

DECISION MEMORANDUM

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

FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL

DATE: JANUARY 28, 2013

SUBJECT: IDAHO POWER COMPANY'S MOTION FOR APPROVAL OF A
CONFIDENTIAL SETTLEMENT AGREEMENT, CASE NO. IPC-E-13-01

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 Agreement¹ 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 underlying PPA, the Letter of Understanding, the Motion and the Confidential Settlement Agreement, Staff recommends that the Commission approve the Confidential Settlement Agreement. Staff concurs with the parties that the proposed settlement is reasonable and in the public interest for several reasons. First, Staff believes it is reasonable to allow voluntary termination of the PPA prior to the scheduled operation date. 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).

Second, the settlement allows Idaho Power to retain a portion of the security deposit while returning the balance to Grand View. From Grand View’s perspective, it recovers the

¹ 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.

balance of its security deposit. Third, resolution of this matter will avoid extensive litigation regarding the parties' conduct. Settlement will conserve resources (both time and money). The settlement represents a significant benefit to Grand View, Idaho Power and ratepayers.

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 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.

COMMISSION DECISION

Does the Commission find that the proposed settlement is reasonable and in the public interest?

Pursuant to Rule 274, does the Commission wish to approve this settlement based upon its review and the particular facts of this case without Modified Procedure?



Don Howell
Deputy Attorney General

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