

## Idaho Public Utilities Commission

Case No. IPC-E-13-23, Order No. 33038

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# Commission returns contract dispute back to Idaho Power, Simplot to resolve

**BOISE (May 21, 2014)** – The Idaho Public Utilities Commission is denying a proposed contract between Idaho Power Company and one its largest customers, the J.R. Simplot Company’s new potato processing plant in Caldwell, until the two parties can resolve disputes over liability and price.

The plant will require enough energy, in excess of 20,000 kilowatts, to place it in a customer class that requires a special contract with Idaho Power for power delivery. 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 Further, Simplot maintains the formula Idaho Power uses to calculate the rate Simplot would pay Idaho Power is outdated.

Idaho Power argues that limits on liability are needed to protect customers. “Today, the electric grid faces a variety of challenges to maintaining its reliability, from integrating increasing amounts of intermittent generation to acts of sabotage,” the utility claims. “The grid’s technological complexity results in potential service failures unrelated to human error. In light of this complexity, it is very difficult for a jury to distinguish between human error, negligence and failures of technology beyond Idaho Power’s control.” Idaho Power claims the liability limits protect the utility and customers from catastrophic loss.

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 order issued this week, the commission said exempting a public utility from the consequences of negligent conduct when the utility is charged with a public duty is not reasonable. “Idaho Power cannot abrogate its general duty to exercise

reasonable care in operating its system to avoid unreasonable risks of harm to its customers.”

However, while the commission said limits on “intentional tortious conduct or gross negligence” are not in the public interest, it is reasonable to consider limits on liability to an agreed-upon amount for a non-willful breach of duty.

Regarding the rate Simplot would pay Idaho Power, the utility proposed about 4.24 cents per kWh. Simplot proposed about 3.94 cents per kWh. Commission staff proposed using an average of rates charged all Idaho Power’s special contract customers.

The commission rejected the staff’s averaging proposal and said a rate could be determined by using Idaho Power’s most recent cost-of-service study as a starting point for negotiation.

The commission directed the parties to renegotiate those portions of the proposed contract regarding liability and price based on the commission’s findings in this week’s order. The final proposed contract must still be approved by the commission.

All documents related to this case are available on the commission’s Web site at [www.puc.idaho.gov](http://www.puc.idaho.gov). Click on “Open Cases” under the “Electric” heading and scroll down to Case Number IPC-E-13-23.

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