

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S PETITION TO DETERMINE)	CASE NO. IPC-E-15-18
PURPA CONTRACT TERM ELIGIBILITY)	
FOR DISAGGREGATED 100 KW SOLAR)	
PROJECTS)	ORDER NO. 33383
)	

On June 26, 2015, Idaho Power Company filed a Petition with the Commission to determine the contract-term eligibility for ten solar projects proposed to Idaho Power by Site Based Energy under the Public Utility Regulatory Policies Act (PURPA). The utility asserts that Site Based designed its project by “disaggregat[ing]” it into ten 100 kilowatt (kW) increments, to obtain 20-year contracts, available for solar projects with a design capacity up to 100 kW. Petition at 3. The utility asks the Commission to set contract lengths for Site Based’s ten projects as determined in the Commission’s contemporaneous PURPA contract-length investigation, which would limit the contracts to two years. *See* Order No. 33357 (Case No. IPC-E-15-01). Idaho Power did not propose how the Commission should process its petition.

On July 24, 2015, the Commission issued a Notice of Petition and Notice of Modified Procedure, setting a 21-day comment period. The Commission received written comments from Commission Staff; the Idaho Irrigation Pumpers Association, Inc. (Irrigators); Site Based; and several members of the general public. Idaho Power filed a timely reply. Exercising its statutory and regulatory authority, the Commission directed Site Based to provide information clarifying who owns the ten proposed projects. Order No. 33374; *Idaho Code* § 61-503; IDAPA 31.01.01.222. On September 11, 2015, Site Based submitted timely responses to the Commission’s questions, rendering the matter fully submitted.

As set out below, the Commission finds that the applications submitted by Site Based to Idaho Power do not identify valid facility owners as required in Idaho Power’s Tariff Schedule 73. This schedule contains the procedures for negotiating applications for PURPA contracts between PURPA developers and the Company. *See* Tariff Schedule 73. Because the applications do not comply with Schedule 73, the issues raised in Idaho Power’s Petition and comments thereto are not ripe for the Commission’s consideration.

BACKGROUND

Under PURPA, electric utilities such as Idaho Power must purchase electric power from qualifying facilities (QFs) — regardless of market indicators — at rates approved by this Commission. 16 U.S.C. § 824a-3; *Idaho Power Company v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013), *citing FERC v. Mississippi*, 456 U.S. 742, 751 (1982). The purchase or “avoided cost” rate must be “just and reasonable to the electric consumers . . . and in the public interest” and “shall not discriminate against [QFs].” 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304. The Commission has established two methods of calculating avoided cost rates, depending on the size of the QF project.¹ Intertwined with the issue of how to calculate avoided cost is the issue of contract length, which this Commission addressed in Case No. IPC-E-15-01. *See* Order No. 33357.

The Commission also directed the Idaho utilities to participate in workshops to “form a structure for fair and reasonable contracting procedures and rules” for negotiating PURPA contracts. Order No. 32697 at 48 (Case No. GNR-E-11-03). Responding to that directive, Idaho Power proposed Tariff Schedule 73, outlining PURPA contracting procedures, which the Commission approved December 30, 2014. Order No. 33197. Schedule 73 requires applicants to provide general information to the utility (ownership, location, size, and type of QF); sets forth timelines for interactions between the QF and utility; and outlines steps for drafting a proposed PURPA contract. *Id.* at 2.

THE PETITION

Idaho Power’s Petition states it received applications for “ten 100 kW PURPA solar QF projects, all from the same developer, John Reuter, from Site Based Energy,” all located “on the same contiguous property, and divided into ten sections.” Petition at 2, Atchs. 1-10. “Each Application requests a contract term of 20 years, requests published avoided cost rates, and states, ‘The facility will be owned by a separate owner than all other facilities within 1 mile.’” *Id.* at 4. Idaho Power was not provided “any evidence of separate ownership, nor was Idaho

¹ For wind and solar QFs with a design capacity of up to 100 kW, and for QFs of all other resource types with a design capacity of up to 10 average megawatts (aMW), avoided cost rates are calculated and published using the surrogate avoided resource (SAR) methodology. Order No. 32697 at 7-8. For QFs with design capacity above the published rate eligibility caps, avoided cost rates are “individually negotiated by the QF and the utility” using the integrated resource plan (IRP) methodology based on the specific characteristics of the resource. *Id.* at 2; Order No. 32176 at 1.

Power able to confirm that the proposed [owner-]entities are registered with the Idaho Secretary of State.” *Id.* at 4.

