

Idaho Public Utilities Commission

Case No. IPC-E-13-23, Order No. 32984

March 14, 2014

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Idaho Power, Simplot ask commission to resolve contract dispute

Idaho Power Company is asking the Idaho Public Utilities Commission to resolve a contract dispute between the utility and J.R. Simplot Company's new potato processing plant in Caldwell.

The plant will require enough energy, in excess of 20,000 kilowatts, to place it in a customer category that requires a special contract with Idaho Power for power delivery. The two have agreed on nearly all contract conditions, but Simplot objects to Idaho Power language that places limits on both parties' direct liability and waives damages for indirect or consequential liability. Further, Simplot maintains the formula Idaho Power uses to calculate the rate Simplot would pay Idaho Power is outdated.

Simplot contends the liability language is not included in contracts Idaho Power has with other large industrial customers such as Micron and the Idaho National Laboratory. Simplot claims Idaho Power's inclusion of the liability cap on direct damages and a waiver from indirect or inconsequential damages contradicts the commission's own rules.

Idaho Power argues that, under current market standards, utilities do not assume risk for indirect damages, nor do they allow for unlimited direct damages. The utility said it has included similar language in its more recent contracts, such as one with the failed Hoku polysilicon plant in Pocatello and its contract with the builders of the Langley Natural Gas plant near Payette. The utility argues it would "not be appropriate to subject the company and its customers to undue risk for liability related to Simplot's business ..."

Simplot argues that previous Idaho Supreme Court decisions have held that public utilities should not be immune from damage claims because customers cannot choose between competing suppliers of electric power and are, thus, "compelled to rely absolutely on the care and diligence of the company in the transmission of power. Idaho Power's proposed exculpatory language shielding it from virtually all liability is a violation of the public trust under which it serves."

In an effort to compromise, Idaho Power said it agreed to raise the ceiling on the company's potential liability for direct damages, but that was not accepted by Simplot. The original contract said the total claim against either party could not exceed 100 percent of the total

charges paid by Simplot to Idaho Power in a calendar year. Idaho Power offered to increase that to 150 percent.

Regarding the rate Simplot would pay Idaho Power under the contract, Simplot alleges an outdated formula used by Idaho Power would require Simplot to pay 4.441 cents per kilowatt-hour. Simplot is proposing an overall rate of 4.197 cents per kWh.

Comments are accepted via e-mail through March 28, by accessing the commission's homepage at www.puc.idaho.gov and clicking on "Case Comment Form," under the "Electric" heading. Fill in the case number (IPC-E-13-23) and enter your comments. Comments can also be mailed to P.O. Box 83720, Boise, ID 83720-0074 or faxed to (208) 334-3762.

All documents related to this case are available on the commission's Web site. Click on "Open Cases" under the "Electric" heading and scroll down to the above case number.