

DECISION MEMORANDUM

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

FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL

DATE: JUNE 12, 2012

SUBJECT: IDAHO POWER'S JOINT MOTION FOR APPROVAL OF A
SETTLEMENT STIPULATION WITH YELLOWSTONE POWER,
CASE NO. IPC-E-10-22

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. Idaho Power requests that the Motion be processed by Modified Procedure pursuant to Commission Rules of Procedure 201-204. IDAPA 31.01.01.201-.204.

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.

THE SETTLEMENT STIPULATION

Yellowstone has failed to achieve its 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 payment 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.

STAFF RECOMMENDATION

Staff recommends that the case be processed by Modified Procedure.

COMMISSION DECISION

Does the Commission wish to process this case under Modified Procedure?



Kristine A. Sasser
Deputy Attorney General