

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

INTERCONNECT SOLAR)	
DEVELOPMENT, LLC,)	CASE NO. IPC-E-12-10
)	
COMPLAINANT,)	
)	
v.)	
)	
IDAHO POWER COMPANY,)	ORDER NO. 32571
)	
RESPONDENT)	

On May 11, 2012, Interconnect Solar Development, LLC (Interconnect Solar, Project) filed a Motion for Reconsideration of Commission Order No. 32531. In its Motion, Interconnect Solar asks the Commission to reinstate its Firm Energy Sales Agreement (FESA) with Idaho Power and “order Idaho Power, as unwilling as they are, to fix their mistake, and perform their requirements without error. . . .” Motion at 6. Idaho Power filed an answer to Interconnection Solar’s Motion on May 18, 2012. Based upon our review of the evidence and arguments of the parties, we deny Interconnect Solar’s request for reconsideration, as set out in greater detail below.

BACKGROUND

On June 17, 2011, Idaho Power Company filed an Application with the Commission requesting acceptance or rejection of a 25-year Firm Energy Sales Agreement (Agreement) between Idaho Power and Interconnect Solar. Interconnect Solar would sell and Idaho Power would purchase electric energy generated by the Murphy Flats Solar Power Project located near Murphy, Idaho.

Following the submission of comments by the parties and the public the case was fully submitted for the Commission’s consideration. On September 20, 2011, the Commission issued Order No. 32361. The Commission noted that all parties had acknowledged a computational error that was made in the escalation rate that was applied to the CCCT capital cost component from the 2009 IRP that was carried through and used in the IRP pricing model for the Interconnect Solar project. In an effort to permit the parties an opportunity to correct the mathematical error without creating undue delay, the Commission allowed Idaho Power and

Interconnect Solar additional time to resubmit their Firm Energy Sales Agreement with accurate calculations prior to the Commission making a final determination regarding the Agreement. Order Nos. 32361 and 32364.

On October 11, 2011, pursuant to Commission Order Nos. 32361 and 32364, Idaho Power resubmitted the parties' Firm Energy Sales Agreement. The adjustments resulted in a levelized price of \$97.47 per MWh. In the modified Agreement, Interconnect Solar selected September 1, 2012, as its commercial operation date (COD). The Project had been advised by Idaho Power that its COD was prior to such time that interconnection/transmission facilities were scheduled to be constructed and complete. Interconnect Solar acknowledged and expressly agreed to accept the risk associated with not meeting its COD. On October 20, 2011, the Commission approved the replacement Agreement signed by Idaho Power and Interconnect Solar on October 4, 2011, for the sale and purchase of electric energy. Order No. 32384.

COMPLAINT AND ANSWER

On February 14, 2012, Interconnect Solar Development, LLC (Interconnect Solar, Project) filed a Complaint and Request to Intervene with the Commission. Interconnect Solar maintained that Idaho Power improperly cancelled its Firm Energy Sales Agreement (FESA) and mishandled its Generator Interconnection Agreement (GIA) and facility study. Interconnect Solar requested that the Commission (1) require Idaho Power to provide a revised in-service date in its FESA to comport with "the ever moving GIA schedule-72"; (2) require Idaho Power to provide a corrected GIA "which lines up with the BLM meeting and schedules set forth and agreed upon by all Parties"; (3) require Idaho Power to provide the BLM with "a timely EA [Environmental Assessment] and spring Botanical study so the BLM can expedite the ROW GRANT"; and (4) direct Idaho Power "to stop delaying the project and damaging Interconnect Solar." Complaint at 5.

In its Answer, Idaho Power asserted that Interconnect Solar was put on notice that BLM permitting issues were outside of its control and could influence the Project's commercial operation date. Answer at 2. Idaho Power argued that Interconnect Solar "affirmatively accepted and assumed any and all risk associated with the contingency that the interconnection/transmission facilities would not be constructed by the Scheduled Operation Date. . . ." *Id.* Idaho Power maintained that any alleged damages suffered by Interconnect Solar were caused by and the result of Interconnect Solar's own conduct. *Id.* at 8. Interconnect Solar

agreed to the delay security provisions in its FESA. The Project failed to post the security pursuant to the terms of the Agreement. As a result, Idaho Power terminated the Agreement. For these reasons, Idaho Power requested that the Commission dismiss the Complaint with prejudice.¹

FINAL ORDER NO. 32531

After a thorough review of the evidence, we dismissed the complaint filed by Interconnect Solar. Interconnect Solar's delay security was due no later than December 11, 2011. On December 16, 2011, Idaho Power notified Interconnect Solar that it was in material breach of its Agreement because of the Project's failure to post its required delay security. Answer, Atch. 1. On February 23, 2012, Idaho Power notified Interconnect Solar that its FESA had been terminated after it failed to cure the material breach by posting the required delay security deposit. Interconnect Solar does not dispute that it has not posted the delay security pursuant to Section 5.8 of the Agreement. Interconnect Solar asserted that it would be unable to obtain a loan to post the required delay security with an obsolete GIA and unworkable commercial operation date.

