

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER COMPANY'S PETITION TO MODIFY TERMS AND CONDITIONS OF PURPA PURCHASE AGREEMENTS))))))	CASE NO. IPC-E-15-01
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IN THE MATTER OF AVISTA CORPORATION'S PETITION TO MODIFY TERMS AND CONDITIONS OF PURPA PURCHASE AGREEMENTS))))))	CASE NO. AVU-E-15-01
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IN THE MATTER OF ROCKY MOUNTAIN POWER COMPANY'S PETITION TO MODIFY TERMS AND CONDITIONS OF PURPA PURCHASE AGREEMENTS))))))	CASE NO. PAC-E-15-03 ORDER NO. 33311

On January 30, 2015, Idaho Power Company filed a Petition asking the Commission to reduce the length of its PURPA contracts (Case No. IPC-E-15-01). On February 6, 2015, the Commission initiated an investigation and issued a Notice of Intervention Deadline directing interested parties to intervene “**no later than February 20, 2015.**” Order No. 33222 at 4. Shortly thereafter, Avista Corporation and Rocky Mountain Power each filed petitions seeking the same or similar relief (Case Nos. AVU-E-15-01, PAC-E-15-03). In an Order issued March 13, 2015, the Commission consolidated the three cases and directed that “**All Petitions to Intervene must be filed no later than March 27, 2015.**” Order No. 33250 at 6.

On May 12, 2015, Ecoplexus, Inc. petitioned to intervene in Idaho Power’s case to reduce the length of its PURPA contracts.¹ Ecoplexus asserted it has a direct and substantial interest in this matter as the developer of several proposed solar projects totaling 160 MW in Idaho Power’s service territory and 280 MW in Rocky Mountain Power’s service territory. Petition to Intervene at 2. Ecoplexus acknowledged that its Petition to Intervene was not timely; however, it initially alleged that it “was not aware of this proceeding until recently.” *Id.* at 2. The developer maintained that its intervention “will not broaden the issues, delay the proceedings or result in prejudice to any party.” *Id.*

¹ Although Ecoplexus’s Petition to Intervene only contained the Idaho Power case caption, it addressed both Idaho Power and Rocky Mountain’s petitions for relief.

On May 18, 2015, Ecoplexus submitted a Motion to Late File the Direct Testimony of its witness. The Motion also reiterated that the late-filed testimony of Ecoplexus's witness will not broaden the issues, delay the proceedings or result in prejudice to any party. Motion at 2.

On May 19, 2015, Ecoplexus filed an "Errata" to both its Petition to Intervene and Motion to Late File Testimony wherein the solar developer acknowledged it had received actual notice of Idaho Power's Petition in February 2015 by letter.² Errata at 1. Although Ecoplexus acknowledged it had received notice of Idaho Power's Petition, the developer continued to maintain it "has a substantial interest in this case and its participation in these proceedings will not result in any prejudice to any party." *Id.* at 2.

Ecoplexus outlined several issues in its Petition that it desires to address in this case. First, the Company believed that any relief granted by the Commission to shorten IRP-based PURPA contracts be individually tailored to each utility's specific circumstances. *Id.* at 3. Second, the Company indicated it "wishes to address" whether proposed PURPA projects that have "pricing and energy service agreements" with the three utilities "should be treated differently, i.e., grandfathered into previous terms and conditions, than those that seek pricing and energy service agreements after such order." *Id.* (emphasis added).

BACKGROUND

In its February 6, 2015 Order initiating this proceeding, the Commission directed "the parties to establish an expedited case schedule" to process the proceeding. It further directed the parties to convene a prehearing conference to develop a schedule to process this expedited case. Order No. 33222 at 4 (emphasis added). The Commission Secretary issued the initial Notice of Parties on March 3, 2015.

