

DECISION MEMORANDUM

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

**FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL**

DATE: MAY 12, 2014

**SUBJECT: IDAHO POWER'S APPLICATION FOR AN ACCOUNTING ORDER FOR THE
RECOVERY OF OVERPAYMENTS MADE TO SIMPLOT UNDER A
TERMINATED PURPA CONTRACT, CASE NO. IPC-E-14-08**

On May 9, 2014, Idaho Power filed an Application seeking an accounting order to “flow back \$1,884,406.85 to customers through the [annual] Power Cost Adjustment (“PCA”) mechanism” starting in 2015. Application at 1. Idaho Power and J.R. Simplot Company have entered into a confidential Settlement Agreement regarding the recovery of the utility’s overpayments to Simplot.

BACKGROUND

Simplot operates a PURPA cogeneration facility at its Pocatello plant. In February 2006, Idaho Power and Simplot entered into a new 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, Case No. IPC-E-06-03. 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 performance band”). If Simplot’s delivery of energy was outside of the 90-110 band, then Idaho Power was required to adjust (i.e., lower) the payments to Simplot in those months.

THE APPLICATION

A. Settlement Agreement

Idaho Power asserts that upon termination of the 2006 PPA in February 2013, it “discovered an overpayment [to Simplot] had occurred.” 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. Under the terms of the Settlement Agreement, Simplot agreed to repay \$1,564,503.76 of the \$1,884,406.85 that was 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 proposes to record the recovery of the overpayments to customers as part of the 2015 PCA case. The utility asserts that the recovery of the overpayments “will be a direct benefit to . . . customers in the form of a reduction in net power supply expense.” Application at 3.

The Application contains two attachments: a confidential “Settlement Agreement and Release”; and a “confidential summary” of the Settlement Agreement. The Company maintains 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.*” Certificate of Attorney. The Company has indicated that the confidential attachments will be provided to parties that have signed a Protective Agreement pursuant to Commission Rule 67.04, IDAPA 31.01.01.067.04.

B. Proposed Accounting Treatment

Idaho Power proposes to record recovery of the overpayments by debiting either the 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 Company has proposed that its Application be processed under Modified Procedure pursuant to Commission Rule 201 *et seq.*

STAFF RECOMMENDATION

Staff recommends that this Application be processed under Modified Procedure with a 28-day comment period.

COMMISSION DECISION

Does the Commission wish to process this case under Modified Procedure with a 28-day comment period?



Don Howell
Deputy Attorney General

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