

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR) CASE NO. IPC-E-06-35
APPROVAL OF A FIRM ENERGY SALES)
AGREEMENT FOR THE SALE AND)
PURCHASE OF ELECTRIC ENERGY)
BETWEEN IDAHO POWER COMPANY) ORDER NO. 30399
AND BENNETT CREEK WINDFARM LLC)

On July 11, 2007, Idaho Power Company (Idaho Power; Company) submitted for Commission approval an amendment (First Amendment) to the December 20, 2006, Firm Energy Sales Agreement (Agreement) between Idaho Power and Bennett Creek Windfarm LLC (Bennett Creek). The original Agreement was approved on February 20, 2007, in Order No. 30245 (Order). Idaho Power and Bennett Creek desire to amend the Agreement to (1) revise the wind turbine manufacturer and specifications; (2) revise the scheduled operation date; and (3) provide liquid security in the amount of estimated Delay Damages. The Commission in this Order approves the First Amendment to the Idaho Power Bennett Creek Agreement.

BACKGROUND

In the original Agreement, Bennett Creek selected December 31, 2007 as the estimated scheduled operation date for the Bennett Creek Windfarm Project (Project). The Agreement contains provisions that require the Project to pay Idaho Power liquidated damages if the Project comes online after December 31, 2007 (Delay Liquidated Damages). The Delay Liquidated Damages will accrue for a period of up to ninety days. (Agreement Sections 5.3-5.6).

In the Order approving the original Agreement, the Commission noted that the Bennett Creek Windfarm Project had not signed an interconnection agreement at the time of the Commission's approval of the Agreement. During the negotiation of the Agreement, Bennett Creek indicated to Idaho Power that it believed that the costs of interconnection would be manageable and that the time required for interconnection studies would not adversely impact its ability to meet the December 31, 2007 scheduled operation date.

Bennett Creek has now completed initial discussions with Idaho Power's delivery business unit as required by the Agreement. As a result of those discussions, it has become apparent that the Bennett Creek Project will require network upgrades in order to accommodate the Project's generation and that the time required for completion of necessary studies and the

construction of necessary interconnection facilities and network upgrades will delay the Project's online date beyond the December 31, 2007 scheduled operation date. Such a delay will trigger Delay Liquidated Damages.

Bennett Creek is also now concerned about its ability to absorb all of the network upgrade costs. Bennett Creek has indicated that the type of settlement that is proposed in Case No. IPC-E-06-21 (Cassia Case) will allow it to proceed with its Project. However, until Case No. IPC-E-06-21 is resolved, Bennett Creek is reluctant to proceed.

FIRST AMENDMENT

1. Wind Turbine Manufacturer and Specifications

The delay in interconnection of the Project has caused Bennett Creek's investor and wind turbine supplier to reallocate the project's turbines to another project. Bennett Creek must now wait for the next available turbines, which are due before the end of the year. One of the new turbine options requires a modification of the type and size of wind turbines allowed under the Agreement. The First Amendment reflects this change in turbine manufacturer and size. It also recognizes that the turbine market is volatile and additional changes in turbine configuration may be required in the future.

2. Scheduled Operation Date

In light of the foregoing, Bennett Creek has requested that Idaho Power agree to amend the Agreement to extend the scheduled operation date for a period of approximately one year. Bennett Creek believes this time is necessary to ensure that it will be able to meet the revised scheduled operation date and give the Project the opportunity to avoid the payment of Delay Liquidated Damages.

3. Liquid Security

Idaho Power states that it is willing to enter into the First Amendment for two reasons. First, in exchange for this Amendment, Bennett Creek is willing to provide Idaho Power with liquid security in an amount sufficient to cover the Delay Liquidated Damages. This provision is not currently included in this or other QF¹ contracts and Idaho Power believes that the inclusion of this provision provides value for the Company and its customers. Second, Idaho Power is aware of two other wind projects in the same area facing similar delays due to unanticipated (by the

¹ A qualifying small power production facility (QF) under § 292.203(a) of the Public Utility Regulatory Policies Act of 1978 (PURPA), as amended.

developer) interconnection delays (Bennett Creek; Alkali Wind). If the Commission concurs, Idaho Power indicates that it will propose a similar resolution for those projects.

The Bennett Creek and Hot Springs contracts are the first with separate firm energy sales agreements and interconnection agreements. When power sales agreements are approved first, without signed transmission interconnection agreements, projects can be delayed and necessitate later amendments to firm energy sales agreements. The Federal Energy Regulatory Commission's (FERC's) Standard of Conduct rules make it impossible, the Company states, for Idaho Power's power supply business unit to independently confirm the reasonableness of the QF developer's selection of a particular date for scheduled operation. To address this problem in the future, Idaho Power states that it has implemented new contract procedures. As a result, Idaho Power states that it will now be the policy of the power supply business unit not to sign firm energy sales agreements until the QF project developer can demonstrate that it has completed its interconnection application to the extent that the scheduled operation date is unlikely to be modified due to delays in the interconnection study and transmission construction process. This is the only way, Idaho Power states, that the Company can be reasonably certain that the scheduled operation dates selected by the QF developer are realistic.

