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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for part/intervenor Idaho Irrigation Pumpers Association, Inc.

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF IDAHO POWER	)	
COMPANY'S PETITION FOR APPROVAL	)	CASE NO. IPC-E-08-23
OF CHANGES TO THE IRRIGATION PEAK	)	
REWARDS PROGRAM.	)	
	)	
IDAHO POWER COMPANY'S PROPOSAL	)	
RECOVER THE ANNUAL COST OF THE	)	
PROGRAM IN THE PCA.	)	
	)	

**IDAHO IRRIGATION PUMPERS ASSOCIATION, INC.'S PETITION FOR RECONSIDERATION**

IDAHO IRRIGATION PUMPERS ASSOCIATION, INC. ("IIPA"), by and through its attorneys, hereby respectfully petition the Commission for reconsideration of Order No. 30771, dated April 13, 2009, issued in the above case (the "Order") pursuant to RP's 70-76, 161-165, and 331-333 and Idaho Code §§ 61-617A and 61-626.

**BACKGROUND**

This case stems from the stipulation that the parties entered into and that the Commission approved in IPC E-07-08. See Order No. 30508. Specifically, the stipulation provided, among other things, that Idaho Power Company ("IPC") and the IIPA would implement a working group prior to June 19, 2009, to (a) design and implement at new dispatchable irrigation demand response program and (b) develop and

review the methodology used in determining the amount of incentive payments for the Peak Rewards Program and the new dispatchable program participants. See IPC E-07-08 Stipulation, at 5.

The first meeting was held on June 11, 2009, at IPC's facilities in Heyburn, Idaho. Representatives from IPC, IIPA, and Commission Staff were in attendance, along with local farmers. From this meeting IPC prepared a proposal that outlined the terms of the new dispatchable program and pricing of the incentives for it and the existing Peak Rewards Program. A series of conference calls were then held to review and comment on the terms of these programs and pricing matters in August through October. These conference calls were all attended by IPC, IIPA, and Commission Staff representatives and they resulted in the Stipulation among the parties that was filed in this matter on November 10, 2009 (the "Stipulation"). Concurrently, the IIPA filed comments in support of the Stipulation.

On December 3, 2008, the Commission issued Order Nos. 30686 and 30694. Order 30686 dealt with the merits of the changes to the Peak Rewards Program and provided it would proceed under modified procedure and required that comments be filed with the Commission within 14 days of its date. Order 30694 dealt with IPC's request this case dealing with its desire to recover the costs associated with revisions to the Peak Rewards Program under the PCA. An intervention deadline was given for this bifurcated portion of the proceedings. Given the bifurcation, the IIPA did not intervene pursuant to Order No. 30694 because it was unsure procedurally whether it needed to formally intervene under the circumstances because it was a party to the Stipulation and had already filed comments at the time of the filing of this case.

Prior to the deadline for submitting comments pursuant to Order No. 30686, the IIPA filed its Application for Intervenor Funding on December 16, 2008 (the "Application") so that the Commission could consider the application with its ruling on the Peak Rewards Program changes. On January 14, 2009, the Commission issued Order No. 30717 which approved the changes to the Peak Rewards Program. However, this order did not address the IIPA's Application. IIPA's legal counsel spoke to Commission Staff about this issue on January 15, 2009, and was told that the Commission was deferring its ruling on the Application pending the closing of the case.

On February 10, 2009, IIPA representatives participated with IPC and Commission Staff representatives on a conference call to address the funding issue of the changes to the Peak Rewards Program. IPC, IIPA, and Commission Staff were the only parties participating because no one else had intervened in this part of the case. Subsequently, IPC gave up the idea of recovering the cost of the Peak Rewards Programs through the PCA and filed a Motion to Close Case on March 10, 2009. The IIPA filed its Response to this motion on March 20, 2009 stating that it did not object to the closing of the case, but asked that the Commission rule on its Application. On April 13, 2009, the Commission issued the Order denying the IIPA's Application on the basis that (1) the IIPA was not properly considered an "Intervenor" in this case and/or (2) that the informal nature of the proceedings did not provide the Commission with a record sufficient to make the required findings for an award of intervenor funding. See Order No. 30771 at 2-3.

## ARGUMENT

Given the policy behind the Intervenor Funding Statute to “*encourage participation at all stages of all proceedings before*” the Commission and in light of the precedence of the Commission making awards of intervenor funding made in prior, similar cases, the IIPA respectfully believes that the Commission has erred in denying its Application in this Case. I.C. § 61-617A(1) (emphasis added). As such, the IIPA respectfully requests that the Commission reconsider its denial of its Application in this case on the following bases.

