

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AN ACCOUNTING ORDER))))))	CASE NO. IPC-E-14-08 ORDER NO. 33076
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On May 9, 2014, Idaho Power Company filed an Application seeking an accounting order regarding the recovery of \$1,884,406.85 for overpayments made by Idaho Power to the J.R. Simplot Company. Simplot operates a PURPA cogeneration facility at its Pocatello plant. In February 2006, Idaho Power and Simplot entered into a Power Purchase Agreement (the “2006 PPA”) whereby Simplot agreed to sell power to the utility over a seven-year period ending on February 28, 2013. See Order No. 30028. Under the terms of the 2006 PPA, Simplot was generally required to deliver no less than 90% of the contracted monthly amount of power and no more than 110% of the monthly amount (commonly referred to as the “90-110 band”). If the amount of the delivered power was outside of the 90-110 band, then Idaho Power was required to adjust (e.g., lower) the payments to Simplot.

On May 22, 2014, the Commission issued a Notice of Modified Procedure inviting interested persons to file written comments on the Application no later than June 19, 2014. Only the Commission Staff filed written comments. Idaho Power did not file reply comments.

BACKGROUND

After the termination of the 2006 PPA in February 2013, Idaho Power “discovered an overpayment [to Simplot] had occurred” during the entire term of the expired 2006 PPA. Application at 2. Apparently, Idaho Power did not adjust the monthly payments to Simplot for power outside the 90-110 band. The parties subsequently began discussions regarding the recovery of the overpayments made to Simplot. *Id.* As a result of these discussions, Idaho Power and Simplot entered into a confidential Settlement Agreement in February 2014.

Under the terms of the Settlement Agreement, Simplot agreed to repay \$1,564,503.76 of the \$1,884,406.85 that was purportedly overpaid to Simplot. *Id.* at ¶ 3. Idaho Power will also repay to customers the unrecovered balance of \$319,903.09 (\$1,884,406.85 - \$1,564,503.76). *Id.* Idaho Power proposed to record the recovery of the overpayments to the benefit of customers through the annual Power Cost Adjustment (PCA) mechanism beginning in 2015.

Idaho Power proposed to record the recovery of the overpayments by debiting either Federal Energy Regulatory Commission (FERC) Account No. 143 (Other Accounts Receivable) for funds to be received, or by debiting FERC Account No. 235 (Customer Deposits) and crediting FERC Account No. 555 (Purchased Power) if the funds are already on deposit with the Company.

The Application also contained two attachments: a confidential “Settlement Agreement and Release” and a “Confidential Summary”¹ of the Settlement Agreement. Idaho Power maintained that these attachments “contain information that is a trade secret, privileged or confidential as described in *Idaho Code* § 9-340 *et seq.* and § 48-801 *et seq.*” See Certificate of Attorney.

STAFF COMMENTS

A. Audit

Staff first verified that the reported overpayment of \$1,884,406.85 was correct. In response to production requests, Idaho Power reported that the overpayments made to Simplot during the seven-year contract totaled \$2,429,438. This amount was subsequently adjusted to reflect Simplot’s planned maintenance of its cogeneration facility in May and June of every year. Staff verified that when the May-June planned maintenance events are incorporated into the pricing methodology, the total overpayment is reduced by \$545,031.90 resulting in the reported overpayments of \$1,884,406.85. Staff concurred with the adjusted overpayment amount. Comments at 3.

Staff also inquired about the internal controls that were presumably in place regarding the accuracy of the monthly bills and payments made to Simplot. In response, the Company disclosed that it reviewed all of its other 90-110 band PURPA contracts to ensure that the contract billing terms were properly applied. The Company reported that the other contracts were properly paid. The Company also disclosed that it had implemented additional internal accounting controls to prevent a recurrence of this type of billing overpayment. Staff declared that the necessary changes implemented by Idaho Power appear to adequately address the past problem and are intended to prevent future overpayments. *Id.*

B. The Settlement Agreement

¹ The Confidential Summary describes in detail the manner of the proposed recovery.

