

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 7. Mediation Questionnaire**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form07instructions.pdf>

9th Cir. Case Number(s)

Case Name

Counsel submitting this form

Represented party/parties

Briefly describe the dispute that gave rise to this lawsuit.

The Public Utility Regulatory Policies Act of 1978 vests state regulatory agencies with broad authority to govern the contractual relationship between qualifying facilities ("QF" or "QFs") and utilities. Franklin 1-4 self-certified to the Federal Energy Regulatory Commission ("FERC") that its projects are energy storage QFs. The Idaho Public Utilities Commission ("IPUC") looked at both the generation source and the generation output profiles of the QFs and determined that the characteristics of the QFs closely aligned with the characteristics of solar QFs and therefore gave Franklin 1-4 the same rights as solar QFs of the same size, despite Franklin 1-4's self-certifications to FERC that its QFs were energy storage facilities. The IPUC determined Franklin Energy Storage 1-4 were eligible for two-year contracts and Integrated Resource Plan method avoided-cost rates. Franklin argued it was entitled to twenty-year contracts and Surrogate Avoided Resource method avoided-cost rates based on its status as an "other" QF under prior IPUC orders. The IPUC acknowledged that a project's QF status is a matter of federal, not state jurisdiction. Although FERC determines whether or not a facility is a QF, Congress left it to the States to determine the contractual relationship between QFs and utilities, including avoided-cost rates and contract terms. Franklin 1-4 sued the IPUC in federal district court on its claim the IPUC invaded FERC's jurisdiction to make QF status determinations.

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Briefly describe the result below and the main issues on appeal.

The U.S. District Court of Idaho erred in determining it had subject matter jurisdiction to hear the case based on its determination that Franklin brought an “implementation” challenge under 16 U.S.C. § 824a-3(h)(2) as opposed to an “as-applied” challenge under 16 U.S.C. § 824a-3(g). The appellants intend to appeal this determination. The district court also rejected IPUC arguments that plaintiffs’ claims were untimely and an improper collateral attack on IPUC orders. The appellants do not intend to appeal these latter two determinations.

The district court erred in determining the IPUC invaded FERC’s jurisdiction by making a QF status determination. On appeal, the IPUC intends to argue that FERC determines whether a facility is a QF, a simple yes or no determination. Relatedly, Congress left it to the states to regulate the relationship between the QF and the utility regarding avoided-cost rates and contract terms. The state is vested with the authority to determine contract terms such as pricing and contract length based on the QF’s actual characteristics, regardless of how the QF checked the boxes on its Form 556, which is accepted upon filing without further review.

Describe any proceedings remaining below or any related proceedings in other tribunals.

Appellants are unaware of any proceedings remaining below. Following the district court’s decision, Idaho Power petitioned the IPUC to establish avoided-cost rates applicable to PURPA energy storage QFs.

Signature

s/ Edward J. Jewell

Date

2/27/2020

(use “s/[typed name]” to sign electronically-filed documents)