

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	
MURPHY FLAT MESA, LLC TO MODIFY)	CASE NO. IPC-E-10-56
ORDER NO. 32255 AND APPROVE A FIRM)	
ENERGY SALES AGREEMENT ENTERED)	
INTO BETWEEN ITSELF AND IDAHO)	
POWER COMPANY)	
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IN THE MATTER OF THE PETITION OF)	
MURPHY FLAT ENERGY, LLC TO)	CASE NO. IPC-E-10-57
MODIFY ORDER NO. 32255 AND APPROVE)	
A FIRM ENERGY SALES AGREEMENT)	
ENTERED INTO BETWEEN ITSELF AND)	
IDAHO POWER COMPANY)	
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IN THE MATTER OF THE PETITION OF)	
MURPHY FLAT WIND, LLC TO MODIFY)	CASE NO. IPC-E-10-58
ORDER NO. 32255 AND APPROVE A FIRM)	
ENERGY SALES AGREEMENT ENTERED)	NOTICE OF PETITION
INTO BETWEEN ITSELF AND IDAHO)	
POWER COMPANY)	NOTICE OF SCHEDULE
)	
)	ORDER NO. 32629

On August 16, 2012, Murphy Flat Mesa, LLC; Murphy Flat Energy, LLC; and Murphy Flat Wind, LLC (collectively “Murphy Flat”) filed a Petition requesting that the Commission modify its previous Order No. 32255 issued June 8, 2011, and approve the three Power Purchase Agreements (PPAs) between Idaho Power Company and the three wind projects. In Order No. 32255, the Commission declined to approve the rates contained in the three PPAs finding that those Agreements became effective after December 14, 2010 – the date on which the eligibility cap for published avoided cost rates was reduced from 10 aMW to 100 kW. *See* Order No. 32176. Murphy Flat maintains that the Federal Energy Regulatory Commission’s (FERC’s) ruling in the *Cedar Creek* and *Rainbow Ranch* cases “constitute new facts or information justifying modification of” Order No. 32255. Petition at 1. “Accordingly, pursuant to *Idaho Code* § 61-624 and Idaho PUC’s Rules of Procedure, Murphy Flat respectfully petitions the Commission to modify its [previous Order] and approve the [three] Agreements.” *Id.* at 1-2 (footnotes omitted).

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Murphy Flat asserts that the issue raised in its Petition is “strictly one of law,” and there is no need for further proceedings. Based upon its assumption that Congress will extend the federal financing incentives for qualifying facilities (QFs) for another year, Murphy Flat insists that it must have the wind “Projects online by December 31, 2013.” *Id.* at 12. Accordingly, Murphy Flat requests that the Commission “issue its Order on this Petition on an expedited basis but not later than August 31, 2012.” *Id.*

IDAHO POWER’S LIMITED RESPONSE

On August 24, 2012, Idaho Power submitted a “Limited Answer Regarding Request for Expedited Treatment.” Idaho Power “objects to Murphy Wind’s ‘request’ for expedited treatment and, . . . files this limited Answer addressing the request for expedited treatment.” Limited Answer at 2. Idaho Power advances several reasons why the Commission should deny Murphy Flat’s request for an Order by August 31, 2012.

First, Idaho Power asserts that it is entitled to at least 21 days in which to file an answer to a petition. *Id.* at 6 *citing* Rule 57.02. Idaho Power insists that Murphy Flat has failed “to make a proper Motion requesting such expedited relief.” *Id.* at 6. Moreover, Idaho Power “should be given adequate opportunity to fully Answer and respond to Murphy Wind’s request.” *Id.* Second, Idaho Power questions the need for expedited treatment based on an assumption that Congress may continue financial incentive for QFs that are scheduled to expire on December 31, 2012. Idaho Power maintains that it is speculative whether Congress will extend the incentive and such speculation is “not a valid reason for the Commission to grant expedited treatment of Murphy Wind’s request.” *Id.* at 3.

