

Idaho Power plays hardball with biogas developer

JOHN MILLER - Associated Press - Associated Press

Idaho's renewable energy landscape is strewn with failed projects, but more casualties may soon be added to the list after Idaho Power Co. demanded state regulators cancel the utility's contracts to buy electricity from two proposed dairy manure digesters.

Idaho Power says Boise-based Exergy Development Group's two biogas-to-power projects near Twin Falls have missed or will miss deadlines to deliver electricity to the state's biggest utility, according to filings with the Idaho Public Utilities Commission.

Exergy counters that circumstances beyond its control — in this case, pending rules governing small renewable projects still being hammered out by the IPUC — have scared off its financiers, making such developments impossible.

Among other things, Idaho Power is asking the Idaho Public Utilities Commission for permission to pursue Exergy for undisclosed damages for not delivering electricity when it said it would.

"We're just looking at enforcing the terms of the contract," Brad Bowlin, an Idaho Power spokesman, said Monday.

Once one of Idaho's biggest renewable energy developers, Exergy has been beset by bad news for months.

The Boise-based company suspended \$323 million in Idaho wind projects in August. It's also fighting at least two federal lawsuits over wind turbines in Pennsylvania it wanted but didn't pay for and over ownership of a Minnesota wind farm where it's accused of defaulting on a loan and giving up its stake.

Now, its proposed digesters — at the Double B Dairy in Murtaugh and Swager Farms, in Buhl — appear to be in jeopardy, despite a pledge just three months ago from Exergy CEO James Carkulis that they were on schedule.

"We will commence construction of two dairy digesters in Twin Falls County later this year," Carkulis said in August, in a statement stressing Exergy's financial health, despite a wave of bad news.

Carkulis didn't immediately return a request for comment Monday.

But according to emails included in Idaho Power's filing with the state regulator, by September he was blaming uncertainty over pending rules governing Idaho renewable developments for his difficulties finding backers for projects to turn methane gas from cow manure into electricity.

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The PUC held contentious hearings over the summer on issues including whether developers like Exergy or utilities like Idaho Power should own valuable environmental credits generated by renewable projects, but the three-panel commission isn't likely to publish the rules until mid-December.

"A consequence of the pending proceedings, perhaps unintended, but certainly beyond the control of seller, is that renewable energy project lenders are unwilling to lend in Idaho pending the outcome of these proceedings," Carkulis' company wrote in a Sept. 28 email to Idaho Power. "There is, therefore, no financing available."

Idaho Power disputes that Carkulis' financing woes constitute a so-called "force majeure" — an earthquake, for instance, or civil strife — that should allow Exergy out of its contracts.

"The claimed events do not excuse (Exergy) from meeting the operational requirements," utility lawyers wrote.

At least initially, it will be up to the regulators to decide which side is right, though the dispute could end up in state court.

"The commission will determine whether that really is a valid reason for accepting a delay in the contract," commission spokesman Gene Fadness said of Exergy's claims.

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