First, the Commission has made awards of intervenor funding to the IIPA on prior cases that were processed under modified procedure and no intervention deadline was order by the Commission. In IPC-E-03-05, the IIPA filed comments on the PCA objecting to IPC’s use of certain normalized sales data making certain calculations under the PCA which the Commission found to be material. Other issues were also contested by Commission Staff and the Industrial Customers of Idaho Power (“Industrial Customers”). Rather than hold technical hearings, a settlement conference was ordered to allow the parties to work out these issues. The IIPA, Commission Staff and the Industrial Customers participated in the settlement conference and in subsequent conference calls that ended up in a resolution of the matter. Although, the IIPA had not formally intervened it had filed comments which the commission found were material to the case and the Commission granted the IIPA party status in Order No. 29258. At the conclusion of the proceedings, the IIPA filed an application for intervenor funding and the Commission granted part of the IIPA’s request in Order No. 29371.

In IPC-E-04-23, the Commission had order that workshops be held to address issues raised about IPC's cost of service study in its general rate case IPC-E-04-23. An intervention deadline was not set by the Commission. A series of workshops were held to address the issues raised in that general rate case on cost of service issues. The workshops resulted in a final report being submitted by all the parties to the proceedings. The IIPA filed an application for intervenor funding for the costs associated with participating in these proceedings and the Commission granted that request in part as provided in Order No. 29868. In addressing the award, the Commission relied on the general policy of the Intervenor Funding Statute to "*encourage participation at all stages of all proceedings before*" before the Commission. See Order No. 29868 at 3.

In this case, the IIPA should be granted party status due to fact that it was a party to the Stipulation and filed comments in support thereof similar to the procedural situations present in IPC-E-03-05 and IPC-E-04-23. This is due to the fact that the comments were material in assisting the Commission in addressing the changes to the Peak Rewards Program and were relied on by them in issuing its Order No. 30771. As a result, a formal request for intervenor status was not necessary because the IIPA's comments in this case gave all the required information needed under a formal petition for intervention under Rules of Procedure 72 and 73 and the Commission had already indirectly determined that the IIPA was a party to this case.

In the alternative, the IIPA files concurrently herewith a late filed Petition to Intervene in this case. The petition is made under Rule of Procedure 73 and on the basis that it was not clear whether the IIPA needed to formally intervene to be given party status in light of the fact that it was a party to the Stipulation and that it filed comments in

support of the Stipulation. Further, the granting of the IIPA intervenor status would not prejudice any parties to this case in that it does not expand any issues raised and in light of the fact that no other parties who were not already parties to the Stipulation sought to intervene. Also, granting intervention status also comports with the policy behind the Intervenor Funding Statute of encouraging participation in all matters and at all stages of the proceedings as was evident when the Commission issued prior Order Nos. 29371 and 29868.

Second, this is an appropriate proceeding whereby the Commission can make a determination as to the application of Rules of the Procedure 161 through 165. Specifically, the Commission has made awards of intervenor funding in similar proceedings such as those of IPC-E-03-05 and IPC-E-04-23. The record is sufficient in that there was testimony and comments file and a stipulation presented to the Commission upon which it based its Order No. 30771. If that record is not sufficient to make a ruling on intervenor funding, then how can it be used as a basis to issue Order No. 30717? It cannot, or else the Commission is saying that it acted arbitrarily when it issued Order No. 30717, and that obviously was not the case. Further, Commission Staff participated at all stages of these proceedings and they can assist the Commission in making the determinations of whether the requirements of Rule of Procedure 165 are met.

Finally, the intent and purpose of the Intervenor Funding Statute is to encourage participation in all proceedings and at all stages before the Commission. I.C. § 61-217A(1). This includes informal matters as in this case. If the Commission limits the situations wherein it allows awards of intervenor funding to only fully litigated cases and matters, then it is (1) discouraging parties like the IIPA from ever settling cases or

working informally with IPC, other utilities and the Commission Staff and (2) discouraging parties like the IIPA from participating in a broader array of cases because it will not have the financial resources to do so. This frustrates the purposes of the Intervenor Funding Statute and will prevent future of programs like the dispatchable interruption option that was presented in this case and its associated costs savings from ever being presented and considered by the Commission.

### CONCLUSION

For the above reasons, the IIPA respectfully requests that the Commission reconsider its Order No. 30771 and find that the IIPA is a proper party and/or intervenor to this case and rule on the merits of its Application.

DATED this 4<sup>th</sup> day of May, 2009.

RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED

By   
ERIC L. OLSEN, Attorney for  
Idaho Irrigation Pumpers Assn., Inc.

**CERTIFICATE OF MAILING**

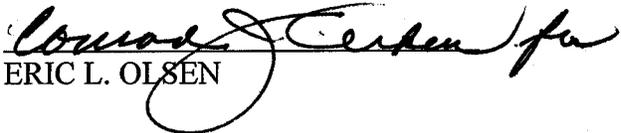
I HEREBY CERTIFY that on this 4<sup>st</sup> day of May, 2009, I served a true, correct and complete copy of the foregoing document, to each of the following, via the method so indicated:

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