second Block power requested. The ESA contemplated that Astaris could request or “call” for Second Block power based on its production requirements.

In its Order approving the ESA, the Commission observed that “[b]y statute, the Commission has continuing jurisdiction to review existing contracts and on its own motion to investigate rates or practices and to order them changed. *Idaho Code* § 61-503.” Furthermore, the Commission ordered that as a condition of approval of the ESA that it would retain “authority over the [ESA] to insure that, as it is implemented, it does not impair the financial ability of Idaho Power to continue its service nor harm other ratepayers.”

Section 13 of the ESA also recognized and outlined the Commission jurisdiction:

Except as provided in section 6, this Agreement and the respective rights and obligations of the parties hereunder shall be subject to (1) Idaho Power’s general rules and regulations as now or hereafter in effect and on file with the Commission, and (2) the jurisdiction and regulatory authority of the Commission and the laws of the state of Idaho.

Section 18 of the ESA also contains a provision entitled “Governing Law” that states, “[t]his Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho, excluding any choice of law or rules which direct the application of laws of another jurisdiction.”

B. The Letter Agreement

In the fall and winter 2001, three external factors prompted Astaris and Idaho Power to amend the ESA. First, low water conditions reduced Idaho Power’s hydrogeneration. Second, these low water conditions compelled the Company to replace the lost generation with much higher priced power purchases in the volatile regional power market. Third, Astaris desired to discontinue its elemental phosphorus process and switch to a “wet” process. Faced with lower production and abnormally high prices for replacement power Idaho Power needed to significantly reduce the total amount of electricity consumed by its customers (i.e., its load). At that time high market prices for power also made it uneconomic for Astaris to call for Second Block power under the ESA. Consequently, the parties mutually desired to amend the ESA to mitigate the impacts of these factors. On March 16, 2001, Idaho Power and Astaris filed a joint Application requesting approval of a Letter Agreement that would amend certain sections of the

ESA. Specifically, the parties agreed that Astaris would reduce its First Block electric consumption at the Pocatello plant, and, in turn, Idaho Power would pay Astaris for its load reduction.

By its terms the Letter Agreement states that, “the parties mutually desire to amend the [ESA] as set forth below. The purpose of this letter is to memorialize the parties understanding regarding the agreed amendments to the [ESA].” The Letter Agreement also states that “[a]ll other terms and conditions of the [ESA] except those expressly modified by this Letter of Understanding shall remain in full force and effect.” Paragraph 6 of the Letter Agreement stated that the parties “acknowledge and agree that this Letter Agreement is subject to the approval of the Idaho Public Utilities Commission,” and that its terms were conditioned on favorable approval by the Commission.

Under the Letter Agreement Astaris would consume “no more than 70 MW’s of energy per hour” from the First Block, for 24 months starting from April 1, 2001. However, Astaris would continue to pay for 120 MW of energy per hour (the take-or-pay First Block). The difference – 50 MW of load reduction – would be available to Idaho Power for the 24-month period beginning April 1, 2001 and ending March 31, 2003. Idaho Power would pay Astaris not to consume the 50 MW at then projected monthly market rates, over the two years of the Letter Agreement, minus a 13.5% discount.

The Letter Agreement also provided for the shut down of furnaces No. 1 and No. 4 at the Astaris facility in Pocatello.³ As a result, the demand charge set forth in § 4.2.1 of the ESA would be reduced by 130,000 kW and the charges for the Second Block demand under § 5.2.4 of the ESA would be reduced accordingly as of April 1, 2001. If Astaris chose to reconnect furnaces 1 and 4 after March 31, 2001, then Astaris would repay to Idaho Power the Second Block demand charges as if the electrical furnaces had never been disconnected. Thus, Astaris had an option to use Second Block power if market prices dropped to a level that Astaris could cost effectively restart the furnaces.

The total cost to Idaho Power for paying Astaris for the 50 MW of load reduction was approximately \$140 million over the two years, or about \$159 per MWh. Idaho Power also represented that the load reduction payments would be offset by the Company’s continued

³ Furnace Nos. 1 and 4 have an attributable demand of 60,000 kW each.

recovery of the take-or-pay energy charges for the entire 120 MW in the First Block. Finally, Idaho Power requested that the payments it would make to Astaris under the Letter Agreement be treated as a purchased power expense for purposes of its PCA mechanism. The Letter Agreement also proposed that the ESA be amended to terminate at midnight on March 31, 2003.

