

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT)	
AND PETITION OF IDAHO POWER)	CASE NO. IPC-E-12-20
COMPANY FOR A DECLARATORY)	
ORDER REGARDING THE FIRM ENERGY)	
SALES AGREEMENTS AND GENERATOR)	
INTERCONNECTION AGREEMENTS WITH)	
COTTONWOOD WIND PARK, LLC; DEEP)	
CREEK WIND PARK, LLC; ROGERSON)	
FLATS WIND PARK, LLC; AND SALMON)	
CREEK WIND PARK, LLC.)	
)	
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IN THE MATTER OF THE COMPLAINT)	
AND PETITION OF IDAHO POWER)	CASE NO. IPC-E-12-22
COMPANY FOR A DECLARATORY)	
ORDER REGARDING THE FIRM ENERGY)	
SALES AGREEMENT AND GENERATOR)	
INTERCONNECTION AGREEMENT WITH)	
NOTCH BUTTE WIND PARK, LLC.)	
)	
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IN THE MATTER OF THE COMPLAINT)	
AND PETITION OF IDAHO POWER)	CASE NO. IPC-E-12-23
COMPANY FOR A DECLARATORY)	
ORDER REGARDING THE FIRM ENERGY)	NOTICE OF COMPLAINT
SALES AGREEMENT AND GENERATOR)	AND SETTLEMENT
INTERCONNECTION AGREEMENT WITH)	
LAVA BEDS WIND PARK, LLC.)	ORDER NO. 32628

On July 24, 2012, in Case No. IPC-E-12-20, Idaho Power Company filed a Complaint and Petition for Declaratory Order against Exergy Development Group of Idaho LLC, the developer of four wind projects previously approved by the Commission (Cottonwood, Deep Creek, Rogerson Flats, and Salmon Creek). Complaint at 4. In essence, Idaho Power alleged that each of the four projects have failed to meet their “scheduled operation date” of June 30, 2012. *Id.* at 2. The utility requested that the Commission issue a Declaratory Order finding that: (1) “Exergy’s claim of force majeure does not exist”; (2) Idaho Power may terminate the PPAs as of September 28, 2012; and (3) Idaho Power is entitled to an award of liquidated damages pursuant to the provisions of the Power Purchase Agreements (PPAs). *Id.* at 40.

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On July 31, 2012, Idaho Power filed two additional Complaints and Petitions for Declaratory Order concerning Exergy's wind projects at Notch Butte and Lava Beds wind parks (Case Nos. IPC-E-12-22 and IPC-E-12-23, respectively). In these two latter cases, Idaho Power seeks similar relief and claims that Notch Butte and Lava Beds have failed to achieve their scheduled operation date, and are in default of their PPAs. Notch Butte Complaint at 32-33; Lava Beds Complaint at 23-24.

On August 14, 2012, Exergy and Idaho Power Company filed a "Joint Motion" for approval of a Settlement Stipulation. More specifically, the parties move the Commission to accept a confidential Settlement Stipulation that resolves Idaho Power's Complaints and requests for Declaratory Orders regarding the three cases (and all six wind projects). As described in the Joint Motion, Exergy agrees to termination of the six PPAs in exchange for Idaho Power returning Exergy's Letters of Credit in the four projects included in the 12-20 case. Motion at 4. In their Settlement Stipulation the parties assert the Settlement is reasonable and in the public interest. The parties urge the Commission to issue an Order accepting their confidential Settlement Stipulation without material condition or modification.

Based upon our review of the complaints, the Joint Motion and the proposed settlement, we grant the Motion and approve the settlement.

BACKGROUND

In October 2005, the Commission approved two Power Purchase Agreements (PPAs) for the Lava Beds and Notch Butte wind projects. See Order Nos. 29949 and 29950, respectively. Each of these PPAs committed Idaho Power to purchase the 10 aMW output of each project (18 MW nameplate rating) over a 20-year period with an initial operation date in May 2007. Applications at 5 (same for both). The operation date for the two projects was subsequently postponed by the parties to September 1, 2010. See IPCo Letter dated June 4, 2008.

In December 2010, Idaho Power and Exergy executed four PPAs for the Cottonwood, Deep Creek, Rogerson Flats, and Salmon Creek wind projects. Each PPA provided that Idaho Power would buy 10 aMW of power per month at the then published avoided cost rate. Each project has a 20 MW nameplate capacity and was for a term of 20 years with a schedule operation date for all four projects of June 30, 2012. On February 11, 2011, the Commission

approved the four PPAs in Order Nos. 32182, 32183, 32184 and 32185. The four PPAs all contain delayed liquidated damage provisions calculated at \$45 per kW.