On March 10, 2015, the parties held a prehearing conference and agreed to a schedule for processing this case. In Order No. 33253, the Commission adopted the parties' proposed procedural schedule and set direct and rebuttal prefile testimony deadlines for Staff/Intervenors as April 23 and May 14, 2015, respectively. Order No. 33253 at 5. The utilities are to file their rebuttal testimony no later than June 11, 2015. The Commission set the technical hearing to begin on June 29, 2015.

² The Idaho Power letter to Ecoplexus stated: "On January 30, 2015, Idaho Power filed with the IPUC a petition requesting the IPUC to modify terms and conditions of prospective PURPA Energy Sales Agreements. (IPUC Case No. IPC-E-15-01)." Idaho Power Objection to Intervention, Atch. 1.

OPPOSITION TO INTERVENTION

A. Idaho Power's Opposition

On May 19, 2015, Idaho Power filed a timely answer opposing Ecoplexus's Petition to Intervene. Idaho Power generally objected to the developer's intervention because Ecoplexus failed to state good cause for its untimely filing as required by Rule 73 ("Petitions not timely filed must state a substantial reason for delay."). The utility also alleged that late intervention will disrupt the proceedings, prejudice existing parties, and unduly broaden the issues in this case. Idaho Power Objection at 3. In the alternative, Idaho Power argued that if the Commission is inclined to grant intervention, such intervention be conditioned upon: (1) not disrupting the hearing schedule; and (2) barring Ecoplexus from unduly broadening the issues by addressing "grandfathering."

1. Ecoplexus Received Actual Notice. Idaho Power asserted Ecoplexus's sole basis for its delay and untimeliness in seeking intervention is that it was not aware of the proceeding. *Id.* at 3-4 *citing* Petition at 2. Idaho Power stated that it provided actual notice of its January 30, 2015 Petition, to the developer on the very next business day, February 2, 2015. *Id.* at 4; Atch. 1

In addition to receiving actual notice, Idaho Power noted that the Commission has issued several Orders in this matter since February 6, 2015. Idaho Power maintained that Ecoplexus has not explained why its Petition to Intervene was filed at this late date especially "when the evidentiary submissions from Staff and the intervening parties are now closed (as of May 14, 2015). . . ." *Id.* at 4. Consequently, the Company urged the Commission to deny the Petition to Intervene because Ecoplexus failed to provide a substantial reason for its untimely filing.

2. Late Intervention Will Disrupt the Proceedings. Idaho Power next insisted that granting intervention at this late date will disrupt the schedule in this expedited proceeding. Idaho Power observed that the developer's Petition was filed well after the deadline for intervention (about three months), well after the deadline for Staff and Intervenor direct testimony (about one month), and just two days before Staff and Intervenor rebuttal testimony was due.³ At this stage of the proceeding, Staff and Intervenors have filed all their testimonies and the three utilities are in the process of preparing rebuttal to all the parties' direct and rebuttal

³ Idaho Power recognized that Ecoplexus also filed its Motion to Late File Direct Testimony on May 18, 2015 (the day before Idaho Power filed its objection to intervention). Idaho Power subsequently filed a Joint Answer with the other two utilities opposing the Motion. *See supra* pp. 6-7.

testimony. The utilities' rebuttal testimony is due no later than June 11, 2015. Responding to Ecoplexus's Petition is a substantial disruption and hardship for Idaho Power at this stage of the proceeding. *Id.* at 5.

Allowing "Ecoplexus to participate without modifying the schedule, or allowing untimely submissions, [will] disadvantage[] all of the parties to the proceeding." *Id.* at 6. Granting intervention will also lengthen the technical hearing. Granting intervention at this late stage also denies the other parties the opportunity for discovery and timely assessment of issues as they relate to Ecoplexus. Idaho Power observed that at this point in the schedule, discovery is complete and "it is highly prejudicial to allow a new potential party to join." *Id.* Consequently, the Commission should deny intervention.