On April 10, 2001, the Commission issued its final Order approving the Letter Agreement and allowing the load reduction to be added to the Company's resource portfolio. Order No. 28695 at 6. In approving the Letter Agreement, the Commission noted that based upon the best information available at that time, the monthly forward market prices that were the basis for the load reduction rates were reasonable. *Id.* at 5-6. The Commission further found that reasonably incurred payments made by Idaho Power to Astaris for purchases of the load reductions should be treated as a purchased power expense and recovered through the Company's PCA mechanism. *Id.*

C. Parties

In its Order initiating this proceeding, the Commission directed that Idaho Power and Astaris be made parties to this case. Order No. 28928 at 12. Subsequently, Astaris LLC, FMC of Idaho LLC (fka Astaris of Idaho LLC) and FMC Corporation filed a joint Petition to Intervene. The Commission granted their joint Petition. The Commission observed that they are represented by the same counsel and their interests appear to be aligned. Consequently, the Commission treated the three companies as a single party in this matter. Order No. 28933 at 5. For purposes of this case they collectively have been referred to as "Astaris" unless specific distinctions are necessary.

The Commission also received timely petitions for intervention from the Industrial Customers of Idaho Power and the Idaho Irrigation Pumpers Association. The Commission granted these petitions as well. All the parties are represented by counsel.

D. Procedural History

On January 14, 2002, the Commission convened its prehearing conference for this case where the parties reached agreement on several issues including scheduling, discovery, and the use of electronic service. Astaris, the Staff, and Idaho Power also filed a "Statement of Understanding."

On January 28, 2002, Astaris filed a Motion to Dismiss and Brief on Commission Authority. Astaris generally argued that the Commission lacks the authority to abrogate the load

reduction rates contained in the Letter Agreement. Astaris Motion to Dismiss at 7. The Staff and Idaho Power filed responses opposing Astaris' Motion on February 11 and 13, 2002, respectively. Astaris filed a reply brief to the previous responses on March 19, 2002.

At the evidentiary hearing, Staff, Astaris, and Idaho Power presented their witnesses and evidence. ICIP and the Irrigation Pumpers did not present any witnesses. ICIP's counsel did participate in the hearing. The Irrigation Pumpers did not participate at the hearing. The Staff, Astaris, ICIP and Idaho Power filed post-hearing briefs on March 8, 2002.

After the hearing the Commission was concerned that the expedited schedule in this case did not provide a sufficient period of time for the parties to consider the possibility of settling this dispute. Accordingly, the Commission scheduled a settlement conference, pursuant to Commission Rule 273, for April 2, 2002. Order No. 28983. *See also* IDAPA 31.01.01.273. The parties engaged in protracted discussions that eventually resulted in the proposed Stipulation and Settlement Agreement.

THE STIPULATION AND SETTLEMENT AGREEMENT

The proposed Stipulation and Settlement Agreement resolves the disputes between the Parties regarding:

- (a) The December 30, 1997, Electric Service Agreement ("ESA") between Idaho Power and FMC/Astaris providing for the retail sale of electricity from Idaho Power to the FMC/Astaris Pocatello facility (the take pay or obligation);
- (b) The March 15, 2001, Letter Agreement amending the ESA to provide for Voluntary Load Reduction ("VLR") payments from Idaho Power to FMC/Astaris with respect to 50 MW of electricity FMC/Astaris agreed to no longer consume at its Pocatello facility; and
- (c) The proceeding before the Commission (Case No. IPC-E-01-43) and the declaratory judgment action filed by FMC/Astaris against Idaho Power (captioned as Case No. CV-OC-0108506D) in the Fourth Judicial District for the State of Idaho.

The Settlement Agreement has two parts discussed in greater detail below.

1. The Agreement Reductions

The Voluntary Load Reduction ("VLR") payments that Idaho Power makes to FMC/Astaris under the terms of the Letter Agreement will be reduced by \$5,000,000. The benefit of this reduction will flow through Idaho Power's PCA mechanism to the general body of

ratepayers. Idaho Power has also agreed that its jurisdictional PCA share of the VLR savings, approximately \$425,000, shall be distributed to Idaho ratepayers through the PCA mechanism.

The take-or-pay obligation of the ESA shall be based upon the rates in effect as a result of the 2001 PCA and not affected by the rates set by the Commission's recent PCA decision. Order No. 29026. The specific obligation was negotiated prior to issuance of Order No. 29026 in order to eliminate it being an issue in that case.

The overall take-or-pay obligation that FMC/Astaris would otherwise pay to Idaho Power under the terms of the ESA is reduced by \$7,968,473. Idaho Power has agreed that it will not seek to recover \$6,968,473 of this credit in any proceeding before the Idaho Public Utilities Commission. The parties have also agreed that the remaining \$1,000,000 of FMC/Astaris take-or-pay credit will be included in the 2002/2003 PCA true-up balance without any reduction.

