

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL

DATE: JANUARY 21, 2011

SUBJECT: BLUE RIBBON ENERGY'S LATE-FILED PETITION FOR INTERVENTION IN THE MATTER OF THE JOINT PETITION OF THE ELECTRIC UTILITIES TO ADDRESS AVOIDED COST ISSUES AND TO ADJUST THE PUBLISHED AVOIDED COST RATE ELIGIBILITY CAP, CASE NO. GNR-E-10-04

BACKGROUND

On November 5, 2010, Idaho Power Company, Avista Corporation and PacifiCorp dba Rocky Mountain Power (Utilities) filed a Joint Petition requesting that the Commission initiate an investigation to address various avoided cost issues related to the Public Utility Regulatory Policies Act of 1978 (PURPA). The Petitioners requested that, while the investigation was underway, the Commission "lower the published avoided cost rate eligibility cap from 10 aMW to 100 kW [to] be effective immediately. . . ." Petition at 7.

On December 3, 2010, the Commission issued a Notice of Joint Petition, Notice of Modified Procedure, Notice of Intervention Deadline and Notice of Oral Argument. Order No. 32131. The Commission declined to immediately reduce the published avoided cost rate eligibility cap; set a December 17, 2010, deadline for intervention; set comment and reply deadlines of December 22, 2010, and January 19, 2011, respectively; and set the matter for oral argument on January 27, 2011.

THE PETITION FOR LATE INTERVENTION

On January 19, 2011, Blue Ribbon Energy, LLC (Blue Ribbon), filed an Emergency Petition for Intervention pursuant to Rule 73, IPUC Rules of Procedure. Blue Ribbon asserts a direct and substantial interest in the above referenced case as a result of "three permitted PURPA Wind Farms and a fourth wind farm application for a permit pending, all in process of

development in the State of Idaho. . . .” Petition at 4. Blue Ribbon states that its failure to meet the intervention deadline was caused by its inexperience in matters before the Commission. Blue Ribbon maintains that it was unaware that failure to file for intervention would result in exclusion from participation as a party in the case. *Id.*

Blue Ribbon insists that its intervention will not cause disruption in the case or prejudice any existing party. Blue Ribbon further states that its participation will not unduly broaden the existing issues in the case. Blue Ribbon agrees to be bound by any and all existing Orders and Notices in the case.

STAFF RECOMMENDATION

Staff does not oppose Blue Ribbon’s petition for intervention subject to the restrictions enumerated in the Petition and Rule 73. In addition, none of the participating utilities have filed opposition to Blue Ribbon’s request for intervenor status.

COMMISSION DECISION

Does the Commission wish to grant Blue Ribbon’s late-filed petition for intervention?



Kristine A. Sasser
Deputy Attorney General

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BLUE RIBBON ENERGY LLC
4515 South Ammon Road
Ammon, Idaho, 83406
208-524-2414 (Owner MJ Humphries)
801-523-2090 (Owner Arron F. Jepson)

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

— 0000000 —

IN THE MATTER OF THE JOINT
PETITION OF IDAHO POWER
COMPANY, AVISTA CORPORATION,
AND PACIFICORP DBA ROCKY
MOUNTAIN POWER, TO ADDRESS
AVOIDED COST ISSUES AND TO
ADJUST THE PUBLISHED AVOIDED
COST RATE ELIGIBILITY CAP

Case No. GNR-E-10-04

ORDER NO. 32131

**RULE 73 EMERGENCY PETITION
FOR INTERVENTION of BLUE
RIBBON ENERGY LLC**

**RULE 53 POINTS AND AUTHORITIES
IN SUPPORT OF PETITION**

**RULE 41 DESIGNATION OF
REPRESENTATIVES**

— 0000000 —

PETITION

Comes Now Blue Ribbon Energy LLC (hereafter called "BRE" or "Blue Ribbon") and respectfully submits, in compliance with Rule 62, this IPUC Rule 73 Petition for Intervention in Case number 32131, regarding the above referenced Joint Utilities' Petition regarding avoided cost issues, and for the appointment or designation of Blue Ribbon as a Rule 36 "Intervenor" in the above titled case. Blue Ribbon petitions for and requests an Order allowing its intervention, as specifically allowed by Rule 73 – "unless a different time is provided by Order."

POINTS AND AUTHORITIES IN SUPPORT OF PETITION

- 1 This Petition and the following Points and Authorities are submitted in compliance with Rule 53.04 (b), requiring citations of all authorities relied upon by

the petitioner, and in compliance with Rules 41, 61, and 62, as required by Rule 72.

