Office of the Secretary
Service Date
August 29, 2017

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF IDAHO POWER COMPANY FOR A DECLARATORY ORDER REGARDING PROPER CONTRACT TERMS, CONDITIONS, AND AVOIDED COST PRICING FOR BATTERY STORAGE FACILITIES	)	**CASE NO. IPC-E-17-01**
	)	**ORDER NO. 33858**

On February 27, 2017, Idaho Power Company asked the Commission for a declaratory order regarding proper contract terms, conditions, and avoided cost pricing for five battery storage facilities requesting contracts under the Public Utility Regulatory Policies Act of 1978 (PURPA). *See* Order No. 33729. The Commission issued Final Order No. 33785 that granted Idaho Power's request. Franklin Energy Storage Projects (Franklin) timely petitioned the Commission to reconsider the Final Order, and Idaho Power timely answered Franklin's Petition. With this Order, we find that Franklin has failed to meet its burden of showing reconsideration is warranted, and deny Franklin's Petition.

PETITIONS FOR RECONSIDERATION

Reconsideration provides an opportunity for a party to bring to the Commission's attention any issue previously determined, and thereby affords the Commission an opportunity to correct any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). Under Commission Rule 331.01, "Petitions for reconsideration must set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law...." IDAPA 31.01.01.331.01.

FRANKLIN'S PETITION FOR RECONSIDERATION

Franklin's Petition asked the Commission to reverse the Final Order and deny Idaho Power's request for declaratory relief because parts of the Final Order are "mistaken, unreasonable, unlawful, erroneous, and not in conformity with the law." Franklin Petition at 1, 10. Franklin argued that, while the Commission conceded that battery storage facilities' qualifying facility (QF) status is a matter within the Federal Energy Regulatory Commission's (FERC's) jurisdiction, the Commission nevertheless determined that "energy storage QF

facilities that use solar power as a primary energy input are, in fact, [s]olar QFs and not energy storage QFs," intruding on FERC's jurisdiction. *Id.* at 3, 6.

According to Franklin, the Commission erred, in part due to its misreading of FERC's *Luz* decision. *Id.* at 8 (referring to *Luz Development and Finance Corp.*, 51 FERC ¶ 61,078 (1990)). Franklin asserted that in *Luz*, FERC ruled that energy storage facilities *are* QFs, so long as they meet the fuel-use criteria and other requirements for QF status. *Id.* at 9. Franklin further asserted that in *Luz*, FERC looked to the primary energy source behind the storage system to confirm that the storage system is a QF but did not consider the primary energy source to be the QF. *Id.* Franklin claimed this Commission found that "an energy storage facility's primary source of energy is the QF and not the storage facility itself." *Id.* at 6.

Franklin therefore argued that the Commission exceeded its jurisdiction under PURPA by granting Idaho Power's request for relief and "illegally finding that energy storage facilities that use solar power to charge the underlying storage devices are not energy storage QFs, but are instead solar QFs." *Id.* at 10 (quoting *Indep. Energy Producers Ass'n v. California Pub. Util. Comm'n*, 36 F.3d 848, 856 (9th Cir. 1994)).

IDAHO POWER'S ANSWER

Idaho Power asserted that Franklin's "sole basis of error" was "that the Commission improperly made a determination as to the [QF] status of the Franklin" projects. Idaho Power Answer to Petition for Reconsideration (Idaho Power Answer) at 2. Idaho Power contended Franklin's argument is incorrect. According to Idaho Power, the Commission (in Final Order No. 33785) determined the proposed battery storage facilities' proper avoided cost rate and contract term, not their QF status, which the Commission expressly accepted as undisputed for purposes of the case. *Id.* at 2-4. The Company also noted that the Commission has the exclusive jurisdiction to determine proper avoided cost rates and contractual terms as applied to the battery storage facilities, which is what the Commission did in the Final Order. *Id.* at 3-4. Because the Final Order was based upon substantial and competent evidence in the record, and the Commission regularly pursued its authority and acted within its discretion, Idaho Power asked that the Commission deny Franklin's Petition. *Id.* at 5.

COMMISSION DISCUSSION AND FINDINGS

Franklin argues that the Final Order is "unreasonable, unlawful, erroneous or not in conformity with the law" and should be reconsidered because it infringed on FERC's jurisdiction

to determine QF status. Franklin's only legal authority for its argument is *Indep. Energy Producers*, 36 F.3d at 856, in which the Ninth Circuit Court of Appeals opined that the authority to make QF status determinations belongs to FERC, not the states. Franklin asserts that, contrary to *Indep. Energy Producers*, we determined the QF status of battery storage facilities in the Final Order. We did not. Franklin's mischaracterization of our Final Order is a frivolous effort to contrive a legal basis for reconsideration.

Franklin contends we determined that the primary energy source behind a battery storage QF *is* the QF, based on a misreading of FERC's decision in *Luz Development and Finance Corporation*, 51 FERC ¶ 61,078. Franklin Petition at 9. This Commission did not find that the primary energy source behind a battery is the QF, nor did we assert that *Luz* stands for such a proposition. In the Final Order, we explicitly recognized that "battery storage facilities' QF status is a matter within FERC's jurisdiction" and we acknowledged the self-certifications of Franklin's QFs. Final Order No. 33785 at 3, 10-11. Consistent with FERC's analysis in *Luz*, we looked to the primary energy source of Franklin's battery storage QFs to determine the projects' eligibility to particular avoided cost rates and contract terms.

It is well-established that state commissions such as this Commission have broad discretion and authority to establish and approve the terms and conditions of PURPA contracts, in implementing FERC rules. 16 U.S.C. § 824a-3(f)(1) ("each State regulatory authority shall . . . implement such rule (or revised rule) for each electric utility for which it has ratemaking authority"); *Indep. Energy Producers*, 36 F.3d at 856 (noting state commissions' broad authority to implement PURPA); *see also Portland General Electric Co. v. FERC*, 854 F.3d 692, (D.C. Cir. 2017); *Idaho Power Company v. Idaho Pub. Util. Comm.*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013); *FERC v. Mississippi*, 456 U.S. 742, 751 (1982). Pursuant to such authority, and consistent with FERC's reasoning in *Luz*, we concluded that Franklin was eligible for two-year contracts at negotiated avoided cost rates. Final Order No. 33785 at 12. Franklin failed to show that Final Order No. 33785, or any issue in it, is unreasonable, unlawful, erroneous or not in conformity with the law. We thus deny Franklin's Petition.

ORDER

IT IS HEREBY ORDERED that Franklin's Petition for Reconsideration is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No.

IPC-E-17-01 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 29th day of August 2017.

PAUL KJELLANDER, PRESIDENT

KRISTINE RAPER, COMMISSIONER

ERIC ANDERSON, COMMISSIONER

ATTEST:

Diane M. Hanian
Commission Secretary

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