3. Unduly Broaden the Issues. Despite Ecoplexus's assurance that its intervention will not broaden the issues, Idaho Power asserts that the developer's Petition reveals its desire to introduce at least one new issue. More specifically, Idaho Power points to Ecoplexus's Petition to Intervene where the developer wishes to address whether proposed QF projects should be "grandfathered into previous terms and conditions." Idaho Power Answer at 7 *citing* Petition to Intervene at 3. Idaho Power also observed that Ecoplexus submitted a Motion to Late File Direct Testimony on May 18, 2015. "In this testimony, Ecoplexus clearly intends to broaden the scope into issues of legally enforceable obligation and grandfathering." Idaho Power Answer at p. 7, n.1. Introduction of these new issues will certainly broaden the issues.

4. The Alternative. If the Commission is inclined to grant late intervention, Idaho Power urged the Commission to limit Ecoplexus's participation to that of an interested person and allow its witness to testify as a public witness pursuant to Commission Rules 39 and 76. *Id.* at 7-8. Allowing the developer limited intervention will permit it to receive notice and service and its witness may submit written comments prior to the completion of the technical hearing. Idaho Power concluded that limiting Ecoplexus's participation strikes an appropriate balance between due process for the other parties and allowing the developer to submit comments into the record. *Id.* at 8.

B. Rocky Mountain's Objection

On May 20, 2015, Rocky Mountain Power electronically filed an untimely objection in opposition to Ecoplexus's Petition to Intervene. Rocky Mountain's e-mail transmittal letter

indicated that the original and seven copies will arrive at the Commission's office on May 21, 2015.⁴

Rocky Mountain's untimely objection noted that the Commission's Order No. 33250 issued March 13, 2015, consolidated Rocky Mountain's and Avista's Petitions with the Idaho Power case. Order No. 33250 directed that any person desiring to intervene must do so no later than March 27, 2015. Order No. 33250 at 6. Rocky Mountain asserted that Ecoplexus's late Petition to Intervene was filed about six weeks after the March 27 deadline.

In its objection, Rocky Mountain incorporated those arguments raised by Idaho Power's objection set out above. Rocky Mountain Objection at 3. In addition, Rocky Mountain urged the Commission to deny intervention because the interests of Ecoplexus "will be covered to a large extent by parties with similar interests who timely intervened and filed at least one round of testimony already." *Id.* Rocky Mountain also alleged that it provided Ecoplexus with notice by providing the pending case number to the solar developer.

**OBJECTIONS TO ECOPLEXUS'S
MOTION TO LATE FILE DIRECT TESTIMONY**

A. Staff Objection

On May 21, 2015, the Commission Staff filed an answer objecting to Ecoplexus's Motion to Late File the Direct Testimony of its witness. Despite Ecoplexus's assertion that the testimony of its witness "will not broaden the issues, delay the proceedings, or result in prejudice to any party," Staff argued that introducing his testimony will result in just the opposite. Staff urges the Commission to deny the Motion for the following reasons.

First and foremost, if the Commission grants Ecoplexus's Petition to Intervene, Staff argued that such intervention is conditioned by Rule 73. In pertinent part, this rule provides that "intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition." IDAPA 31.01.01.073. The Commission's Scheduling Order No. 33253 required that intervenor direct testimony be filed no later than April 23, 2015, and intervenor rebuttal testimony be filed no later than May 14, 2015. Neither Ecoplexus's Motion nor the proposed testimony was timely-filed. Thus, the solar developer is not in compliance with the Commission's Scheduling Order.

⁴ As noted below, objections to Ecoplexus's Petition were due no later than May 18, 2015.

In addition, Staff maintained that Ecoplexus's rationale supporting the late filing of its testimony is without merit. Ecoplexus's initial claim that it was never informed by the utilities of these proceedings was withdrawn by the developer. In its Errata, the developer acknowledged that it did receive actual notice from Idaho Power in February 2015, that the utility had filed its Petition in this case. Errata at 1.

