

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

HIDDEN HOLLOW ENERGY 2 LLC,)	
)	CASE NO. IPC-E-12-18
COMPLAINANT,)	
)	
vs.)	
)	
IDAHO POWER COMPANY,)	ORDER NO. 33442
)	
RESPONDENT)	

In July 2012, Hidden Hollow Energy 2 filed a complaint against Idaho Power Company alleging that Idaho Power had acted unlawfully in terminating a Power Purchase Agreement (PPA) for a landfill gas project at Ada County’s Hidden Hollow Landfill. Hidden Hollow generally alleged that two force majeure events had occurred which excused Hidden Hollow’s failure to produce and sell energy to Idaho Power.¹ In its complaint, Hidden Hollow requested that the Commission order Idaho Power to retract the termination of the PPA and return \$144,000 in delay liquidated damages to Hidden Hollow. The Commission issued a Summons and Idaho Power timely answered the complaint in August 2012. Hidden Hollow initiated discovery and then the parties informally asked that action on the complaint be stayed.

THE PROPOSED SETTLEMENT

On December 18, 2015, the parties filed an amended “Joint Motion to Approve Settlement Stipulation for Dismissal [of the Complaint] with Prejudice.” Under the proposed settlement, the parties agreed to terminate the Power Purchase Agreement. Idaho Power will return the liquidated damages to Hidden Hollow, and the complaint will be dismissed.

The parties assert that the proposed settlement is in the public interest because it avoids protracted and costly litigation involving multiple claims of force majeure and the collection of liquidated damages. Hidden Hollow also remains in litigation with Ada County regarding certain items that were the subject of Hidden Hollow’s complaint before the Commission. First Amended Motion at 3-4. The parties further insist that the settlement is reasonable and in the public interest because it “conclusively terminates a long-term [PPA] that

¹ The two force majeure events were related to Hidden Hollow’s failure to obtain a timely air quality permit and the subsequent Ada County contract to supply Dynamis Energy with trash stock. According to Hidden Hollow, the Dynamis contract undermined the available fuel source for Hidden Hollow’s landfill gas project.

contains terms and conditions that have subsequently been found by the Commission to be no longer just and reasonable nor in the public interest for new [PPAs] going forward. . . .” *Id.* at 4.

The proposed settlement also contains a provision stating that all terms and conditions of the Settlement Stipulation are subject to approval by this Commission. The settlement will become valid and effective only after the Commission approves the settlement without material change or modification. *Id.* at 5. Both parties believe that the amended settlement is a fair and equitable resolution to this matter, and in the public interest.

COMMISSION FINDINGS

The Commission has jurisdiction 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 considers proposed settlements under our Rules 274-277, IDAPA 31.01.01.274-277. When a settlement is presented to the Commission, the Commission will determine the procedures appropriate to review of the settlement. For example, the Commission may accept settlement of a private dispute upon the written request of the parties. Rule 274, IDAPA 31.01.01.274. In this case, it is the parties that carry the burden of showing that the settlement is reasonable and in the public interest. Rule 275, IDAPA 31.01.01.275. The Commission “will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.” Rule 276, IDAPA 31.01.01.276.

The Commission has thoroughly reviewed the record in this case and finds that the Settlement Stipulation provides a reasonable basis for settlement on the terms proposed by the parties. In particular, we find that the parties’ settlement avoids further litigation in this matter and benefits ratepayers by avoiding a long-term contract that is not needed at this time. Based on the foregoing considerations, we find that the terms of the proposed settlement are fair, just and reasonable to all parties, including Idaho Power’s ratepayers.


ORDER

IT IS HEREBY ORDERED that the amended Joint Motion to Approve Settlement Stipulation entered into between Idaho Power Company and Hidden Hollow Energy 2 is granted. The Settlement Stipulation is approved in its entirety without material change or condition.

IT IS FURTHER ORDERED that Hidden Hollow's complaint against Idaho Power be and is hereby dismissed with prejudice.

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 22nd day of December 2015.



PAUL KJELLANDER, PRESIDENT

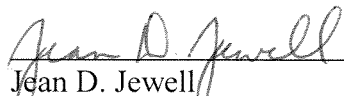


MARSHA H. SMITH, COMMISSIONER



KRISTINE RAPER, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:IPC-E-12-18_don