Finally, Idaho Power claims that any alleged need for expedited treatment is undercut by Murphy Flat’s “fail[ure] to take any action with regard to Order No. 32255 for over one year/more than 14 months. . . .” *Id.* at 3. Idaho Power notes that Murphy Flat did not seek reconsideration of Order No. 32255 “but it also did not seek any other type of judicial or FERC review for over one year.” *Id.*

In conclusion, Idaho Power requests that the Commission deny the request to issue an Order no later than August 31, 2012, and provide Idaho Power with adequate time to answer the Petition. *Id.* at 6. More specifically, Idaho Power requests that it be granted 21 days “from the date of the Commission’s Order regarding these issues” to file its full answer. *Id.* at 6-7. In the

alternative, the Company requests that the Commission deny Murphy Flat's Petition because it failed to seek timely reconsideration of final Order No. 32255. *Id.* at 7.

FINDINGS

Without discussing the substantive merits of Murphy Flat's Petition, we issue this Order responding to the Petitioner's request for us to issue a *sua sponte* Order no later than August 31, 2012. After reviewing the Petition and Idaho Power's Limited Answer, we deny the request to issue an order by August 31 for three reasons. First, Murphy Flat seeks modification of Order No. 32255 pursuant to *Idaho Code* § 61-624. This statute provides in pertinent part that the Commission "may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision by it." *Idaho Code* § 61-624 (emphasis added). By its very terms, this statute requires that Idaho Power be provided an opportunity "to be heard" as provided in the case of complaints. Our Rule 57.02 provides that answers to complaints shall be made within 21 days, unless the Commission modifies the time within which [to] answer." IDAPA 31.01.01.057.02. Thus, our Procedural Rule 57 generally provides parties 21 days to file an answer.

Second, we find that the need for an expedited Order is not supported by speculation as to whether Congress may or may not extend the financial incentives available to QFs. Finally, the request for expedited treatment is undercut by Murphy Flat's own conduct in this case. As indicated in its Petition, Murphy Flat is relying upon two FERC Orders in the *Cedar Creek* and *Rainbow* cases to bolster its assertion that no further proceedings are necessary given FERC's Declaratory Orders. However, FERC issued its *Cedar Creek* Order in October 2011 and its *Rainbow* Order in April 2012. Murphy Flat has not adequately explained why it waited until August 16, 2012, to file its current Petition. Consequently, we deny Murphy Flat's request for an Order by August 31, 2012 (15 days after the Petition was issued).

NOTICE OF SCHEDULING

We further find that it is reasonable to issue a procedural schedule in this case. Consistent with our Rules of Procedure, we set out the following schedule for the parties:

DATE	ACTION
September 7, 2012	Deadline for Idaho Power's Answer
September 14, 2012	Deadline for Murphy Flat's Reply (if any)

As part of its answer, Idaho Power is directed to address whether the three Murphy Flat PPAs in these cases have been assigned to other principals or owners pursuant to Section 22 of the PPAs dated December 15, 2010. Murphy Flat may also address this inquiry in its reply.

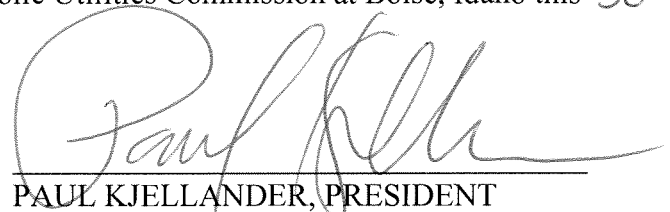
ORDER

IT IS HEREBY ORDERED that Murphy Flat's request that the Commission issue an expedited Order no later than August 31, 2012, is denied.

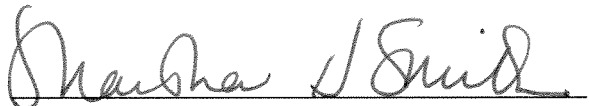
IT IS FURTHER ORDERED that the parties comply with the schedule set out above.

IT IS FURTHER ORDERED that the parties disclose whether the Power Purchase Agreements in these cases have been assigned, and if so, when and to whom.


DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30th 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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