Second, Staff insisted that allowing the introduction of the proposed testimony of Ecoplexus's witness will broaden the issues. In particular, Mr. Stuebe's proposed direct testimony introduces several new issues. On page 8 of his testimony between lines 14 and 18, the witness suggests that "the Commission should consider introducing a REC or Compliance Certificate value in its QF contracts and requir[e] that any in state QFs the utilities contract with must deliver the RECs to the utilities." Staff contended that the issue of including a REC value in QF contracts and the allocation of RECs is a new issue in this proceeding. In addition, the proposed testimony on pages 10-12 alleges that Ecoplexus perfected a legally enforceable obligation (LEO) with PacifiCorp. This allegation is beyond the scope of this proceeding and contrary to the long-established procedures for processing claims alleging a LEO .

Finally, Staff declared that introduction of Ecoplexus's proposed testimony at this stage of the case results in prejudice to the Staff. When the Commission the initiated this case, it directed "the parties to establish an expedited case schedule." Order No. 33222 at 4 (emphasis added). The deadline for Staff filing rebuttal testimony to any intervenor was May 14, 2015. Thus, unless the schedule is changed, Staff argued it has been denied its opportunity to rebut this proposed testimony and to engage in discovery to evaluate the issues raised by Ecoplexus. Instead of filing the proposed testimony with its Petition to Intervene on May 12, 2015, the developer did not file its Motion to late file testimony until May 18, well after the date that direct and rebuttal testimony were to be filed.

B. The Utilities' Joint Objection

On May 26, 2015, Idaho Power, Avista and Rocky Mountain Power (collectively the "Utilities") filed a timely Joint Objection to Ecoplexus's Motion to Late File Direct Testimony. "In the interest of expediency" the Utilities incorporate the points raised by Staff in its objection to Ecoplexus's Motion. Joint Objection at 3. The Utilities argue the Ecoplexus should be limited at this late stage in the proceeding "to participating as an interested person and public witness" pursuant to Commission Rules 39 and 76. *Id.* at 3-4. The Utilities conclude that

allowing the introduction of the proposed testimony will broaden the issues by the introduction of several new issues. *Id.* at 4.

ECOPLEXUS'S RESPONSE TO THE OBJECTIONS

On May 26, 2015, Ecoplexus also filed a response to Idaho Power's and Rocky Mountain's objection to the developer's Petition to Intervene. In addition, Ecoplexus responded to Staff's objections to the Motion to accept late-filed direct testimony. In responding to the intervention objections, Ecoplexus reiterates it has a substantial interest in the outcome of this case as the developer of solar projects with both Idaho Power and Rocky Mountain. Response at 2.

In response to Staff's objections, Ecoplexus responded that it "is not trying to unduly broaden the issues in this proceeding. Rather, in attempting to discuss legally enforceable obligations and grandfathering, Ecoplexus believed it is "positing questions that are common to proceedings of this subject matter." *Id.* If the Commission finds that the introduction of these issues broadens the proceedings, the developer recognizes the Commission has discretion to condition the introduction of new issues. Rather than striking the proposed testimony, "the Commission could simply strike any specific testimony that it believes is beyond the scope of these proceedings." *Id.* The Commission could also schedule additional discovery and provide an additional opportunity to file rebuttal testimony in response to Ecoplexus's proposed testimony. *Id.* at 3.

Ecoplexus also disclosed that it is a party in a proceeding before the Utah Public Service Commission examining Rocky Mountain Power's pricing and queue structure. The developer asserted that allowing its participation in this case "would be beneficial . . . as it has direct experience with Rocky Mountain Power, its QF application process and program in Idaho." *Id.* at 4. Ecoplexus concluded that its participation in this docket as a party will assist the Commission in evaluating the issues in this case.

FINDINGS AND DISCUSSION

The Commission took up these matters at its Decision Meeting on May 26, 2015. We initially find that Ecoplexus and the opposing parties have adequately developed a record regarding the Petition to Intervene and the Motion to Late File Direct Testimony.

