

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AMENDMENTS TO)
THE FIRM ENERGY SALES AGREEMENT) **CASE NO. IPC-E-10-19**
BETWEEN IDAHO POWER COMPANY)
AND GRAND VIEW SOLAR ONE PV, LLC.) **ORDER NO. 32593**
_____)

On April 11, 2012, Idaho Power Company filed a Letter of Understanding and Agreement with the Commission. The Letter memorializes an agreement reached between Idaho Power and Grand View Solar One PV (the Project) regarding Grand View’s required security and scheduled operation date. Idaho Power requested that the Commission “file the enclosed letter in the contract file for this matter.”

The Commission chose to process the Letter through the use of Modified Procedure because the amendments pertained to material terms of the Firm Energy Sales Agreement. On April 24, 2012, the Commission issued a Notice of Proposed Amendments to FESA and Notice of Modified Procedure and set a comment deadline of May 31, 2012. Order No. 32535. Idaho Power, Grand View Solar One and Commission Staff filed comments. By this Order, the Commission approves the amendments to the FESA between Idaho Power and Grand View Solar One.

THE PROPOSED AMENDMENTS

On March 22, 2012, Idaho Power sent Grand View Solar One a Notice of Material Breach. Idaho Power deemed the Project in material breach of its Firm Energy Sales Agreement (FESA) for failing to maintain the required security and failing to meet its scheduled operation date. Grand View disputed Idaho Power’s interpretation of the FESA and asserted that it had a “rolling” scheduled operation date for which a deadline had not expired.

The parties met in an attempt to settle the dispute. As a result of negotiations, Idaho Power and Grand View Solar One agreed to the following:

1. A (scheduled) commercial operation date of no later than January 12, 2013;
2. The commercially reasonable time period granted to Grand View Solar One to achieve its operation date is fair and reasonable;

3. Grand View Solar One shall post security in the amount of \$810,000 no later than April 6, 2012, to secure the scheduled operation date. If Grand View Solar One fails to achieve a January 12, 2013, operation date Idaho Power has the right to immediately draw funds from the Project's posted security and terminate the Project's FESA without further action or notice;
4. In the event that Grand View Solar One achieves its operation date by or before January 12, 2013, Idaho Power shall release the posted security;
5. If Grand View Solar One does not post the required security by April 6, 2012, the FESA will be terminated without further notice;
6. If Grand View Solar One does not achieve commercial operation on or before January 12, 2013, the FESA will be terminated without further notice;
7. Grand View Solar One shall pay \$475,000 no later than April 6, 2012, representing the required construction deposit pursuant to the Generator Interconnection Agreement (GIA). If the payment is not made the FESA will be terminated without further notice; and
8. If it could be reasonably demonstrated that Idaho Power was the cause of any delays that would prevent Grand View Solar One from achieving its operation date of January 12, 2013, then the operation date shall be extended by the length of such delays or to a reasonable date mutually agreed upon by Idaho Power and the Project.

The Letter of Understanding and Agreement is dated April 3, 2012, and signed by Grand View Solar One and Idaho Power.

COMMENTS

Staff Comments

Staff acknowledges that Appendix B to the FESA is unclear with regard to the Scheduled Operation Date. Paragraph B-3 provides for two alternative ways of defining the Scheduled Operation Date. The first option ties the Scheduled Operation Date to 90 days past the date identified in the Facility Study report in which Idaho Power shall have completed installation of the necessary interconnection equipment. The second option seems to contemplate delays caused by Grand View, but clearly sets January 30, 2011, as the Scheduled Operation Date. The first option that ties the Scheduled Operation Date to the Facility Study could conceivably imply a date either prior to or after January 30, 2011.

In its Application to the Commission seeking approval of the original FESA, Idaho Power stated that “Grand View has elected a Scheduled Operation Date of January 30, 2011, for the Facility.” Application at 3. Grand View admits that development and funding challenges have caused the Project's operation date to be pushed later in time than originally hoped and anticipated. Grand View now argues that the Scheduled Operation Date is 90 days after the date specified in the Facility Study and, therefore, Grand View is not in default.

Grand View submitted a letter from Idaho Power dated December 7, 2010, in which Idaho Power seems to agree to a request from Grand View to delay Idaho Power’s pursuit of construction of interconnection facilities. In the letter, Idaho Power agrees to modify the milestones specified in the Facility Study to provide a rolling timescale rather than specific dates. The Facility Study appears to leave the timing for commencement of interconnection construction by Idaho Power up to receiving a go-ahead from Grand View. Staff maintained that it is inappropriate to allow any PURPA facility to have a rolling Scheduled Operation Date, where the QF can, in effect, unilaterally dictate when it wishes to come on-line. Staff pointed out that, in this particular case, Idaho Power and its ratepayers have not necessarily been harmed by Grand View’s delay because Idaho Power has been able to purchase or produce power from other sources at less cost than it would have paid Grand View. However, this will not always be the case. In Staff’s opinion, both parties to a FESA should agree to a specific, unambiguous Scheduled Operation Date, that date should be rigorously enforced, and should be changed only when it benefits all parties (including ratepayers) and is approved by the Commission.

