

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S APPLICATION TO APPROVE)	CASE NO. IPC-E-15-09
FIRST AMENDMENT TO ITS POWER)	
PURCHASE AGREEMENT WITH)	
TELOCASET WIND POWER PARTNERS,)	ORDER NO. 33318
LLC)	

On April 1, 2015, Idaho Power Company filed an Application asking the Commission to approve the First Amendment to its Power Purchase Agreement (PPA) with Telocaset Wind Power Partners, LLC. The PPA is not a contract under the Public Utility Regulatory Policies Act (PURPA), but includes many provisions similar to those in PURPA contracts. *See* Order No. 30259 at 2.

The parties' proposed Amendment deletes and replaces the PPA's Section 12.1 and Appendix J. The new Section 12.1 changes the nature of financial statements Telocaset must provide in order to adapt to administrative changes implemented by Telocaset's new parent organization. Application at 2-3. The amended Appendix J resolves the parties' conflicting interpretations of the PPA's provisions regarding assumption of curtailment risk. *Id.* at 6.

Idaho Power asked that its Application for approval of the First Amendment to its PPA with Telocaset be processed under Modified Procedure. *Id.* at 9. On April 28, 2015, the Commission issued a Notice of Application and Notice of Modified Procedure, setting a 21-day comment period. Commission Staff filed written comments, and the Company advised Staff it did not intend to file a reply. The Commission now approves the Amendment to the PPA.

BACKGROUND

The Commission approved Idaho Power's PPA with Telocaset in 2007. Order No. 30259. Under the PPA, Idaho Power purchases energy generated by Telocaset's 100.65 megawatt (MW) Elkhorn Wind Park facility, located in eastern Oregon between Baker City and La Grande. Application at 2. The facility is connected directly to Idaho Power's La Grande-Brownlee 230 kilovolt transmission line. *Id.* at 2.

Under PPA Section 9.2 and Appendix J, Idaho Power could – on notice to Telocaset – elect to pay lower prices ("Post-Operation Date Alternative Pricing") for energy deliveries, but in exchange, Idaho Power would accept more financial risk for possible curtailment. *Id.* at 4. In

December 2011, Idaho Power gave notice to Telocaset that it would use the Post-Operation Date Alternative Pricing. *Id.* In August 2012, Telocaset sent its first invoice to Idaho Power requesting payment for “Lost Output” related to transmission curtailments from March through July 2012; this was followed by additional monthly invoices for Lost Output. *Id.* at 4-5. On review of its documented curtailments and the applicable provisions of the PPA, Idaho Power disagreed with Telocaset’s Lost Output calculations. *Id.* at 5.

On December 31, 2012, Idaho Power paid Telocaset the undisputed Lost Output amount of \$485,985.33 for the period from January 2012 through September 2012. *Id.* at 6. On May 21, 2013, Idaho Power paid Telocaset an additional undisputed Lost Output amount of \$52,544.05, for the period from October 2012 through December 2012. *Id.* The remaining disputed balance is \$145,378.97. *Id.* In essence, the remaining dispute concerned the parties’ disagreement about how Appendix J applies to the PPA. *Id.*

Throughout 2013 and 2014, the parties engaged in meetings and discussions about their interpretations of Appendix J. *Id.* at 7. Under Telocaset’s interpretation of Appendix J, Idaho Power “assumed curtailment risk for the full 100.65 [megawatt (MW)] nameplate rating of the Facility.” *Id.* at 6. Under Idaho Power’s interpretation of Appendix J, Idaho Power “only accepted curtailment risk for the 66 MW of the Facility’s nameplate rating, as the Facility elected to only secure 66 MW of network transmission capacity for its output” under Section 6.8 of the PPA. *Id.* On December 19, 2014, the parties agreed to and signed the First Amendment for which they now seek the Commission’s approval. *Id.* at 7.

