

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER RAPER
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DAPHNE HUANG
DEPUTY ATTORNEY GENERAL

DATE: APRIL 24, 2015

SUBJECT: IDAHO POWER'S APPLICATION TO APPROVE FIRST AMENDMENT
TO ITS POWER PURCHASE AGREEMENT WITH TELOCASET WIND
POWER PARTNERS, CASE NO. IPC-E-15-09

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, 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.

BACKGROUND

The Commission approved Idaho Power's PPA with Telocaset in 2007. Order No. 30259. Under the PPA, Idaho Power purchases, and Telocaset sells, energy generated by Telocaset's 100.65 megawatt (MW) Elkhorn Wind Park facility, located in eastern Oregon between Baker City and La Grande, Oregon. 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, 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 a 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 to interpret Appendix J 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 an 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.

Idaho Power asks that its Application for approval of the Amendment to its PPA with Telocaset be processed under Modified Procedure. *Id.* at 9.

STAFF RECOMMENDATION

Staff has reviewed the Application and attachments and recommends that the Application be processed under Modified Procedure with a 21-day comment period.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Application and Notice of Modified Procedure with a 21-day comment period?

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Deputy Attorney General

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