

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	CASE NO. IPC-E-11-23
IDAHO POWER COMPANY FOR A)	
DECLARATORY ORDER REGARDING)	NOTICE OF PETITION FOR
PURPA JURISDICTION.)	DECLARATORY ORDER
)	
)	NOTICE OF
)	COMMENT DEADLINE
)	
)	ORDER NO. 32410

On November 3, 2011, Idaho Power Company filed a Petition for Declaratory Order pursuant to Rule 101, IPUC Rules of Procedure. Idaho Power requests that the Commission issue an Order determining that the Commission will exercise jurisdiction over the proposed Public Utility Regulatory Policies Act of 1978 (PURPA) qualifying facility (QF) transaction proposed by Kootenai Electric Cooperative, Inc. (Kootenai Electric).

THE PETITION

Kootenai Electric has developed the Fighting Creek Landfill Gas to Energy Station (Fighting Creek, Project) located in Kootenai County near the City of Bellgrove, Idaho. Fighting Creek is a 3.2 megawatt (MW) landfill gas generating facility and a “qualifying facility” (QF) under the applicable provisions of the federal PURPA. On October 19, 2011, Kootenai Electric drafted a letter to Idaho Power requesting a “Standard Oregon Power Purchase Agreement” for the output from the Project.

Kootenai Electric proposes that the Project will interconnect with Kootenai Electric’s distribution system and then deliver the output to Avista Corporation (Avista) under an amended interconnection agreement with Avista that has not yet been executed. Petition at 2. Kootenai Electric then proposes to wheel the generation across Avista’s system for delivery to Idaho Power. Idaho Power responded to Kootenai Electric’s request for a Standard Oregon Power Purchase Agreement by letter, dated November 3, 2011, stating that the request was received but that Idaho Power was not required to offer an Oregon PURPA contract. On November 3, 2011, Idaho Power also filed this Petition for Declaratory Order requesting that the Idaho Public Utilities Commission exercise its jurisdiction over the transaction proposed by Kootenai Electric.

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Idaho Power states that both the Fighting Creek Project and its interconnection to Idaho Power's transmission grid are located in Idaho. Petition at 6. However, "Oregon's avoided cost rates for Idaho Power are much higher than the published avoided cost rates in Idaho." *Id.* Idaho Power maintains that Idaho customers bear approximately 95% of the power supply costs associated with Idaho Power's QF purchases in Oregon. *Id.* As such, Idaho Power argues that "Kootenai Electric's proposed transaction is a blatant manipulation of PURPA's rules and regulations by a QF developer in order to financially profit to the direct and substantial detriment of Idaho Power's customers." Petition at 5. With its Petition, Idaho Power asks that the Commission assert primary jurisdiction over the transaction proposed by Kootenai Electric and declare that the avoided cost and contracting process be conducted pursuant to Idaho rules and procedures.

THE ANSWER

On November 25, 2011, Kootenai Electric (the Project) filed an Answer and Motion to Dismiss. The Project argues that Idaho Power's Petition is fatally flawed because it fails to cite any Order, law or rule upon which it is based. The Project further maintains that the Commission is prohibited by federal law from regulating QFs and, therefore, does not have authority to restrict its access to markets. The Project states that granting the Petition would violate the Commerce Clause of the United States Constitution by restricting QFs from access to markets outside of Idaho's borders. The Project asks that the Commission dismiss Idaho Power's Petition with prejudice.

NOTICE OF COMMENT DEADLINE

YOU ARE HEREBY NOTIFIED that this Notice is issued pursuant to Rule 102 of the Commission's Rules of Procedure requiring that notice of petitions for declaratory rulings be issued to all affected utilities.

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on this Petition may file a written comment in support or in opposition with the Commission **no later than twenty-one (21) days** from the service date of this Order. The comment must contain a statement of reasons supporting the comment. Persons desiring a hearing must specifically request a hearing in their written comments. Written comments concerning this Petition may be mailed to the Commission and the parties at the addresses reflected below:

Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street
Boise, ID 83702-5918

Donovan E. Walker
Jason B. Williams
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
E-mail: dwalker@idahopower.com
jwilliams@idahopower.com

Peter J. Richardson
Gregory M. Adams
Richardson & O'Leary, PLLC
515 N. 27th Street
Boise, ID 83702
E-mail: peter@richardsonandoleary.com
greg@richardsonandoleary.com

These comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at www.puc.idaho.gov. Click the "Comments and Questions" icon, and complete the comment form, using the case number as it appears on the front of this document. These comments must also be sent to the parties at the e-mail addresses listed above.

YOU ARE FURTHER NOTIFIED that after the comment deadline has passed, the Commission will issue an Order regarding Idaho Power's Petition.

YOU ARE FURTHER NOTIFIED that the Petition has been filed with the Commission and is available for public inspection during regular business hours at the Commission offices or on the Commission's website at www.puc.idaho.gov by clicking on "File Room" and then "Electric Cases."


YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and the Public Utility Regulatory Policies Act of 1978 (PURPA). The Commission has authority under PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed-term obligations for the purchase of energy from qualified facilities and to implement FERC rules.


YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000, *et seq.*

ORDER

IT IS HEREBY ORDERED that any persons interested in submitting written comments regarding Idaho Power's Petition for Declaratory Order must do so no later than twenty-one (21) days from the service date of this Order.

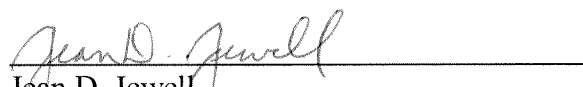
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 14th day of December 2011.


PAUL KJELLANDER, PRESIDENT


MACK A. REDFORD, COMMISSIONER


MARSHA H. SMITH, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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