

DECISION MEMORANDUM

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

**FROM: KARL KLEIN
DEPUTY ATTORNEY GENERAL**

DATE: MARCH 14, 2013

**SUBJECT: IDAHO POWER’S MOTION FOR APPROVAL OF SETTLEMENT
AGREEMENT, CASE NO. IPC-E-13-03**

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 to 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 megawatt 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 recommends that the Commission approve the Settlement Agreement. Staff concurs that the proposed settlement is reasonable and in the public interest. First, ratepayers will avoid paying about \$189 million (with a net present value \$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 resources (both time and money).

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. 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.” *See* Commission Order No. 32743, at 3. Here, the two parties have agreed to resolve their private dispute, and Idaho Power and Staff assert that the settlement is reasonable and in the public interest. Accordingly, Staff recommends that the Commission summarily approve the Settlement Agreement.

COMMISSION DECISION

Does the Commission wish to enter an Order approving the Settlement Agreement without further proceedings?



Karl Klein
Deputy Attorney General

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