

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S PETITION FOR A)	CASE NO. IPC-E-14-10
DECLARATORY RULING REGARDING ITS)	
RIGHTS AND OBLIGATIONS UNDER)	
SCHEDULE 15.)	ORDER NO. 33065
)	

On October 7, 2013, a homeowner sued Idaho Power Company for allegedly providing off-street lighting to a residential customer in a manner that sheds nuisance levels of light on the homeowner/plaintiff's property. During the lawsuit – which is ongoing – the Court commented that if the plaintiff proves the light is a nuisance, the Court may order Idaho Power to abate the nuisance in some manner. The Court's remark prompted Idaho Power to file a Petition for Declaratory Ruling with this Commission. In its Petition, the Company asks the Commission to determine "Idaho Power's rights and obligations specific to its duty to provide off-street lighting under I.P.U.C. No. 29, Tariff No. 101, Schedule 15, Dusk to Dawn Customer Lighting ("Schedule 15")." More specifically, the Company asks the Commission to declare that Idaho Power is not required "to find a technology to provide off-street lighting under Schedule 15 in a manner that does not allow for light to shine on another's property." Petition at 1-2.

Having reviewed the record, we enter this Order dismissing the Company's Petition.

BACKGROUND

The Company provides dusk to dawn, off-street lighting service to residential customers under Schedule 15. The Company currently provides that service to a Boise customer through a pole-mounted streetlight in the alley between the customer's and plaintiff/homeowner's homes. The plaintiff/homeowner has sued the Company in Court because the light shines in his backyard at night. He asked the Court to rule that the light is a nuisance that must be abated. *See* Complaint (Attachment A to Petition).

In response, the Company argues that the light has operated since 1988, no one but the plaintiff/homeowner has complained about it, and even the homeowner did not complain until 2012. Further, the Company has attempted to address the homeowner's complaint by shielding the light, painting it black, directing it downward, decreasing the wattage by half, and

installing a dark-sky fixture. Nevertheless, the homeowner remains unsatisfied. *See* Petition at 3-6.

The Company also moved the Court to dismiss the homeowner's lawsuit on the grounds that the Company's conduct is not a nuisance because the Idaho Public Utility Law authorizes that conduct to occur. In summary, the Company argued that the law requires it to serve customers and empowers the Commission to regulate that service. Further, the Commission has regulated the service by approving Company Schedule 15—Dusk to Dawn Lighting—which specifies that “those services are provided by luminaries mounted on poles owned [or approved] by Idaho Power” and that the “facilities for supplying the lighting are supplied, installed, owned and maintained by Idaho Power in accordance with its standards and specifications.” *Id.* at 5. Despite these arguments, the Court denied the Company's motion and set the case for trial.¹

At the hearing where it denied the motion, the Court commented that if the homeowner proves his nuisance claim at trial, the Court would not order the Company to shut the light off; but the Court might order the Company to fix the light so it does not unreasonably shine in the homeowner's yard. *Id.* at 6. The Court's remark confounds the Company, which says it knows of no currently available lighting fixture that would solve the issue of which the homeowner complains. *Id.* at 9, fn 1. The Company has thus petitioned this Commission to rule that “Idaho Power has a legal duty to provide [off-street lighting] services under Schedule 15” but “does not have a duty under Schedule 15 to find a technology to provide off-street lighting in a manner that prevents light from shining on another's property.” Petition at 3 and 9.

DISCUSSION

Idaho Power invites the Commission to inject its views into conventional tort litigation. We decline the invitation. First, if the Court ultimately decides the light is not a nuisance, then it will not order abatement and the issue raised by the Petition (whether the Company is obligated to invent or find something to prevent the light from shining into the

¹The Company's motion also argued that if the plaintiff “believes customers should not be able to receive dusk to dawn lighting [under] Schedule 15..., this [court] is clearly not the proper forum for [p]laintiff to raise the issue. Rather, [p]laintiff is required to address such a challenge before the P.U.C. I.C. § 61-334A.” *See* Memorandum in Support of Idaho Power Company's Motion to Dismiss, at 6. Contrary to the Company's argument, *Idaho Code* § 61-334A does not apply to the homeowner's complaints. That section, entitled “Remedies for violation of *this act*” (emphasis added), only applies to violations of the Electric Supplier Stabilization Act, *Idaho Code* §§ 61-332 – 61-334C, an act that prohibits different utilities from “pirating” each other's customers.

homeowner's property) will be moot.² Second, whether the company has a duty to prevent its light from shining into the homeowner's yard is a legal question that is well within the Court's competence and requires no special technical expertise or guidance from this Commission. We thus abstain from ruling on the merits of the Company's Petition as a matter of comity. In doing so, however, we note that the light at issue was installed and has been maintained under an approved tariff without complaint for about 24 years. In our view, unless the lighting has changed over time to increase the amount of light that shines into the homeowner's yard, the homeowner who only recently demanded that the Company change the lighting should pay for any costs he causes the Company to incur to meet those demands.

ORDER

IT IS HEREBY ORDERED that the Company's Petition is dismissed without prejudice.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

² For example, the Court might find that the utility and reasonableness of the Company's conduct in lighting the alley outweighs the alleged harm to the homeowner (the Commission has no information about what actions, if any, the homeowner has taken on his property to ameliorate the impact of the light), or that the homeowner unreasonably "moved to the nuisance" (if he moved in after the light was installed) or is being "super-sensitive" in his complaints. *See Koseris v Simplot*, 82 Idaho 263, 268-270 (1960); *Carpenter v. Double R Cattle Co.*, 108 Idaho 602, 607-608 (1985); *McNichols v J.R. Simplot Co.*, 74 Idaho 321, 325 (1953).

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th
day of June 2014.



PAUL KJELLANDER, PRESIDENT




MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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