

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )  
IDAHO POWER COMPANY FOR AUTHORITY ) CASE NO. IPC-E-03-5  
TO IMPLEMENT A POWER COST )  
ADJUSTMENT (PCA) RATE FOR ELECTRIC )  
SERVICE FROM MAY 16, 2003 THROUGH )  
MAY 15, 2004. ) ORDER NO. 29371  
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On September 19, 2003, the Idaho Irrigation Pumpers Association, Inc. (“Irrigators”) applied to the Idaho Public Utilities Commission for \$10,670.15 of intervenor funding pursuant to *Idaho Code* § 61-617A and Rules 161-165 of the Commission’s Rules of Procedure, IDAPA 31.01.01.161-165. No motions objecting to the Irrigators’ Petition were filed within the 14-day period set forth in Rule 164. By this Order, we grant \$5,335.08 of the total amount claimed by the Irrigators pursuant to the Idaho Code and the Commission’s Rules of Procedure.

**STATUTORY STANDARDS**

*Idaho Code* § 61-617A and Rules 161-165 of the Commission’s Rules of Procedure provide the framework for awards of intervenor funding. Section 61-617A(2) provides that the Commission shall rely upon the following considerations in awarding funding to a given intervenor: (a) whether the intervenor materially contributed to the decision rendered by the Commission; (b) whether the alleged costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor to incur; (c) whether the recommendation made by the intervenor differed materially from the testimony and exhibits of the Commission Staff; and (d) whether the testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

Subsection 5 of this statute provides that intervenors who are in direct competition with the public utility involved in proceedings before the Commission shall not be granted funding. The statute also provides that the total award for all intervening parties combined shall not exceed \$40,000.00 in any proceeding.

Rule 162 of the Commission’s Rules of Procedure provides the procedural requirements with which an application for intervenor funding must comply. The application must contain: (1) an itemized list of expenses broken down into categories; (2) a statement of the intervenor’s proposed

finding or recommendation; (3) a statement showing that the costs the intervenor wishes to recover are reasonable; (4) a statement explaining why the costs constitute a significant financial hardship for the intervenor; (5) a statement showing how the intervenor's proposed finding or recommendation differed materially from the testimony and exhibits of the Commission Staff; (6) a statement showing how the intervenor's recommendation or position addressed issues of concern to the general body of utility users or customers; and (7) a statement showing the class of customer on whose behalf the intervenor appeared. Finally, Rule 165 provides that the Commission must find that the intervenor's presentation materially contributed to the Commission's decision.

There were no motions filed in opposition to the Irrigators' Application for intervenor funding within the 14-day time period provided in Rule 164.

### **IRRIGATORS' APPLICATION**

As more fully explained in the Irrigators' comments and in the Stipulation signed by the parties, the Irrigators objected to Idaho Power's use of 1993 normalized sales data in establishing the true-up rate for 2003-2004 Power Cost Adjustment ("PCA"). The Irrigators and Staff argued that the use of stale sales data could result in an over-collection of target true-up revenue. To address this concern, the parties agreed in the Stipulation to a true-up of the target true-up revenue in future PCA cases.

The Irrigators also objected to Idaho Power's calculation of the 2002-2003 PCA deferral amounts for Schedules 7, 19, and 24 that were to be added to the 2003-2004 PCA rate. Because Idaho Power used 1993 normalized sales data rather than the 2000 normalized sales data that was initially used to calculate the deferral amount, the deferral amount for Schedule 24 was approximately 14% higher than what the Commission authorized to be deferred in the 2002-2003 PCA case. To address this issue, the parties agreed in the Stipulation that Schedules 7, 19, and 24 would receive a credit in the 2004-2005 PCA in an amount equal to the difference between the amount Idaho Power is currently projected to collect for the 2003-2004 PCA and what they would be projected to collect if the 2000 sales data was used to calculate the deferral amount for the same period.

The Irrigators argued that their position with respect to the calculation of the 2002-2003 deferral amount for Schedules 7, 19, and 24 differed materially from the positions taken by the Commission Staff. According to the Application, the Irrigators pointed out that Idaho Power's

deferral amounts for Schedules 7, 19, and 24 were too high because Idaho Power used the 1993 customer class sales data as opposed to the 2000 sales data. Order No. 29243 at 8.

The Application also stated that the Irrigators' participation addressed issues of concern to the general body of Idaho Power's ratepayers because the PCA true-up rate affects all customer classes. By joining the Commission Staff in pointing out that the PCA mechanism suffered from using stale sales data, the parties were able to craft a resolution that minimizes the possibility of over- or under-collection of the PCA rate.

