

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER RAPER
COMMISSION SECRETARY
COMMISSION STAFF
DAPHNE HUANG

FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL

DATE: MAY 21, 2015

SUBJECT: ECOPLEXUS'S LATE PETITION TO INTERVENE IN CONSOLIDATED
PURPA CASES AND OBJECTIONS TO INTERVENTION, CASE NOS.
IPC-E-15-01, AVU-E-15-01, PAC-E-15-03

On May 12, 2015, Ecoplexus petitioned to intervene in the consolidated Idaho Power case to reduce the length of IRP-based PURPA contracts. 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. The Company 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. Ecoplexus maintained that its intervention "will not broaden the issues, delay the proceedings or result in prejudice to any party." *Id.*

On May 19, 2015, Ecoplexus filed an "errata" to its Petition to Intervene wherein the solar developer acknowledged it had received actual notice from Idaho Power in February 2015 by letter, stating "the utility advised Ecoplexus that it had filed a Petition in this case." Errata at 1.¹ 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." Errata at 2.

Ecoplexus outlined several issues in its Petition that it desires to address in this case. First, the Company believes that any relief granted by the Commission to shorten IRP-based

¹ The errata also corrected Ecoplexus's initial assertion that it was not aware of the case in its Motion to Late File Direct Testimony.

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

On January 30, 2015, Idaho Power filed a timely Petition requesting that the Commission issue an Order reducing the length of IRP-based PURPA contracts from 20 years to two years. In Order Nos. 33222 and 33250, the Commission granted temporary relief to Idaho Power, Avista and Rocky Mountain Power while the Commission investigates the issue of contract length. The Commission also directed "the parties to establish an expedited case schedule." Order No. 33222 at 4 (emphasis added). The Order set a deadline for intervention in the consolidated proceeding of February 20, 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.

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. 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 (“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 (PUC Case No.IPC-E-15-01).”).

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 stated 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.² At this stage of the proceeding, Staff and Intervenor have filed all their testimonies and the three utilities are in the process of preparing rebuttal to all the parties’ direct and rebuttal 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 is intervention will not broaden the issues, the developer’s Petition reveals that it desires to introduce at least

² Idaho Power recognized that Ecoplexus also filed a Motion to allow late-filed direct testimony on May 18, 2015 (the day before Idaho Power filed its objection to intervention). Idaho Power noted that it intends to separately object to this Motion and will do so within the next seven days.

one new issue. More specifically, Idaho Power points to Ecoplexus's Petition to Intervene where the developer stated that it 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 recognized in a footnote 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." 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.

ROCKY MOUNTAIN POWER'S OBJECTION TO LATE INTERVENTION

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, 2015.³

Rocky Mountain's 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 also 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

³ As noted below, objections to Ecoplexus's Petition were due no later than May 18, 2015.

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.

STANDARDS FOR GRANTING INTERVENTION

The Commission’s Rule 73 discusses the timeliness of petitions to intervene. It states that petitions not timely filed

must state a substantial reason for delay. 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. Moreover, Rule 73 states that late-filed intervenors “are bound by orders and notices earlier entered as a condition of granting the untimely petition.” *Id.* Thus, Ecoplexus is bound by the Commission-approved scheduled.

Rule 75 provides that parties opposing a petition to intervene must do so within seven days after receipt of the petition to intervene. IDAPA 31.01.01.075. The Commission Secretary received Rocky Mountain’s electronic filing on May 20, 2015 – eight days after Ecoplexus’s filed its Petition to Intervene.

Ecoplexus’s “Certificate of Service” for its Petition to Intervene indicated that it served the Petition on the parties by electronic mail. However, the Certificate of Service does not indicate the exact date the electronic was served on the parties because the date of service was not filled in. Commission Rule 61 governs electronic filings. Rule 61.03 prohibits the use of electronic mail for any documents except those authorized by subparagraph 03. IDAPA 31.01.01.061.03. Objections to petitions to intervene is not one of the listed documents that may be filed by electronic mail.

COMMISSION DECISION

1. Does the Commission find that Rocky Mountain’s objection is timely under the procedural rules?
2. Does the Commission find good cause for Ecoplexus’s late-filed Petition?
3. Does the Commission wish to grant or deny intervention to Ecoplexus?
4. If intervention is granted, does the Commission wish to condition such intervention?

5. Anything else?

Don Howell

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