

DECISION MEMORANDUM

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

FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL

DATE: JULY 31, 2013

SUBJECT: SIMPLOT'S APPLICATION AND REQUEST FOR A DETERMINATION OF PRICE REGARDING THE PURCHASE AND ACQUISITION OF CERTAIN ASSETS, CASE NO. IPC-E-13-17.

On July 16, 2013, J.R. Simplot Company filed an Application with the Commission, pursuant to *Idaho Code* § 61-328, for approval of Simplot's purchase and acquisition of certain assets owned by Idaho Power. Simplot requests that the Commission process its Application by Modified Procedure.

THE FILING

Simplot's Application states that Idaho Power provides electrical service to Simplot pursuant to Idaho Power's Schedule 19. Simplot maintains that some of the service is provided with utility-owned facilities beyond the point of delivery.

Simplot asserts that it is closing its existing Plant and constructing a modern, state of the art potato processing facility immediately adjacent to the existing Plant. In closing the Plant, Simplot would like to purchase some of the Idaho Power-owned facilities. Simplot states that it and Idaho Power agree that the net book value of the facilities that Simplot wants to purchase is approximately \$119,725. However, the parties have been unable to agree on a purchase price. Simplot has offered to purchase the facilities for \$85,910. Idaho Power has offered to sell the facilities for \$272,928.

Simplot states that, pursuant to *Idaho Code* § 61-328 and Order No. 32426, a Commission proceeding is necessary before a utility can sell or transfer ownership of any of its distribution facilities. Simplot further asserts that it is the Commission's responsibility to determine the facility's value and whether the transaction is in the public interest. Filing at 2.

Simplot maintains that it is willing to bear the responsibility of operating, maintaining and replacing the facilities. Simplot further asserts that the sale and purchase of the Idaho Power facilities will have “absolutely no adverse impact (either on rates or service) on Idaho Power’s other ratepayers.” Filing at 7.

STAFF RECOMMENDATION

Staff has reviewed Simplot’s filing, as well as the applicable statutes and rules. Staff believes that *Idaho Code* § 61-328 presumes that the filing of an Application (made pursuant to this statute) would be made by the utility. In addition, the filing of an Application does not trigger a timeframe within which the opposing party must respond or answer. *See generally* Rule 57, IPUC Rules of Procedure. In order to elicit a response/answer by Idaho Power, Staff recommends that the Commission construe Simplot’s Application as a Petition and require Idaho Power to answer the petition within 21 days of the issuance of the Commission’s Notice of Petition pursuant to Rules 53.03 and 57.02. After the deadline for Idaho Power’s answer has passed, Staff will convene a pre-hearing conference with the parties and recommend further procedure to the Commission.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Petition requiring Idaho Power to answer within 21 days of the issuance of the Commission’s Notice?



Kristine A. Sasser
Deputy Attorney General

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