PROPOSED AMENDMENT

As noted in the Application, “as part of the Amendment, each party agreed to settle and release any and all claims arising under or pursuant to Appendix J . . . including, but not limited to, the disputed Lost Output payment claim of \$145,378.97.” *Id.* at 8. The parties also agreed to amend the language in the PPA that led to the parties’ disparate interpretations. To this end, the parties have “mutually resolved and agreed to [language] . . . memorialized in the Amended Appendix J.” *Id.*

In addition, the parties agreed to replace Section 12.1, which requires Telocaset to provide *audited* financial statements to Idaho Power, with a new Section 12.1, that requires Telocaset to provide *unaudited* financial statements. *Id.* at 7. This amendment accommodates administrative changes implemented by Telocaset’s new parent organization. *Id.* at 3. Because

Telocaset is already required “to post \$10 million of Performance Assurance” under an existing (and unaltered) provision in the PPA, “Idaho Power believes there is little to no impact by accepting the proposed change in financial reporting requirements.” *Id.* at 3.

STAFF COMMENTS

Staff reviewed the Application and attachments, including the original Appendix J. In particular, Staff evaluated the parties’ agreement to settle claims “relating to payment for Lost Output” resulting from transmission curtailments, and the parties’ agreement that Telocaset provide unaudited rather than audited financial statements to satisfy its reporting requirements.

Regarding the claims for Lost Output under Appendix J, Staff believes the “original Appendix J leaves considerable room for interpretation,” and “neither party’s interpretation is more compelling than the other.” Staff Comments at 3. Staff noted that Idaho Power paid Telocaset \$485,985 and \$52,544, for Lost Output; the remaining disputed amount was \$145,379. *Id.* at 4. Staff believes the parties’ agreement to settle and release all claims, including the \$145,379 for Lost Output, is fair and reasonable, and thus supports the proposed Amendment. *Id.*

As to the change in Telocaset’s reporting requirement, Staff agreed with Idaho Power that it is more important for “Telocaset [to] provide adequate Performance Assurance,” than for Telocaset to provide audited (rather than unaudited) financial statements. *Id.* Staff believes that Telocaset’s unaltered requirement in the PPA to post \$10 million for Performance Assurance is adequate, and thus does not oppose the proposed change in Section 12.1, that Telocaset must provide unaudited rather than audited financial statements.

Staff recommended that the Commission approve Idaho Power’s First Amendment to its PPA with Telocaset, without change or condition.

DISCUSSION AND FINDINGS

The Commission has jurisdiction over Idaho Power and the issues raised in this matter under the authority and power granted it under Title 61 of the Idaho Code, specifically *Idaho Code* §§ 61-129, 61-307, 61-501, 61-502, and 61-503, and the Commission’s Rules of Procedure, IDAPA 31.01.01.000 *et seq.* We have reviewed the record in this case, including the Application, its attachments, and Staff’s Comments.

Given the parties’ disparate interpretations about how the original Appendix J applies to the PPA, we find that the proposed amended Appendix J appropriately resolves the parties’

differing interpretations, and conclude that the amended Appendix J is just and reasonable. We commend the parties for their efforts in resolving the disputed payments and find that the parties' agreement to settle and release all remaining claims under Appendix J is a reasonable outcome. *Id.* With the agreement to settle and release all claims, Idaho Power avoids both litigation expenses and the disputed \$145,379 in Lost Output which would have been passed on to ratepayers. Accordingly, we also find this aspect of the agreement to be just, fair, and reasonable.

Finally, we find that the \$10 million that Telocaset is required to post under the original and amended PPA provides sufficient Performance Assurance such that it is immaterial whether Telocaset reports audited or unaudited financial statements. We therefore find that the proposed change in Telocaset's reporting requirement, from audited to unaudited statements – to accommodate changes implemented by Telocaset's new parent organization – is also fair, just, and reasonable.

ORDER


IT IS HEREBY ORDERED that Idaho Power's Application to approve the First Amendment to its Power Purchase Agreement with Telocaset Wind Power Partners is approved without change or condition.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. 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 10th
day of June 2015.



PAUL KJELLANDER, PRESIDENT




MACK A. REDFORD, COMMISSIONER



KRISTINE RAPER, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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