The Irrigators argued that the expenses and costs set forth in Exhibit A are reasonable in amount and were necessarily incurred (1) in reviewing and evaluating Idaho Power's Application, filing comments, and preparing data requests for a possible hearing, and (2) participating in the scheduling conference, subsequent settlement negotiations, and the resulting Stipulation presented to the Commission. These expenses are summarized as follows:

**Legal fees**

Eric L. Olsen	
30.5 hours @ \$150/hr	\$4,590.00
Costs: travel & long distance expenses	\$ 430.15

**Consultation fees**

Tony Yankel	
56.5 hours @ \$100 per hour	<u>\$5,650.00</u>

<b>TOTAL</b>	<b>\$10, 670.15</b>
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The Application maintained that these expenses constitute a financial hardship. The Irrigators are an Idaho nonprofit corporation qualified under I.R.C. § 501(c)(5) representing farm interests in electric utility rate matters affecting farmers in southern and central Idaho. The Irrigators rely solely upon dues and contributions voluntarily paid by members, together with intervenor funding to support activities and participate in rate cases. The Irrigators have only one part-time paid employee while its officers and directors serve without compensation. The Irrigators explained that they have substantial accounts payable as a result of participation in this case as set out in Exhibit A. They also anticipate they will need to incur substantial expenses in the upcoming Idaho Power and PacifiCorp general rate cases.

## DISCUSSION AND FINDINGS

We find that the Irrigators generally meet the procedural requirements for intervenor funding according to *Idaho Code* § 61-617A and Rule 162. IDAPA 31.01.01.162. We find that while the Irrigators addressed issues primarily of concern to the irrigation customer class, the Irrigators also addressed issues of concern to the general body of ratepayers. We also find that these costs and expenses constitute a significant financial hardship for this organization if they were not recovered.

Furthermore, the Commission finds that the Irrigators materially contributed to the record in this case and took a position substantially different than that of the Commission Staff. Staff would have agreed to the use of actual 1999 energy sales data to calculate the appropriate 2003 PCA rate for the three customer groups that continue to pay off 2002 deferrals. While 1999 numbers would have left Schedule 9 (Large General Service) and Schedule 19 (Large Power Service) customers only slightly worse off than using 2000 actual energy consumption, Schedule 24 (Irrigation Service) customers would have been worse off by \$1 million. The Irrigators identified this problem and argued that 2000 actual energy consumption must be used to calculate the 2003 PCA rate. As a result of the Irrigators' advocacy, the 2000 actual energy consumption data was adopted in the Stipulation.

Although the Irrigators' Application and supporting documentation generally comply with the statutory requirements described above, Commission Rule 164 states that "an intervenor requesting intervenor funding *must apply no later than fourteen (14) days* after the last evidentiary hearing in a proceeding or the deadline for submitting briefs, proposed orders, or statements of position, whichever is last." IDAPA 31.01.01.164 (emphasis added). The Irrigators' Application was filed on September 19, 30 days after the last submission (the Stipulation) was filed on August 20.

Mr. Eric Olsen, counsel for the Irrigators, attached a cover letter to the Application stating:

Given the procedural posture of this case being submitted on the Stipulation of the parties, I was unclear as to when the time period for filing the Application would begin under Commission Rule 164 because there was no evidentiary hearing or deadline for submitting briefs, proposed orders or statements of position.

Mr. Olsen also stated that it was always the Irrigators' intent to file an Application for Intervenor Funding in this case.

Procedural Rule 164 enables the Commission to be in possession of all intervenor funding petitions at the time it issues a final Order. Not only does this facilitate timely and efficient resolution of all the issues in a case, it also reduces the confusion created by multiple reconsideration deadlines. In short, Rule 164 ensures that the reconsideration periods for substantive and intervenor funding issues run simultaneously.

Given the procedural history of this case and the language of Rule 164, the Irrigators' confusion about the timing of the 14-day filing period is understandable. The Stipulation signed by the Irrigators and filed by Idaho Power on their behalf on August 20, 2003, was in essence a "statement of position" under Rule 164. As such, the Irrigators' Petition is untimely and could be denied in full.

That said, the Commission believes it would be unfair to ignore the substantial efforts expended and significant results achieved by the Irrigators on behalf of the irrigation customer class. Thus, the Commission approves an intervenor funding award in the amount of \$5,335.08. Under these circumstances, the Commission finds an award of that amount is fair and will further the statute's purpose of encouraging "participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings." *Idaho Code* § 61-617A(1).

According to Rule 165(3), intervenor funding awards paid by a utility will be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility's next rate case. Rather than disrupt the PCA rates that have been in effect since May 2003, this award may be included as an adjustment chargeable to Schedule 24 irrigation customers in Idaho Power's general rate case in Case No. IPC-E-03-13.

#### **ORDER**

IT IS THEREFORE ORDERED that the Application for intervenor funding filed by the Idaho Irrigation Pumpers Association, Inc. is partially granted in the amount of \$5,335.08.

IT IS FURTHER ORDERED that Idaho Power is directed to pay this amount within 28 days of the date of this Order.


IT IS FURTHER ORDERED that Idaho Power may include the costs of this intervenor funding award to the Idaho Irrigation Pumpers Association as an adjustment chargeable to Schedule 24 irrigation customers in Idaho Power's general rate case in Case No. IPC-E-03-13.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

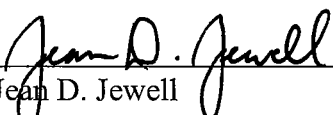
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30<sup>th</sup> day of October 2003.

  
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PAUL KJELLANDER, PRESIDENT

  
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MARSHA H. SMITH, COMMISSIONER

  
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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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