Staff noted that the Letter Agreement requires a Scheduled Operation Date of no later than January 12, 2013, approximately two years later than originally anticipated. Grand View and Idaho Power have agreed that the revised Scheduled Operation Date provides Grand View a “commercially reasonable” time to bring the facility on-line. It is Staff’s understanding that construction for the Project is well under way and the \$810,000 security deposit and the \$475,000 construction deposit as required by the Letter Agreement have already been posted by Grand View. Given the progress of the Project to date and the fact that all required deposits have been made, Staff believes that a revised Scheduled Operation Date of January 12, 2013 is reasonable.

Staff recommended that the Commission approve the Letter of Understanding and Agreement relating to Contract Default, Scheduled Operation Date and Generator

Interconnection Agreement as submitted by Idaho Power. Article VII of the FESA lists the rates to be paid by year by Idaho Power for purchases from Grand View. Rates in the FESA are only listed through the year 2031. Therefore, if the Commission agrees to a revised Scheduled Operation Date of January 12, 2013, Staff recommended that the FESA be modified to display rates through 2033 in order to accommodate a 20-year contract term.

Idaho Power Comments

Idaho Power stated that the FESA between it and Grand View Solar One is unique. The original Agreement contained no firm Scheduled Operation Date and, therefore, no firm Commercial Operation Date. The ambiguity led to an interpretation dispute between the parties. Idaho Power and the Project settled the dispute by agreeing to cash payments to bring Grand View Solar One current and setting a firm Commercial Operation Date of January 12, 2013. Idaho Power maintained that establishing this date would remove the ambiguity created by the original FESA, give both parties certainty as to their obligations and performance under the Agreement, and utilize contractual terms consistent with Idaho Power's other PURPA projects.

Grand View Solar One Comments

Grand View recommended that the Commission approve the modified terms to its FESA with Idaho Power in order to provide clarity to the parties regarding expectations and responsibilities. Grand View states that the Project is currently under construction with millions of dollars of panels and equipment currently staged on the site. "It is Grand View's understanding that changes in operation date have been routinely, without the need for formal Commission action, approved by Idaho Power with simple notice to the file at the Commission. Grand View sees no reason for it to be treated any differently." Comments at 2.

FINDINGS AND CONCLUSIONS

The Idaho Public Utilities Commission has jurisdiction over Idaho Power, an electric utility, and the issues raised in this matter 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.

The Commission has reviewed the record in this case, including the Letter of Understanding and Agreement, and the comments of Commission Staff, Idaho Power and Grand View Solar One. Based on the record, we find that the amendments made in this FESA are reasonable and contain acceptable contract provisions. The original Agreement only displays avoided cost rates through 2031. In order to reflect the new Scheduled Operation Date of January 12, 2013, we direct Idaho Power to supplement the Agreement to display rates through 2033 to accommodate the full 20-year contract term.

Pursuant to the terms of the Agreement, “[n]o modification to this Agreement shall be valid unless it is in writing and signed by both Parties and subsequently approved by the Commission.” Agreement, ¶ 22.1. Contract terms regarding default and a project’s scheduled operation date are undeniably material terms to a firm energy sales agreement. As such, any amendments to these terms must be approved by this Commission if Idaho Power expects to recover the costs associated with the Project. Because we find that the amendments made in this FESA are reasonable, we further find it reasonable to allow payments made under the modified Agreement as prudently incurred expenses for ratemaking purposes.

ORDER

IT IS HEREBY ORDERED that the April 3, 2012, Letter of Understanding and Agreement between Idaho Power and Grand View Solar One be approved and that the modified terms contained therein become part of the June 8, 2010, Firm Energy Sales Agreement currently on file with this Commission.

IT IS FURTHER ORDERED that Idaho Power supplement the June 8, 2010, Agreement to display rates through 2033 to accommodate the full 20-year contract term.

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.

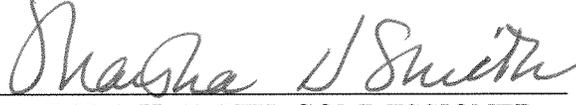
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12th
day of July 2012.



PAUL KJELLANDER, PRESIDENT

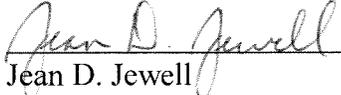


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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