After approval of the six PPAs, disputes arose between the parties regarding the interconnection processes and transmission service arrangements for the six projects. Joint Motion at 3-4. These disputes culminated in Idaho Power filing its three Complaints and Petitions for Declaratory Order.

THE JOINT MOTION TO ACCEPT THE SETTLEMENT

The parties' confidential Settlement Stipulation is a result of settlement negotiations conducted after Idaho Power filed its complaints. The proposed Settlement Stipulation provides that Idaho Power shall return to Exergy the four Letters of Credit held by Idaho Power as delay security for the Cottonwood, Deep Creek, Rogerson Flats and Salmon Creek projects. Joint Motion at 4. "In addition, the Settlement Stipulation provides that the [six PPAs] for the Exergy Projects shall be terminated." *Id.*

The parties recommend that the Commission approve the Settlement Stipulation in its entirety pursuant to Commission Rule 274. The parties also believe that the public interest does not require a hearing and suggest that the Commission process the request to approve the Settlement Stipulation by Modified Procedure. *Id.*

STAFF REVIEW

After reviewing the underlying PPAs, the Joint Motion and the Settlement Stipulation, Staff Counsel recommended the Commission adopt and approve the Settlement Stipulation. Staff concurs with the parties that the proposed Settlement is reasonable and in the public interest. Staff believes it is reasonable to return Exergy's four Letters of Credit in exchange for terminating the six PPAs with a total nameplate capacity of 116 MW. From Idaho Power's perspective, the utility (and its ratepayers) avoid paying for generation that Idaho Power generally claims that it does not need to meet its service obligations. From a ratepayer perspective, ratepayers avoid paying more than \$594 million over the 20-year terms of the PPAs. From Exergy's perspective, it recovers the four Letters of Credit valued at more than \$3 million.

Given the benefits of the proposed Settlement and the request of Exergy's counsel for expeditious treatment, Staff Counsel asserts that it is appropriate for the Commission to approve the Settlement without further proceedings. Pursuant to Rule 274, the Commission has the discretion to determine the manner in which it considers proposed Settlements. Here, the two

parties have agreed to resolve their dispute. The parties assert that the Settlement is reasonable and in the public interest.

DISCUSSION AND FINDINGS

Procedural Rule 276 provides that the Commission is not bound by the parties' Settlement Stipulation. IDAPA 31.01.01.276. The Commission will "independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy." *Id.* The Commission may accept, reject, or modify settlement provisions. Moreover, proponents of settlements carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. Rule 275. When reviewing a settlement, the Commission will prescribe appropriate procedures to consider the settlement. Rule 274. 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.

After reviewing the three complaints, the Joint Motion and the confidential Settlement Stipulation, we find that based upon the particular facts of this case the proposed settlement is reasonable and in the public interest.¹ Exergy, Idaho Power and its ratepayers will receive significant benefits under the settlement. In particular, ratepayers avoid paying nearly \$600 million in energy payments over the 20-year terms of the six PPAs. From Exergy's perspective, it recovers the four Letters of Credit. Termination of the six PPAs permits Idaho Power to avoid purchasing 116 MW of nameplate capacity that the Company claims is not necessary to meet its service obligations.

We further find that given the nature of this settlement, further proceedings are not necessary. Pursuant to our Rule 274, the Commission has the discretion to accept settlement of a private dispute. Our approval of the Settlement Stipulation should not be viewed as condoning the lack of any recovery of the delay security posted by the four more recent projects. As the Commission recently did in the Yellowstone case, we intend to look at the facts of each particular settlement proposal to ensure that the settlement is reasonable and in the public interest. Order No. 32601.

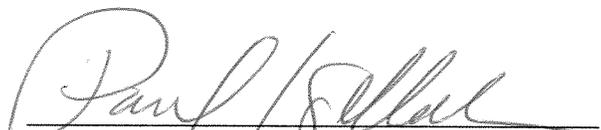
¹ Consistent with the parties' Joint Motion to approve Settlement Stipulation and our Procedural Rule 247, the Commission finds it reasonable to consolidate these three related cases. IDAPA 31.01.01.247.

ORDER

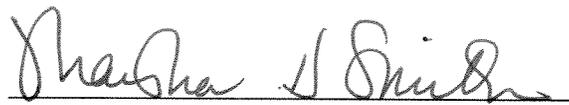
IT IS HEREBY ORDERED that the Joint Motion for approval of the confidential Settlement Stipulation filed by Exergy and Idaho Power is granted. The proposed Settlement Stipulation is approved.

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 these Case Nos. IPC-E-12-20, IPC-E-12-22, and IPC-E-12-23 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 these cases. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

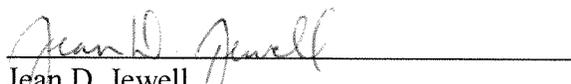
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 29th day of August 2012.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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