

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE FIRM ENERGY )**  
**SALES AGREEMENT BETWEEN IDAHO )** **CASE NO. IPC-E-13-01**  
**POWER COMPANY AND GRAND VIEW )**  
**SOLAR ONE PV, LLC )** **ORDER NO. 32743**  
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On January 24, 2013, Idaho Power Company filed a “Motion” requesting that the Commission approve a “Confidential Settlement Agreement” entered into by Idaho Power and Grand View Solar One PV, LLC. If approved, the settlement agreement would provide for the “voluntary termination” of a Power Purchase Agreement (PPA) that Idaho Power and Grand View executed in June 2010, pursuant to the Public Utility Regulatory Policies Act (PURPA). Idaho Power’s Motion requests that the Commission process this matter via Modified Procedure and approve the confidential settlement “without material condition or modification.” Motion at 3.

**BACKGROUND**

In June 2010, Idaho Power and Grand View Solar entered into a PPA which obligated Grand View to construct and operate a photovoltaic (PV) solar generating facility (with a nameplate rating of 20 MW) and to sell the output from the solar facility to Idaho Power. Order No. 32068 at 1. The PPA contemplated a monthly output of 10 average MW for the PURPA qualifying facility (QF) at the published avoided cost rate in effect prior to March 16, 2010. *Id.* The PPA provided that the QF’s scheduled commercial operation date was January 1, 2011. In September 2010, the Commission approved the Company’s application and the PPA. Order No. 32068.

On April 11, 2012, Idaho Power filed a “Letter of Understanding” regarding the PPA. As set out in the Letter, the parties agreed to postpone the commercial operation date until no later than January 12, 2013, and agreed that Grand View would post a security deposit in the amount of \$810,000 no later than April 6, 2012. On July 12, 2012, the Commission issued Order No. 32593 approving the Letter of Understanding as a modification to the PPA.

## THE MOTION

On January 9, 2013, Grand View Solar advised Idaho Power that it would not be in commercial operation by the scheduled operation date (January 12, 2013) as specified in the Letter of Understanding. Grand View requested that it be allowed to “voluntarily terminate the [PPA] prior to the January 12, 2013, date.” Motion at ¶ 3. The parties maintain that neither the PPA nor the subsequent Letter of Understanding address the status of the security deposit if the PPA is voluntarily terminated “prior to a default or material breach.” *Id.* at ¶ 4. Consequently, the parties executed the Confidential Settlement Agreement<sup>1</sup> which “provides for the immediate termination of the [PPA], the collection of damages, and the disposition of the [QF’s] Delay Security held by Idaho Power.” *Id.* at ¶ 5.

The parties maintain that the terms of the Confidential Settlement Agreement are fair, equitable, and in the public interest. While the settlement agreement is subject to approval by the Commission, Idaho Power requests that the Commission approve the Confidential Settlement Agreement “in its entirety, without material change or condition pursuant to RP 274.” *Id.* at ¶ 7.

## STAFF REVIEW AND RECOMMENDATION

After reviewing the record and the Confidential Settlement Agreement, Staff recommended that the Commission approve the Confidential Settlement Agreement. Staff concurred with the parties that the proposed settlement is reasonable and in the public interest. From Idaho Power’s perspective, the utility (and its ratepayers) avoid paying for generation that Idaho Power generally claims that it does not need to meet its current service obligations. From a ratepayer perspective, ratepayers avoid paying more than \$86 million over the 20-year life of the PPA (without considering generation offsets).

The settlement also allows Idaho Power to retain a portion of the security deposit while returning the balance to Grand View. From Grand View Solar’s perspective, it recovers a portion of its security deposit. Finally, resolution of this matter will avoid extensive litigation regarding the parties’ conduct. Settlement will conserve resources (both time and money).

Given the benefits of the proposed settlement, Staff believes it is appropriate for the Commission to approve the settlement without further proceedings. Pursuant to Rule 274, the Commission has the discretion to determine the manner in which it considers proposed

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<sup>1</sup> Idaho Power claims that the Confidential Settlement Agreement is exempt from public disclosure because the Agreement “is a trade secret or privileged or confidential as described in” the Public Records Act, *Idaho Code* § 9-340 and the Trade Secrets Act, *Idaho Code* § 48-801 *et seq.* See Rule 67, IDAPA 31.01.01.067.

settlement. Here, the two parties have agreed to resolve their private dispute. The parties and the Commission Staff assert that the settlement is reasonable and in the public interest.

### **DISCUSSION AND FINDINGS**

Procedural Rule 276 provides that the Commission is not bound by the parties' confidential settlement agreement. 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." *Id.* The Commission may accept, reject, or modify settlement provisions. Moreover, proponents of settlement carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. Rule 275. When reviewing a settlement, the Commission will prescribe appropriate procedures to consider the settlement. Rule 274. For example, the Commission may summarily accept settlement of an essentially private dispute or may convene an evidentiary hearing to consider the reasonableness of the settlement.

After reviewing the underlying PPA, the Letter of Understanding, the Motion and the Confidential Settlement Agreement, we find that based upon the particular facts of this case the proposed settlement agreement is reasonable and in the public interest. Grand View Solar, Idaho Power and ratepayers will receive significant benefits under the settlement. In particular, ratepayers avoid paying more than \$86 million over the 20-year term of the PPA. In addition, the Confidential Settlement Agreement allows Idaho Power to retain a significant portion of the security deposit while returning the balance to Grand View. Finally, we find that resolution of this matter will avoid extensive litigation and allow the parties to conserve their resources. As we have previously said, reasonable settlements represent a significant benefit to parties and bring the dispute to a reasonable conclusion. Rules 354-55; *Aguirre v. Hamlin*, 80 Idaho 176, 327 P.2d 349 (1958).

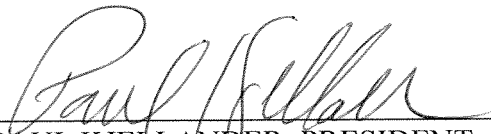
We further find that given the facts of this case and the nature of this settlement, further proceedings are not necessary. Pursuant to our Rule 274, the Commission has the discretion to accept settlement of a private dispute. Although this settlement involves a power purchase agreement, we find that the proposed settlement is reasonable and in the public interest. Order No. 32628. Consequently, we approve the Confidential Settlement Agreement.

**ORDER**

IT IS HEREBY ORDERED that Idaho Power Company's Motion for Approval of the Settlement Agreement is granted. As set out in the Agreement, the power purchase agreement between the parties is hereby terminated; Grand View Solar shall pay the agreed upon damages to Idaho Power; and Idaho Power shall return the Letter of Credit to Grand View Solar upon satisfaction of the conditions contained in the settlement agreement.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-13-01 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

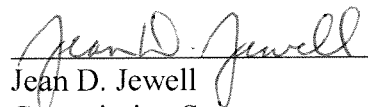
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12<sup>th</sup> day of February 2013.

  
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PAUL KJELLANDER, PRESIDENT

  
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MACK A. REDFORD, COMMISSIONER

  
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MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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