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IDAHO PUBLIC
 UTILITIES COMMISSION

Attorney for Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S APPLICATION FOR)	CASE NO. IPC-E-11-08
AUTHORITY TO INCREASE ITS RATES)	
AND CHARGES FOR ELECTRIC SERVICE)	STAFF MOTION TO STRIKE
IN IDAHO)	THE SURREBUTTAL
)	TESTIMONY OF CAPAI

COMES NOW the Commission Staff by and through its attorneys of record, Donald L. Howell, II and Karl T. Klein, Deputy Attorneys General, and moves to strike the November 28, 2011,¹ Surrebuttal Testimony of Teri Ottens offered by the Community Action Partnership Association of Idaho (CAPAI). The Commission should strike the testimony because it is untimely and violates the Commission's Scheduling Order No. 32316 (setting November 16, 2011 testimony deadline); CAPAI has not sought permission from the Commission to introduce the 18 pages of surrebuttal testimony; and offering surrebuttal testimony at this stage of proceeding (less than 7 days before the hearing) works a hardship upon Staff and other parties.

BACKGROUND

In its Notice of Application, the Commission set a deadline for intervention in this rate case. The Notice stated also that after the Commission had granted intervention, the parties

¹ The surrebuttal was electronically served on Staff and other parties after the close of business on Monday, November 28, 2011.

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 OF CAPAI

were to convene an informal conference “to determine the scheduling of discovery, testimony, technical hearings, and other matters.” Order No. 32272 at 5. The scheduling conference was held on July 20, 2011, and was attended by most parties including CAPAI. Order No. 32316 at 1.

Based upon the “agreement of the parties at the prehearing conference” the Commission issued the following schedule to process this case:

DATE	ACTIVITY
August 31, 2011	Settlement conference
September 8, 2011	Continued settlement (if necessary)
October 7, 2011	Staff/Intervenor prefile direct testimony
October 25, 2011	Deadline for discovery requests
November 16, 2011	Rebuttal prefile testimony (all parties)
December 5-6, 2011	Technical Hearing

Order No. 32316 at 1-2.² As indicated above, Staff and intervenors were to prefile their direct testimony on October 7, 2011, and all parties were to file simultaneous rebuttal testimony on November 16, 2011. The schedule does not provide for the filing of any surrebuttal testimony.

As indicated above, the Commission’s Scheduling Order also provided for two settlement conferences. All parties, including CAPAI, participated in the settlement conferences on August 31 and September 8, 2011. Order No. 32380 at 1. Following the settlement conferences, all parties except CAPAI entered into a Stipulation that proposed to settle many but not all issues in this rate case.

On October 13, 2011, the Commission issued a Notice of Partial Settlement that described the Settlement Stipulation and also the issues on which the parties were unable to reach agreement. In particular, the Commission’s Notice disclosed that the parties were unable to agree on “the amount of funding for the Company’s low-income weatherization program.” Order No. 32380 at 3. On October 7, 2011, CAPAI prefiled its direct testimony seeking a 125% increase in funding for low-income weatherization (from \$1.2 million to \$2.7 million). Until CAPAI filed its testimony seeking to increase weatherization funding by \$1.5 million, there was

² The dates of the technical hearing were set in Order No. 32380 issued October 13, 2011.

no evidence in the record that CAPAI sought to increase funding by that amount. Based upon the schedule, Staff filed its rebuttal testimony on November 16, 2011.

ARGUMENT

CAPAI's surrebuttal testimony is improper and should be stricken for several reasons. First, as set out above, the Commission's Scheduling Order No. 32316 did not allow for surrebuttal. The rebuttal testimony deadline for all parties (including CAPAI) was November 16, 2011. Moreover, CAPAI is an intervenor and should not be allowed to circumvent the Commission's Order by filing untimely surrebuttal testimony not contemplated by the Scheduling Order.

Second, CAPAI did not file a motion seeking procedural relief to file surrebuttal testimony. If CAPAI felt that it was necessary to file surrebuttal testimony addressing Ms. Donohue's rebuttal testimony filed November 16, 2011, then CAPAI should have filed a motion. CAPAI offers no explanation why it could not have filed a motion seeking such procedural relief. Rule 256.03, IDAPA 31.01.01.256.03.³

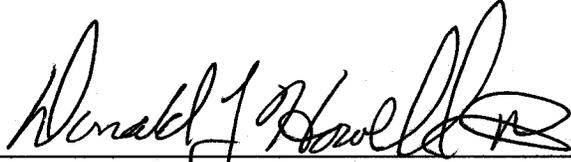
Finally, offering surrebuttal less than seven days before the hearing works a hardship on Staff's preparation for this case. Although CAPAI claims Ms. Donohue's testimony raises certain issues "for the first time," the surrebuttal testimony acknowledges that CAPAI "was aware that Staff had certain reservations about CAPAI's position [to increase weatherization funding]. Ottens Surrebuttal at 3, ll.5-10. In addition, Ms. Ottens admits that she was aware of: (1) Staff's concerns about increasing weatherization funding based upon CAPAI's comparison of "per capita LIWA funding level[s] between Idaho Power and Avista"; and (2) Staff's doubts about the cost-effectiveness of Rocky Mountain Power's low-income weatherization program." *Id.* at 4, ll.6-9, 17-21. The Commission allowed parties ample time to conduct discovery and otherwise prepare their cases. CAPAI did not formally or informally ask Staff about its position on LIWA. CAPAI's failure to explore Staff's potential testimony on LIWA does not justify CAPAI's attempt to obtain special privileges through the filing of supplemental, untimely surrebuttal testimony.

³ In addition, CAPAI has not explained why it did not at least file a motion to accept its supplemental testimony when it served Ms. Ottens' prefile surrebuttal testimony on the parties.

PRAYER

Based upon the reasons stated above, Staff respectfully requests that the Commission not allow CAPAI to offer its prefiled surrebuttal testimony this case.

Respectfully submitted this 2^d day of December 2011.



Donald L. Howell, II
Deputy Attorney General

bls:N:IPC-E-11-08_dh_Motion to Strike

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 2nd DAY OF DECEMBER 2011, SERVED THE FOREGOING **STAFF MOTION TO STRIKE THE SURREBUTTAL TESTIMONY OF CAPAI**, IN CASE NO. IPC-E-11-08, BY E-MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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