2 The Idaho Public Utilities Commission (hereafter "IPUC" or "Commission") has the authority to allow Intervention by Order (See IPUC Rules 36 and 73; all rules referred to in this pleading refer to the IPUC Rules of Procedure, unless otherwise provided).

3 The time for Intervention prior to a Hearing may be lengthened or shortened by Order of the Commission (see Rule 73).

4 Rule 73 clearly allows late intervention as follows:

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.

5 The wording, "Petitions not timely filed must state a substantial reason for delay," is unclear as to whether the "delay" referred to, is a "delay" in the case, caused by the requested intervention, if granted, or alternately refers to a "delay" in filing the Petition itself. Based upon the later wording in Rule 73 (see below), which allows for late filing without stating "good cause," it is reasonable to conclude that the "delay" referred to above, is a "delay" in the above referenced pending case. Therefore, your Petitioner herein, Blue Ribbon, submits that it's intervention, if granted, will cause no "delay" in the pending case, of any kind, and makes no request for a continuance of any hearing presently set, in the above title case, on

the IPUC's calendar. Furthermore, Blue Ribbon submits that the IPUC has broad and unlimited discretion in granting Petitions for Intervention, and that Rule 73 expressly allows late intervention without the requirement of stating a "substantial reason" or "good cause" for a late filed Petition wherein it provides:

The Commission may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing. . .
[emphasis added]

- 6 Furthermore, Rule 13 mandates that the IPUC's Rules of Procedure – "will" – "be liberally construed to secure just, speedy and economical determination of all issues presented to the Commission."
- 7 **Rule 74 Requires the Granting of Blue Ribbon's Petition:** Rule 74 states in clear language that the Commission or a presiding officer thereof "**will grant intervention**" of a Petition to Intervene which shows a direct and substantial interest in any part of the subject matter of a proceeding, and which petition does not unduly broaden the issues. This rule does not distinguish between timely and late filed Petitions.
- 8 Nevertheless, Blue Ribbon states that it is inexperienced in Commission matters and procedures and filing deadline requirements, and did not clearly understand the same, was unaware that there even existed IPUC Rules of Procedure, and that it was quite unaware of the necessity of filing a written Petition for Intervention in the above titled case, to avoid exclusion from participation in the case, and that it only now, for the first time, has acquired the most basic awareness of and familiarity with the aforesaid procedures and rules. For this

ignorance Blue Ribbon apologizes and requests the Commission's liberal construction of its Rules and of this Petition, in Blue Ribbon's favor.

9 Blue Ribbon's Intervention will NOT (a) cause any disruption in the case, (b) prejudice any existing party, or (c) unduly broaden the existing issues of the case.

10 Blue Ribbon agrees to be bound by any and all existing Orders and Notices in the case, following intervention, except as to the petition filing deadline.

11 **Rule 41 Designation of Representatives:** Pursuant to Rule 41, subsections 01 and 02, and Rule 43, subsection 04, Blue Ribbon discloses and states that it will be represented by either or both of its two owners/members (LLC's have "members" not officers - See Idaho Limited Liability Act, I.C. §53-608, et seq.), MJ Humphries and Arron Jepson, whose addresses and phone numbers are respectively:

MJ Humphries
Member of Blue Ribbon
4515 South Ammon Road
Ammon, Idaho 83406
208-524-2414
blueribbonenergy@gmail.com

Arron F. Jepson
Member of Blue Ribbon
10660 South 540 East
Sandy, Utah 84070
801-523-2090
ArronEsq@aol.com

12 **Rule 71 Declaration of Direct and Substantial Interest:** Blue Ribbon has three permitted PURPA Wind Farms and a fourth wind farm application for a permit pending, all in process of development in the State of Idaho, and therefore claims, pursuant to Rule 71, a direct and substantial interest in the subject matter of the aforesaid and above titled proceeding, regarding avoided

cost rates and size of PURPA Wind Farms. Blue Ribbon petitions and respectfully requests an immediate IPUC ORDER allowing and appointing it as a Rule 36 Intervenor in this proceeding, Case Number 32131.

CONCLUSION: Having complied with the IPUC Rules of Procedure for Intervention, Blue Ribbon Energy LLC respectfully requests that its Petition for Intervention be granted forthwith, and that it be allowed to participate in all scheduled and upcoming hearings in this case.

Respectfully submitted this 18, day of January, 2011,

Blue Ribbon Energy LLC

By 
Arron F. Jepson, Member