Based upon our review of the pleadings, there are several facts that appear undisputed. First, we find that Ecoplexus's Petition to Intervene adequately supports its

assertion that it has a direct and substantial interest in this proceeding. Ecoplexus is the developer of several proposed solar projects in the service territories of both Idaho Power and Rocky Mountain. Second, there is no dispute that Ecoplexus's Petition to Intervene is untimely. Its Petition to Intervene in the Idaho Power Petition was due no later than February 20, 2015, and once the Commission consolidated the three cases, the final intervention deadline was no later than March 27, 2015. Order Nos. 33222 and 33250. Ecoplexus's May 12 Petition is clearly late.

Our procedural Rule 73 requires that petitions that are not timely filed "must state a substantial reason for delay." IDAPA 31.01.01.073. Although actual notice is not required, Ecoplexus conceded that it received actual notice from Idaho Power that the utility filed the initial petition in this consolidated proceeding. The Commission finds Ecoplexus has not presented a substantial reason for its long delay in filing its Petition to Intervene.

Rules 73 and 74 set out the standards for granting late-filed petitions. In particular, Rule 73 provides that the Commission

may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition.

Rule 73, IDAPA 31.01.01.073. Rule 74 allows the Commission to impose reasonable conditions on intervenors. IDAPA 31.01.01.074.

Consistent with Rules 73 and 74, we find it is reasonable to conditionally grant intervention to Ecoplexus. Although it failed to state good cause for its untimely filing, we find that it does have a direct and substantial interest in the outcome of this proceeding. As noted above, Rule 73 provides that late filing intervenors "are bound by orders and notices earlier entered as a condition of granting the untimely petition." Accordingly, we find it reasonable to deny Ecoplexus's Motion to Late File Direct Testimony because the offered testimony is inconsistent with the Scheduling Order, prejudices existing parties, and unduly broadens the issues.

We also decline Idaho Power's alternative suggestion to allow Ecoplexus's witness to testify as a public witness pursuant to Rules 39 and 76. The Commission finds this suggested alternative is inconsistent with Rule 241.04. Rule 241.04 provides that parties must offer their evidence at the technical hearing as opposed to the public hearing. A public hearing is for

“customers, public officials, and other persons not related to parties in the case to provide testimony.” IDAPA 31.01.01.241.04.b. Because we granted conditional intervention to Ecoplexus, it is inappropriate to allow a party to present testimony at a public hearing pursuant to Rules 39 and 76.

In summary, we conditionally grant the Petition to Intervene, but deny Ecoplexus’s Motion to Late File Direct Testimony. Granting conditional intervention to Ecoplexus will allow it to be served with documents in this case, view discovery, and cross-examine witnesses so long as it does not unduly broaden the scope of this proceeding by introducing new issues. The Commission will be vigilant to prevent such disruption or delay to this expedited proceeding.

ORDER

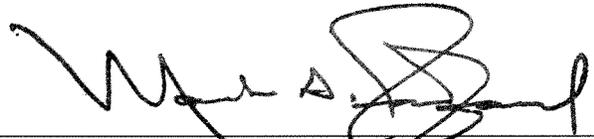
IT IS HEREBY ORDERED that Ecoplexus’s Petition to Intervene is conditionally granted as set out above.

IT IS FURTHER ORDERED that Ecoplexus’s Motion to Late File Direct Testimony is denied.

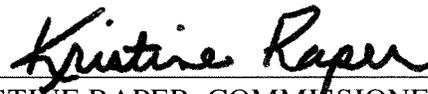
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 2nd day of June 2015.



PAUL KJELLANDER, PRESIDENT

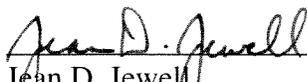


MACK A. REDFORD, COMMISSIONER



KRISTINE RAPER, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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