

DECISION MEMORANDUM

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

**FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL**

DATE: APRIL 20, 2012

**SUBJECT: LETTER OF UNDERSTANDING BETWEEN IDAHO POWER AND
GRAND VIEW SOLAR ONE PV, CASE NO. IPC-E-10-19**

On April 11, 2012, Idaho Power Company filed a Letter of Understanding with the Commission. The Letter is dated April 3, 2012, and memorializes an agreement reached between Idaho Power and Grand View Solar One PV regarding Grand View's required security and scheduled operation date.

The Letter details that Idaho Power deemed Grand View Solar One 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. 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.

Idaho Power requested that the Commission “file the enclosed letter in the contract file for this matter.”

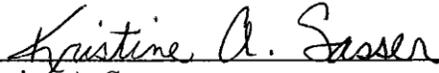
STAFF RECOMMENDATION

Paragraph 22.1 of the FESA states that, “[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. Furthermore, the Agreement states that it “shall become finally effective upon *the Commission’s approval of all terms and provisions* hereof without change or condition and declaration that all payments to be made to [Grand View Solar One] hereunder shall be allowed as prudently incurred expenses for ratemaking purposes.” Agreement, ¶ 20.1 (emphasis added).

Staff believes that the terms amended by the parties’ Letter of Understanding are material terms to the Agreement. As such, the amendments must be approved by the Commission if Idaho Power expects to recover the costs as prudently incurred expenses for ratemaking purposes. Therefore, Staff recommends that the Letter of Understanding be processed by Modified Procedure. Staff recommends a comment deadline of May 31, 2012, to allow adequate time for discovery.

COMMISSION DECISION

Does the Commission find that the Letter of Understanding between Idaho Power and Grand View Solar One should be processed by Modified Procedure with a comment deadline of May 31, 2012?



Kristine A. Sasser
Deputy Attorney General

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