

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE TERMINATION OF THE FIRM ENERGY SALES AGREEMENT BETWEEN IDAHO POWER COMPANY AND DYNAMIS ENERGY, LLC))))))	CASE NO. IPC-E-13-03 ORDER NO. 32763
--	----------------------------	---

On March 7, 2013, Idaho Power Company moved the Commission to approve Idaho Power's March 6, 2013 Settlement Agreement with Dynamis Energy, LLC. If approved, the Settlement Agreement will immediately terminate the November 16, 2011 Firm Energy Sales Agreement ("FESA") pursuant to which Idaho Power is to buy electricity from Dynamis under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Idaho Power asks the Commission to approve the Settlement Agreement "without material condition or modification," pursuant to RP 274 or via modified procedure. *See* Idaho Power Company's Motion for Approval of Settlement Agreement ("Motion") at 3.

BACKGROUND

Under the FESA, Dynamis is to own and operate a 22 MW landfill waste-to-energy facility near Boise in Idaho Power's service territory, and Idaho Power is to buy electricity produced by that facility. The FESA contains a scheduled operation date of February 15, 2014. The Commission approved the FESA on February 24, 2012. *See* Order No. 32470, Case No. IPC-E-11-25.

THE MOTION

According to Idaho Power's Motion, on or about January 4, 2013, Dynamis asked the Company to voluntarily terminate the FESA. Motion at 2. As the FESA does not discuss voluntary termination before the scheduled operation date, the parties executed the Settlement Agreement to discuss that situation. It provides: (1) the parties will immediately terminate the FESA; (2) Idaho Power will collect a confidential amount of damages from Dynamis; (3) Dynamis will terminate the Generator Interconnection Agreement ("GIA"); and (4) all interconnection deposit refunds, equipment removal, etc. will be in accordance with the GIA and Schedule 72. *Id.* The Settlement Agreement further states that the Commission must approve it before it takes effect. *Id.* at 2-3. Idaho Power's Motion represents that the Settlement

Agreement is in the public interest and a fair and equitable final resolution to this matter. *Id.* at 3.

STAFF REVIEW AND RECOMMENDATION

After reviewing the record and the Settlement Agreement, Staff recommended the Commission approve the Settlement Agreement. Staff concurred the proposed settlement is reasonable and in the public interest. First, ratepayers potentially will avoid paying about \$189 million (with a net present value of \$82 million) to Dynamis over the 20-year term of the Agreement. Second, Idaho Power will retain a portion of the security deposit as damages while returning the balance to Dynamis. Finally, settlement will resolve this matter without litigation and thus conserve both time and money resources.

Given the benefits of the proposed settlement, Staff believes it is appropriate for the Commission to approve it without further proceedings. Pursuant to RP 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, and Idaho Power and Staff assert 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' 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. RP 275. When reviewing a settlement, the Commission will prescribe appropriate procedures to consider the settlement. RP 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 FESA, the Motion, and the Settlement Agreement, we find the Settlement Agreement is reasonable and in the public interest. Dynamis, Idaho Power, and ratepayers will receive significant benefits under the settlement. The Settlement Agreement allows Idaho Power to retain a portion of the security deposit while returning the balance to Dynamis. Resolving this matter now avoids litigation and allows the parties to conserve their

resources. As we have previously said, equitable settlements can represent a significant benefit to parties and bring disputes to reasonable conclusions. RP 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 RP 274, the Commission has the discretion to accept settlement of a private dispute. On the facts of this case, we find that the proposed settlement is reasonable and in the public interest. Consequently, we approve the Settlement Agreement.

ORDER

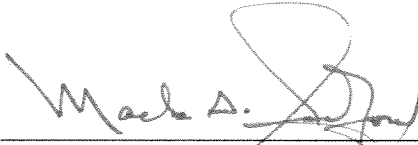
IT IS HEREBY ORDERED that Idaho Power Company's Motion for Approval of Settlement Agreement is granted.

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-13-03 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 19th
day of March 2013.



PAUL KJELLANDER, PRESIDENT

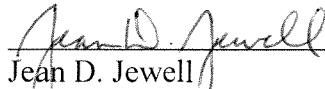


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:IPC-E-13-03_kk