Office of the Secretary
Service Date
July 31, 2012

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A FIRM ENERGY SALES AGREEMENT WITH YELLOWSTONE POWER, INC., FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY.	)	**CASE NO. IPC-E-10-22** **ORDER NO. 32601**

On May 31, 2012, Idaho Power Company and Yellowstone Power, Inc. filed a Motion requesting that the Commission accept a Settlement Stipulation entered into between the parties. On June 19, 2012, the Commission issued a Notice of Filing/Notice of Modified Procedure and set a comment deadline of July 10, 2012. Order No. 32573. Commission Staff was the only party to file comments. Two public comments were also received. By this Order, the Commission approves the Settlement Stipulation entered into by Idaho Power and Yellowstone Power on May 31, 2012.

BACKGROUND

On May 4, 2004, the Commission approved a Firm Energy Sales Agreement (FESA) between Idaho Power and Renewable Energy of Idaho, Inc. ("Renewable Energy"), for a 17.5 megawatt (MW) biomass generating facility to be located at the old Boise Cascade Plant site near Emmett, Idaho. Order No. 29487. The FESA subsequently went into default and was terminated by Idaho Power after Renewable Energy failed to meet its scheduled operation date. Idaho Power determined that the project had incurred damages in the amount of $106,804 for Renewable Energy's non-performance. Renewable Energy was unable to pay the assessed damages.

On August 13, 2010, Idaho Power filed an application with the Commission requesting approval of a 15-year FESA between Idaho Power and Yellowstone Power for an 11.7 MW biomass fueled combined heat and power generator located at the same site as the Renewable Energy project. Richard Vinson, a principal of Yellowstone Power, was also a principal of Renewable Energy. Mr. Vinson agreed, as part of the Yellowstone FESA negotiations, to pay the non-performance damages of the Renewable Energy FESA as an offset to the energy payments Yellowstone was to receive in its FESA. On November 2, 2010, the

Commission approved the FESA between Idaho Power and Yellowstone, including the payment by Yellowstone of Renewable Energy's $106,804 in non-performance damages. Order No. 32104. Yellowstone chose a scheduled operation date of December 31, 2011.

SETTLEMENT STIPULATION

Yellowstone has failed to achieve its December 31, 2011, scheduled operation date. On May 3, 2012, Idaho Power sent Yellowstone a Notice of Material Breach. Yellowstone responded by alleging that a force majeure event had occurred. Settlement discussions between the parties ensued.

The Settlement Stipulation provides for termination of the FESA between Idaho Power and Yellowstone Power and mutual release of any future claims or causes of action between the parties. Yellowstone agrees to pay Idaho Power $200,000 for its material breach of the FESA, which amount includes Renewable Energy's pre-existing debt of $106,804. If Yellowstone fails to make the $200,000 then Yellowstone agrees to allow Idaho Power to draw on the current $450,000 Letter of Credit.

Idaho Power and Yellowstone state that the Settlement Stipulation is in the public interest and that all of its terms and conditions are fair, just, and reasonable.

COMMENTS

Staff Comments

Staff maintains that because the project has not achieved operation within 90 days of the scheduled operation date, the project is in material breach and Idaho Power is entitled to terminate the FESA. Idaho Power provided notice to the project of the material breach, and termination of the FESA, as well as the utility's request for payment of the $450,000 delay liquidated damages pursuant to the terms of the FESA. The project responded to the notification of material breach with a claim of *force majeure* regarding its non-performance. Yellowstone alleges that conditions beyond its control have made it impossible to complete the project and achieve the scheduled operation date specified in the FESA.

Staff argues that Idaho Power is entitled to the full amount of delay liquidated damages ($450,000), in addition to the pre-existing debt of $106,804. The proposed settlement collects the pre-existing debt ($106,804) and provides approximately $93,196 in damages for default of the current agreement. Staff recognized that, although it would normally be reluctant to recommend approval of a settlement that appears to be inconsistent with the terms of the

FESA, current circumstances may support acceptance of the proposed settlement. Staff noted that, currently, electric market prices are far below the avoided cost rates specified in the contract. In addition, the proposed settlement eliminates the uncertainty and additional cost and resources necessary to litigate the termination of the agreement and validity of the delay liquidated damages. Consequently, Staff asserted that approving the proposed settlement is in the public interest.

Public Comments

Both public comments were in support of resolving the issue amicably for all parties involved. The commenters encouraged the parties and the Commission to decide the matter responsibly.

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 Settlement Stipulation between Idaho Power and Yellowstone Power, the public comments and the comments of Commission Staff. The proposed settlement provides for termination of the FESA and mutual release of any future claims or causes of action between Idaho Power and Yellowstone Power. In exchange, Yellowstone agrees to pay Idaho Power $200,000 for its material breach of the Agreement. The Settlement Stipulation acknowledges Yellowstone Power's default under the terms of the Agreement, recognizes the complications in calculating actual damages, and avoids costly litigation. Therefore, we find that the terms of the proposed settlement are fair, just and reasonable to all parties, including Idaho Power's ratepayers.

O R D E R

IT IS HEREBY ORDERED that the Settlement Stipulation entered into between Idaho Power and Yellowstone Power on May 31, 2012, is approved.

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 30th 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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