Comments Of Idaho Winds LLC

Idaho Winds LLC is the developer of Alkali Wind Farm (IPC-E-06-36; Order No. 30253), a PURPA qualified facility with an Idaho Power power supply contract. The Alkali project faces similar obstacles to meeting its online date due to unanticipated interconnection delays. Idaho Winds is currently engaged in discussion with the Idaho Power delivery business unit and, like Hot Springs and Bennett Creek, it has become apparent that Alkali will require network upgrades in order to accommodate the project's generation and the time required for completion of necessary studies and the construction of necessary interconnection facilities and network upgrades will delay this project's online date beyond the December 31, 2007 Scheduled Operation Date, triggering Delay Liquidated Damages.

Idaho Winds believes that the Delay Liquidated Damages provision of Alkali Project's contract is adequate to protect Idaho Power and its customers and objects to Idaho Power's proposal to require Delay Security from Idaho Winds, or upon any other developer in a similar situation.

Analysis of the Commission Staff

Staff apprises the Commission that it has no objection to amending the Idaho Power/Bennett Creek Agreement to revise the wind turbine manufacturer and specifications. The particular turbine manufacturer and specifications are not critical, and do not change the energy product Idaho Power will be purchasing under the Agreement.

As a condition of the one-year contract extension, the contract parties propose extending the scheduled operating date by approximately one year. Because both Idaho Power and Bennett Creek are in agreement, Staff does not oppose the proposed changes. Unlike most of the other wind contracts wherein the projects have yet to come online, this Agreement contains liquidated damages provisions in the event of delays in achieving the expected online date.

Staff believes strongly that approval of the First Amendment should not carry with it either explicit or implicit approval of any terms of interconnection. The Interconnection Agreement, which is yet to be signed, and the Firm Energy Sales Agreement, Staff states, are clearly two separate agreements. The Bennett Creek project is not included in the "Twin Falls cluster" and will not be included in a settlement stipulation in the Cassia Case IPC-E-06-21; therefore, whether any terms of the proposed settlement in the pending IPC-E-06-21 case relating to QF interconnection can be applied to this Project is yet to be determined. Staff expects that a separate interconnection agreement for this Project will be submitted for Commission approval at a later date.

Bennett Creek agrees to provide liquid security in the amount of estimated Delay Damages. Staff has no objection to this consensual change in security by the contract parties. Idaho Power states that if the Commission concurs, Idaho Power would propose a similar resolution for other wind projects in the same vicinity that are facing similar transmission interconnection delays. Although Staff does not have any particular objections to proposals for similar resolutions for other projects, Staff does not believe that Commission approval of the Bennett Creek First Amendment should be interpreted by the Company as blanket approval for any other wind contracts.

Staff recommends that the Commission issue an Order: (1) approving the First Amendment to the Firm Energy Sales Agreement (Attachment 1) without change or condition; and (2) confirming that the costs associated with the Agreement as amended will be approved as prudent expenditures for ratemaking purposes as originally provided in Order No. 30245. Staff recommends that the Commission decline to comment on the Company's proposal to use the

“Liquid Security” amendment to the online delay damages provision agreed to by the contract parties in this case as a template for other instances of QF failure to achieve scheduled operation dates.

Commission Findings

The Commission has reviewed the filings of record in Case No. IPC-E-06-35 including the underlying Agreement between Idaho Power and Bennett Creek which we approved on February 20, 2007, in Order No. 30245 (Order). Idaho Power and Bennett Creek desire in this case to amend the Agreement to (1) revise the wind turbine manufacturer and specifications; (2) revise the scheduled operation date; and (3) provide liquid security in the amount of estimated Delay Damages. The Commission finds that the proposed amendment terms have been agreed to by the parties and we find the proposed changes comprising the First Amendment to the Firm Energy Sales Agreement between Idaho Power and Bennett Creek Windfarm LLC to be reasonable.

The Commission notes that Idaho Power proposes to use the “Liquid Security” amendment to the online Delay Liquidated Damages provision agreed to by the contract parties in this case as a template for other instances of QF failure to achieve scheduled operation dates. Idaho Winds LLC opposes the Company’s template proposal. Staff contends that it is not necessary for the Commission to address the Company’s template proposal in this case docket and advises the Commission that it has contacted both Idaho Power and Idaho Winds LLC with its recommended treatment of the Company’s template proposal. Neither party, it states, objects to Staff’s recommendation. The Commission finds that the First Amendment proposed in this case can be approved without consideration of the Company’s template proposal. We accordingly find it reasonable to not address the substance of the Company’s template proposal in this docket. We find that the respective positions of both Idaho Power and Idaho Winds LLC regarding same can be raised later and are preserved and not waived.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, and the issues raised in Case No. IPC-E-06-35 pursuant to the authority and power granted it under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to

enter into fixed term obligations for the purchase of energy from qualified facilities (QFs) and to implement FERC rules.

ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED and the Commission does hereby approve the First Amendment to the December 20, 2006 Firm Energy Sales Agreement between Idaho Power Company and Bennett Creek Windfarm LLC. Reference Order No. 30245.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

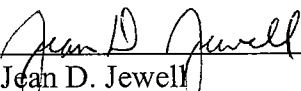
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8th day of August 2007.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

bls/O:IPC-E-06-35_sw

ORDER NO. 30399