Staff noted that the Application and the parties' Settlement Agreement do not request that the Commission approve the settlement but only request that the Commission issue an accounting order to implement the confidential settlement. Comments at 4. Although Idaho Power discovered the overpayments in February 2013, the parties did not execute their settlement until February 2014. Recovery of the overpayments was not included in the 2014 PCA filing (Case No. IPC-E-14-05) because the utility asserted it did not recover overpayments during the PCA period of April 2013 through March 2014. *Id.* Staff commented that the first recovered payment from Simplot was paid to Idaho Power in April 2014, and thus, will be reflected in next year's PCA filing in April 2015. Under the terms of the settlement, Idaho Power will pay its share (\$319,903.09) in one lump sum in next year's PCA filing. Staff expects the source of Idaho Power's contribution will be shareholder funds, not ratepayer funds. *Id.*

Despite the lack of request to approve the Settlement Agreement, Staff believed "the Commission has authority to review Idaho Power's conduct and the settlement." *Id.* Staff concurred in the proposed sharing of the overpayment costs between the parties: Simplot will pay \$1,564,503.76 and Idaho Power will contribute \$319,903.09 for a total amount of \$1,884,406.85. Staff stated that Idaho Power bears partial responsibility for the overpayment by failing to adequately monitor and adjust the contract payments. *Id.*

C. Recovery of Simplot Overpayments

"Although Staff supported the agreement between the parties, Staff [opposed] Idaho Power's proposed accounting treatment to recover the overpayments." Comments at 5. In particular, paragraph 2 of the Settlement Agreement provides that Idaho Power will recover the overpayments over a term longer than one year.² Staff took exception to the length of the recovery period and asserted that Idaho Power should credit the entire recovery (\$1,884,406.85) in the single 2015 PCA year for several reasons.

First, the recovery of the overpayments to Simplot does not necessarily compensate the same customers that were overcharged when the overpayments occurred over the seven-year period (2006-2013). Second, Staff noted that a year has already passed since Idaho Power discovered the overpayments in February 2013, and subsequently entered into the settlement agreement in February 2014. Finally, Staff noted that requiring the Company to record the full

² The exact length of the recovery period is considered by the parties to the settlement agreement to be confidential information. For purposes of this Order we will characterize the recovery period as more than one year.

amount of payments in next year's PCA will not adversely affect the Company's financial position. "The overpayment amount to be recovered from Simplot is 1.2% of the total actual PURPA expenses as included in the past two PCA filings, and the total amount is less than 1% of the Company's net income for 2013." Comments at 5. Staff declared that Idaho Power's "failure to properly compensate Simplot under the 2006 PPA should not excuse the utility from immediately compensating customers for the overpayments." *Id.*

In summary, Staff believes the settlement between Simplot and Idaho Power (as modified above) is fair and reasonable. Staff recommends that customers be compensated by Idaho Power in a single year as part of the 2015 PCA case.

COMMISSION FINDINGS

The Commission's procedural Rule 356 provides that the Commission is not bound by the parties' Settlement Agreement. IDAPA 31.01.01.356. The Commission will "independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, and in the public interest or otherwise in accordance with law or regulatory policy." *Id.*

After reviewing the parties' Settlement Agreement, the Application and Staff comments, we find that Idaho Power overpaid Simplot under the 2006 PPA. As a result, Idaho Power over collected PURPA power costs from its ratepayers. Based upon the parties' agreement and Staff's comments, we find that ratepayers should be credited with the recovery of \$1,884,406.85 (\$1,564,503.76 from Simplot and \$319,903.09 from Idaho Power). Idaho Power's contributed share of the recovered funds will be from shareholder funds, not ratepayer funds. We are pleased the parties were able to settle their differences regarding the recovery of the overpayments.

While we will not disturb the settlement between the parties, we find it is not reasonable for Idaho Power to spread the recovery of the overpayments for more than one year. The recovery of all the overpayments made to Simplot should flow to the benefit of customers in the single 2015 PCA year. Thus, Idaho Power's application for a multi-year accounting order is modified. Idaho Power is authorized to establish the necessary accounting and regulatory accounts to reflect the return of the overpayments in the 2015 PCA while the settlement provides recovery of the overpayments from Simplot over a longer period. Idaho Power shall file the actual initial accounting entries with the Commission Staff. Resolution of this matter brings the

overpayment dispute to a reasonable conclusion, and as modified above, benefits the parties and ratepayers.

ORDER

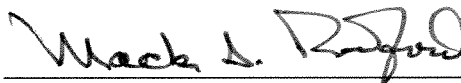
IT IS HEREBY ORDERED that Idaho Power Company's Application for an accounting order to account for the recovery of the overpayments made to Simplot over a period of more than one year is partially granted as modified above. Idaho Power shall credit the entire amount of recovered overpayments to ratepayers in the amount of \$1,884,406.85 in its 2015 PCA application.

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-14-08 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 16th day of July 2014.



PAUL KJELLANDER, PRESIDENT



MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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