The parties also agree that because the ESA and Letter Agreement would expire on March 30, 2003, the PCA charge on the 120 MW take-or-pay commitment for the period of April 1, 2003 through May 15, 2003, in the amount of \$275,663 will be included in the 2002/2003 PCA true-up balance without any reduction. This adjustment recognizes the difference between Astaris' take or pay obligation under the Commission's 2002 PCA Order and the fact that the ESA expires before the end of the PCA period.

The parties have proposed that this case can be closed if the Commission accepts the Stipulation and Settlement Agreement by Order. Furthermore, FMC/Astaris has agreed to dismiss, with prejudice, its declaratory judgment action (CV-OC-0108506D) that it filed against Idaho Power in the Fourth Judicial District for the State of Idaho.

2. Revenue Requirement and Ratemaking issues contained in the Agreement

The parties have agreed that the FMC/Astaris ESA-Letter Agreement obligation will be excluded from test year analyses for any general rate case.

The parties have also agreed that through March 2003 the FMC/Astaris ESA-Letter Agreement obligation of 120 MW will be reflected "as served" for PCA purposes (i.e., no reduced load at \$16.84 per MWh).

The parties also agreed that after March 2003, the FMC/Astaris ESA-Letter Agreement obligation load will be removed from the PCA normalized load.

Finally, the parties have agreed that after March 2003, the FMC/Astaris ESA-Letter Agreement obligation load of 120 MW will no longer be reflected "as served" for PCA purposes.

PARTIES RECOMMENDATION

Because an Agreement has been reached and all parties have signed the Stipulation and Settlement Agreement, the matter is ripe for Commission review. The parties insist that the Agreement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy of this State. The parties recommended that the Commission accept this settlement as presented. The parties further agree that this Stipulation presents an opportunity to finally resolve all ESA issues between the parties. This Stipulation is made to compromise contested claims and is entered solely for the purpose of avoiding expense, inconvenience, and uncertainty of further litigation. The parties agree that the Settlement itself fairly spreads the obligations and benefits among Idaho Power, FMC/Astaris and the general body of ratepayers. Furthermore, the parties agree that this Stipulation and Settlement Agreement represents a reasonable resolution of the disputed issues between the parties and believe that it is in the public interest for the Commission to approve it.

COMMISSION FINDINGS AND DISCUSSION

Pursuant to Commission Rule 274 we shall decide whether to accept the Stipulation and Settlement Agreement based on the record currently before us. IDAPA 31.01.01.274. The record is extensive and all parties to this case have signed this Agreement. Accordingly, further proceedings are not necessary for us to determine whether we should accept this Agreement.

At the outset, we recognized that the disputes among the parties were numerous, contentious and significant. We congratulate the parties for their diligence and work on the settlement. In Order No. 28983 we stated that “[i]n attempting to settle this matter, we encourage the parties to explore spreading the benefits and obligations equally among Idaho Power, Astaris, and the general body of ratepayers.” Order No. 28983 at 2. After reviewing the Stipulation and Settlement Agreement signed by all parties the Commission finds that it accurately reflects those elements that constitute an appropriate resolution of this case in that it appropriately spreads the benefits and obligations equitably among all parties.

Pursuant to the proposed Agreement, FMC/Astaris has agreed to a \$5 million reduction in the amount of payments it will receive for its VLR under the terms of the Letter Agreement. The benefit of this reduction will flow through Idaho Power’s PCA mechanism to the general body of ratepayers. Idaho Power has also agreed that its jurisdictional PCA share of the VLR savings (approximately \$425,000) shall be distributed to Idaho ratepayers through the

PCA mechanism. We find that this reduction in VLR payments and the contribution by Idaho Power of its PCA share will benefit Idaho Power ratepayers through operation of the Company's PCA mechanism. Thus, we find the Agreement has significant value.

The Commission also finds that basing the take-or-pay obligation upon the rates set by the 2001 PCA was a reasonable concession by all parties to eliminate it as an issue in the 2002 PCA case. Accordingly, we find that the 2002 PCA decision shall not affect Astaris' take-or-pay obligation. This provides benefits to FMC/Astaris as its take-or-pay obligation will be lower for the remaining contract than if adjusted by the 2002 PCA decision.

The Agreement also provides a \$7,968,473 reduction in the overall take-or-pay obligation that FMC/Astaris would otherwise pay to Idaho Power under terms of the ESA. Idaho Power has agreed that it will not seek to recover \$6,968,473 of this amount in any proceeding before the Idaho Public Utilities Commission. The parties also agreed that the remaining \$1,000,000 of FMC/Astaris take-or-pay credit will be included in the 2002/2003 PCA true-up balance without any reduction. The Commission finds that these measures benefit FMC/Astaris by reducing its payment obligation for power it cannot use. Furthermore, we find that Idaho Power's concession to not seek recovery of \$6,968,473 of this amount in any proceeding before the Commission provides benefits to the general body of ratepayers. Finally, we find that Idaho Power receives a benefit from its recovery of the remaining \$1 million through the PCA mechanism.