According to Idaho Power, “Site Based Energy has specifically designed and proposed its project – disaggregated into 100 kW increments – in an attempt to avoid application of the” contract term limit established in Case No. IPC-E-15-01. *Id.* at 3. Idaho Power therefore asked the Commission to apply the two-year maximum contract term, determined in the 15-01 case. *Id.* at 3-5; *see* Order No. 33357.

THE COMMENTS

A. Commission Staff

Staff identified the issue as “whether this is a single large project or ten smaller projects.” Staff Comments at 1. The distinction would “determine which of two avoided cost methodologies is used to calculate the rate Idaho Power must pay for power, as well as the appropriate length of the PURPA contract(s).” *Id.* at 1-2. Although the projects did not appear to technically violate Federal Energy Regulatory Commission (FERC) regulations, Staff found, “there is legitimate uncertainty about whether the proposed projects violate the intent of prior Commission orders” addressing disaggregation. *Id.* at 5-9. Staff recommended that the Commission approve Site Based’s proposals based on technical compliance with FERC regulations, but that it develop “rules for managing co-located projects,” in a separate docket. *Id.* at 9, 11.² Staff further suggested devising rules “to manage community solar [projects] . . . as an alternative to rooftop solar or solar development under PURPA.” *Id.* at 10-11.

B. Idaho Irrigation Pumpers Association

The Irrigators filed comments supporting Idaho Power’s request to apply two-year contracts to Site Based’s proposed projects, per Order No. 33357. The Irrigators highlighted the Commission’s prior admonition that disaggregation of a wind or solar project causes the SAR methodology to produce rates that inaccurately reflect the value of energy sold to the utility. Irrigators Comments at 6, *quoting* Order No. 32697 at 13. In light of that admonition, the Irrigators recommended that the Commission find Site Based’s proposed projects are a “wrongful attempt to sidestep the Commission’s previous Orders,” and thus approve Idaho Power’s Petition. Irrigators Comments at 6.

² Staff proposed using rules already developed and promulgated “by the Oregon Department of Energy to determine the eligibility for business energy tax credits (BETCs) . . . for issuing tax credits for qualifying renewable energy resources.” Staff Comments at 8-9; Oregon Admin. Rules Chapter 330, Division 90 (330-090-0105).

C. Site Based Energy

Site Based filed comments opposing Idaho Power's Petition. According to Site Based, each of the ten projects would "meet the requirements for Schedule 73 . . . [and] would meet FERC requirements to be a [QF], have completely separate ownership, and would not be located within 1 mile of another project owned by the same owner." Site Based Comments at 2. Site Based compared its projects to "10 homeowners with homes adjacent to each other . . . that contracted with a single solar installer to each install a solar PV array at the same time to get better installation pricing from their installer." *Id.* Accordingly, Site Based asked the Commission to reject Idaho Power's Petition and allow its projects to "continue the contract negotiation process." *Id.* at 8-9.

D. Public Comments

The Commission received 19 written comments from the public. Of these, 18 opposed Idaho Power's Petition, and one supported it. Opponents of the Petition shared similar concerns: desire to support solar power and reduce carbon; belief that promoting renewable energy projects is good for the economy and the environment; and belief that Idaho Power is only interested in profit. The sole proponent of Idaho Power's Petition stated that he supports solar but that Site Based's project appears to be a single source and should not be allowed to disaggregate.

E. Idaho Power's Reply

In its reply, Idaho Power asserted that, contrary to Staff's comments, Idaho Power is not asking the Commission to find that the ten projects are one large project. Reply at 2, *quoting* Staff Comments at 1-2. Rather, Idaho Power only requests that the contract length for the ten 100 kW projects be set at two years, consistent with Order No. 33357. Reply at 2. Idaho Power compared Site Based's "manipulation of project configuration . . . to get access to 20-year contracts" to projects that the Commission has previously prohibited "from disaggregating into ten [aMW] increments in order to gain access to published rates." Reply at 4-5.

DISCUSSION AND FINDINGS

The Commission has jurisdiction over Idaho Power and the issues raised in this matter under Title 61 of the Idaho Code and PURPA. The Commission has authority under PURPA and FERC's regulations to implement FERC's regulations, set avoided costs, and order electric utilities to enter into fixed-term obligations for the purchase of energy from QFs. The

Commission has the statutory authority and “is the appropriate forum to . . . *determine whether a regulated utility has an obligation under PURPA to purchase power from an applicant.*” *Id.* (emphasis original), *quoting Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 192, 755 P.2d 1229, 1230 (1987). We have reviewed the record in this case, including the Petition and the ten applications, the comments of Staff, the Irrigators, Site Based, and the public, and Idaho Power’s reply.