This Commission admonished that Interconnect Solar was repeatedly warned about choosing a commercial operation date that preceded Idaho Power's estimated time for completion of the Project's interconnection. Interconnect Solar argued that its failure to post a delay security stemmed from issues with its GIA. However, its Agreement with Idaho Power states that "[d]elays in the interconnection and transmission network upgrade study, design and construction process that **are not** Force Majeure events accepted by both Parties, **shall not** prevent Delay Liquidated Damages from being due and owing as calculated in accordance with this Agreement." Agreement, ¶ 5.3 (emphasis in original).

We stated that "[t]he concerns of Idaho Power, Staff and this Commission have been realized. Setbacks with regard to Interconnect Solar's GIA have affected the Project's ability to post its required delay security deposit." Order No. 32531 at 5. Because Interconnect Solar was in material breach of its FESA and failed to cure the defect, we found that Idaho Power terminated the FESA consistent with the terms of the Agreement. Accordingly, we dismissed the complaint filed by Interconnect Solar.

¹ The record in the underlying complaint case closed on April 9, 2012, when the case was fully submitted to the Commission for deliberations. On April 16, 2012, Interconnect Solar filed a request for oral argument. Interconnect Solar's request was untimely and, therefore, not considered.

FINDINGS AND CONCLUSIONS

In its request for reconsideration, Interconnect Solar restates the position asserted in its complaint. Interconnect Solar argues that Idaho Power knew the originally proposed interconnection path was not viable and Idaho Power's error caused Interconnect Solar's inability to comply with the FESA's required delay security deposit provisions. Interconnect Solar requests that the Commission order Idaho Power to fix the mistake and allow the project to proceed.

In its answer, Idaho Power states that Interconnect Solar's request for reconsideration does not explain why Order No. 32531 is unreasonable, unlawful, erroneous, or not in conformity with the law. Idaho Power further maintains that Interconnect Solar fails to offer any new statements, evidence or arguments that would cause the Commission to reconsider its original decision. Idaho Power argues that the Motion should, therefore, be denied.

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by rehearing if it intends to take additional argument. If reconsideration is granted, the Commission must complete its reconsideration within 13 weeks after the deadline for filing petitions for reconsideration. *Idaho Code* § 61-626(2). The Commission must issue its order upon reconsideration within 28 days after the matter is finally submitted. *Id.*

Interconnect Solar's request for reconsideration does little more than reiterate the arguments made in its underlying complaint. The Project blames its inability to post the delay security deposit on Idaho Power's "error in choosing and suggesting [an interconnection] path that was never viable. . . ." Motion at 4. Interconnect Solar's arguments were considered by this Commission when we issued our initial decision dismissing the Project's complaint. Setbacks with regard to Interconnect Solar's GIA made terms in its FESA unworkable. However, as we previously stated, "Interconnect Solar was repeatedly warned about choosing a commercial operation date that preceded Idaho Power's estimated time for completion of the Project's interconnection." Order No. 32531 at 4. The Project cannot now blame Idaho Power for not being able to meet its target dates that Interconnect Solar chose despite repeated warnings.

Moreover, the Agreement negotiated and signed by both parties states that “[d]elays in the interconnection and transmission network upgrade study, design and construction process that **are not** Force Majeure events accepted by both Parties, **shall not** prevent Delay Liquidated Damages from being due and owing as calculated in accordance with this Agreement.” Agreement, ¶ 5.3 (emphasis in original). We find that Idaho Power complied with the terms of the Agreement between the parties and terminated the Agreement consistent with its terms.

Interconnect Solar has failed to set forth grounds why Order No. 32531 is unreasonable, unlawful, erroneous or not in conformity with the law pursuant to Rule 331.01 of the Commission’s Rules of Procedure. IDAPA 31.01.01.331.01. Therefore, Interconnect Solar’s Motion for Reconsideration is denied.

ORDER

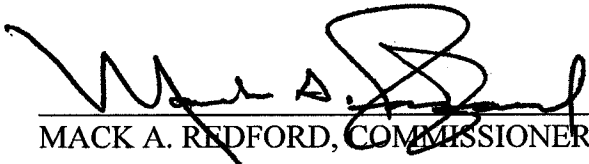
IT IS HEREBY ORDERED that the May 11, 2012, Motion for Reconsideration filed by Interconnect Solar is denied.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Order previously issued in this Case No. IPC-E-12-10 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8th
day of June 2012.



PAUL K. ELLANDER, PRESIDENT

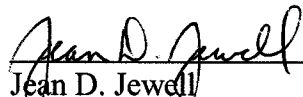


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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