The parties also agreed that because the ESA and Letter Agreement would expire on March 30, 2003, the PCA charge on the 120 MW take-or-pay commitment for the period of April 1, 2003 through May 15, 2003, (an amount of \$275,663) should be included in the 2002/2003 PCA true-up balance without any reduction. We find that the adjustment acknowledges the fact that the ESA expires before the end of the PCA period. Thus, we find it reasonable to include this adjustment in the 2002/2003 true-up balance without reduction.

We also find that the ratemaking and revenue requirement provisions contained in the Agreement are fair, just and reasonable. These provisions are beneficial to Idaho Power Company. Furthermore, Idaho Power also receives benefits because the Company is no longer obligated to provide the 120 MW load as called for under the ESA and Letter Agreement.

In the Agreement the parties noted that IPC-E-01-43 can be closed if the Commission accepts the Stipulation and Settlement Agreement by Order. Furthermore, FMC/Astaris has

agreed to dismiss, with prejudice, its declaratory judgment action filed against Idaho Power in the Fourth Judicial District for the State of Idaho. We find that resolution of this matter and dismissal of the District Court litigation that would occur upon approval of this Agreement will provide benefits to all parties to this case and to the ratepayers generally. Specifically, the Commission finds that the costs, both time and money, to continue this litigation in multiple forums with the possibility for future cases represents a significant burden to all parties. To avoid this burden removes costly uncertainties and provides benefits to all parties. Thus, we find that by this Agreement the instant case shall be closed. Astaris' Motion to Dismiss is rendered moot. Furthermore, the Commission by acceptance of this Agreement requires Astaris to move quickly to dismiss with prejudice its Declaratory Judgment action in District Court in this State with prejudice once our Order becomes final.

CONCLUSION

After reviewing this Agreement the Commission approves it as presented. We find that this Stipulation finally resolves all ESA and Letter Agreement issues among the parties. We further find that this Agreement has been made to compromise contested claims and is entered largely for the purpose of avoiding expense, inconvenience, and uncertainty of further litigation. We also find that the Agreement spreads the obligations and benefits among Idaho Power, FMC/Astaris and the general body of ratepayers in a fair and equitable manner. Finally, pursuant to Commission Rule 275 we find that the parties have carried their burden of showing that the Agreement is just, fair and reasonable, in the public interest, and in accordance with the law and regulatory policy of this State. IDAPA 31.01.01.275. Accordingly, we accept the Stipulation and Settlement Agreement in the form and content as signed by all parties in this case.

ORDER

IT IS HEREBY ORDERED that the proposed Stipulation and Settlement Agreement is just, fair and reasonable, in the public interest, and in accordance with the law and regulatory policy of this State. Accordingly, we accept the Stipulation and Settlement Agreement in the form and content as signed by all parties in this case.

IT IS FURTHER ORDERED that the parties shall comply with all terms contained in the Stipulation and Settlement Agreement.

IT IS FURTHER ORDERED that FMC/Astaris' Motion to Dismiss in this case is rendered moot by our acceptance of the Stipulation and Settlement Agreement.

IT IS FURTHER ORDERED that as a result of the Stipulation and Settlement Agreement the Commission shall close this case, Case No. IPC-E-01-43, with prejudice.

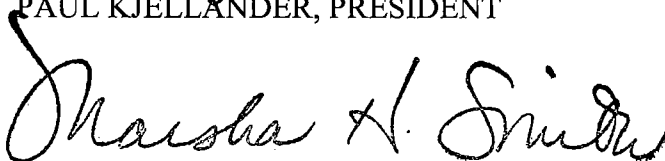
IT IS FURTHER ORDERED that pursuant to the Agreement FMC/Astaris shall dismiss its District Court litigation (CV-OC-0108506D) against Idaho Power with prejudice.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-01-43 may petition for reconsideration within twenty-one (21) days of the service date of this order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. IPC-E-01-43. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

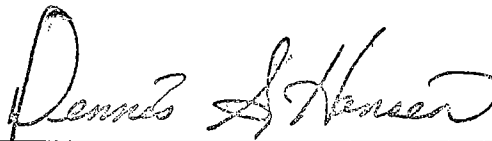
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 10th day of June 2002.



PAUL KJELLANDER, PRESIDENT

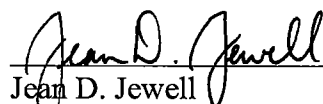


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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