Idaho Power’s Petition asks what contract term should apply to Site Based’s projects. Comments by Commission Staff, the Irrigators, Site Based, and Idaho Power’s reply prompt other questions, including: if Site Based “disaggregated” its project to circumvent the 100 kW eligibility cap for 20-year published avoided cost rates, which methodology (SAR or IRP) should be used to calculate avoided costs for the project(s); and what contract term would apply to this single project or ten separate projects? However, the Commission need not reach these questions. Because the ten applications fail to comply with Schedule 73, their submission has not triggered an obligation for Idaho Power to negotiate.

Schedule 73 requires a party seeking a PURPA contract with Idaho Power to identify the owner of the QF facility in its application. Tariff Schedule 73-4 (1)(a)(i). Each of Site Based’s ten applications for a PURPA contract identified the owners of the proposed QFs as limited liability companies (LLC) named WRCE 1 through 10, LLC, respectively. Petition, Atchs. 1-10. Although each application states that the “facility will be owned by a separate owner than all other facilities within 1 mile, including other facilities at the same site,” Idaho Power asserts it was provided no evidence of separate ownership, and it could not confirm that WRCE 1 through 10 were entities registered with the Idaho Secretary of State. Petition at 4; Atchs. 1-10. Site Based responded that “Idaho Power did not and has not requested this information.” Site Based Comments at 6.

Given this apparent impasse, the Commission directed Site Based to provide additional information identifying the owners of WRCE 1 through 10, LLC, and the copies of the Articles or Certificates of Organization for each LLC. Order No. 33374. Sited Based timely responded to the Commission’s Order by providing letters from ten individuals who each expressed intent to own a QF for which Site Based submitted applications on their behalf. Although these individuals indicated they “intend to proceed with the solar project using a Special Purpose Entity, LLC DBA,” they qualified their intent with “If the projects are approved

by the PUC.” See Response to Order No. 33374, Appendix B. Nine of the ten proposed owners further conditioned their intent with the proviso “if all of the approvals are completed and the economics work out.” *Id.* Site Based did not provide any evidence that these LLCs exist, nor that they existed at the time the applications were submitted. To the contrary, two of ten letters are dated by the intended owner as the day before the responses were submitted to the Commission.

The Idaho Code governs the formation of LLCs. A limited liability company is formed when one or more persons signs and delivers “to the secretary of state for filing a certificate of organization” and “the secretary of state has filed the certificate of organization.” *Idaho Code* § 30-6-201(1) and (6). We find that the entities identified as WRCE 1-10 do not exist. Moreover, we find that the proposed owners’ statements of intent to be named later in an approved PURPA contract are too abstract and conditional to support the applications under Schedule 73.

It is Idaho Power’s responsibility to ensure that the provisions of Schedule 73 are satisfied before proceeding with later steps of the negotiation process, and ultimately applying to the Commission for contract approval. *Idaho Code* § 61-313. If an applicant fails to comply with the requirements of Schedule 73, Idaho Power may reject the submission accordingly. The relief requested in Idaho Power’s Petition puts the proverbial cart before the horse.

Having determined that Site Based’s applications do not satisfy Schedule 73, the Commission need not reach the other complex issues presented by the parties. Idaho courts are precluded “from deciding cases which are purely hypothetical or advisory.” *ABC Agra, LLC v. Critical Access Group, Inc.*, 156 Idaho 781, 783, 331 P.3d 523, 525 (2014) (other citations omitted). In determining whether a case is ripe for justiciability, courts consider “whether there is any need for court action at the present time.” *Id.* (other citations omitted). “The purpose of the ripeness requirement is to prevent courts from entangling themselves in purely abstract disagreements.” *State v. Manley*, 142 Idaho 338, 342, 127 P.3d 954, 958 (2005), *citing Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967).

We apply the ripeness doctrine here for similar reasons. The underlying applications are incomplete and the purported owners of the solar projects do not exist. Our entanglement in the other issues raised by the parties would be abstract, advisory, and premature. See *ABC Agra, LLC*, 156 Idaho at 783, 331 P.3d at 525; *Manley*, 142 Idaho at 342, 127 P.3d at 958. Those

issues carry significant implications and require careful analysis that we will not undertake unnecessarily or without benefit of all relevant facts, including the nature and circumstances of the responsible QF owners. Accordingly, we dismiss Idaho Power's Petition without prejudice.

ORDER

IT IS HEREBY ORDERED that Idaho Power'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.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24th day of September 2015.



PAUL KJELLANDER, PRESIDENT

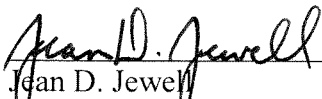


MARSHA SMITH, COMMISSIONER



KRISTINE RAPER, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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