

Benjamin J. Otto (ISB No. 8292)
710 N 6th Street
Boise, ID 83701
Ph: (208) 345-6933 x 12
Fax: (208) 344-0344
botto@idahoconservation.org

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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for the Idaho Conservation League

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE)	
APPLICATION OF IDAHO POWER)	
COMPANY FOR AUTHORITY TO)	CASE NO. IPC-E-12-27
MODIFY ITS NET METERING)	
SERVICE AND TO INCREASE THE)	IDAHO CONSERVATION LEAGUE's
GENERATION CAPACITY LIMIT.)	PETITION FOR RECONSIDERATION

The Idaho Conservation League (“ICL”), pursuant to I.C. § 61-626 and IDAPA 31.01.01.331 - 332 submits this Petition for Reconsideration. In Order 32846, the Commission, contrary to legal standards and state policy, reduced ICL’s witness’s hourly rate by over 58% and recalculated ICL’s intervenor funding award. Because this decision does not align with the plain language or prior Commission and Supreme Court interpretations of the intervenor funding statute, I.C. § 61-617A, ICL urges the Commission to reconsider and award ICL’s full intervenor funding request. ICL is prepared to provide further briefing or argument if the Commission so desires, otherwise our argument rests on these written comments. *See* IDAPA 31.01.01.331.03.

I. Grounds for Reconsideration

Reconsideration is appropriate when a Commission Order “is unreasonable, unlawful, erroneous or not in conformity with the law[.]” IDAPA 31.01.01.331.01. Idaho Code empowers the Commission to award intervention costs “to encourage participation at all stages of all proceedings . . . so that all affected customers receive full and fair representation in those proceedings.” I.C. § 61-617A. To be eligible for an award intervenors must demonstrate five factors: (a) material contribution; (b) costs are “reasonable in amount”; (c) significant hardship;

(d) recommendations differ materially from the Staff; and (e) the issues concern the general body of consumers. *Id.* Idaho law declares intervenor funding awards represent “the policy of this state to encourage participation at all stages of all proceedings . . . so that all affected customers receive full and fair representation[.]” *Id.*; *Idaho Fair Share v. Idaho Public Utilities Comm'n*, 113 Idaho 959, 963, 751 P.2d 107, 110 (1988).¹ By reducing ICL’s expert witness’s hourly fee by 58% the Commission did not conform to the factors in the intervenor funding law, which provides costs must be “reasonable in amount”, nor act in conformity with the declared policy of Idaho to encourage full and fair representation in regulatory proceedings. Because Order 32846 does not conform to applicable law, the Commission should reconsider and award ICL the entire intervenor funding request as detailed in Attachment A.

II. Argument

The Commission abused their discretion by reducing ICL’s expert witness’s hourly rate without balancing this with the qualifications of the expert or the number of hours expended. The statute provides the Commission discretion as to whether and to what extent to grant any award. I.C. § 61-617A. This discretion is reviewed for abuse. *Building Contractors Ass’n of Southwestern Idaho v. Idaho Public Utilities Comm’n*, 151 Idaho 10, 253 P.3d 684, 691 (2011)(*BCA*). Similar to the award of attorney fees under I.C. § 12-121, an abuse of discretion review asks whether the Commission: (1) “perceived the issue as one of discretion”; (2) “acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it”; and (3) “reached its decision by the exercise of reason.” *Bingham v. Montane Resource Associates*, 133 Idaho 420, 427, 987 P.2d 1035, 1042 (1999).

The decision to award intervention costs is discretionary, but bounded by five factors the Commission shall consider. I.C. § 61-617A; IDAPA 31.01.01.165; *BCA*, 253 P.3d 691. The

¹ Overruled on other grounds by *J.R. Simplot Co. Inc. v. Idaho State Tax Comm'n*, 120 Idaho 849, 862, 820 P.2d 1206, 1219 (1991).

Commission found ICL met four of the five standards: (a) material contribution to the decision; (b) recommendations that differed materially from the Staff; (c) addressed issues concerning the general body of ratepayers; and (d) financial hardship absent an award. Order 32846 at 18.

However, the Commission found ICL's expert witnesses hourly rate unreasonable and applied a 58.33% discount. *Id.* But the applicable legal standard asks whether the request is "reasonable in amount". IDAPA 31.01.01.162.03. ICL's request, while based on a relatively high hourly rate, is reasonable in amount because it covers a relatively small number of hours in light of the procedure and complexity of the case. ICL's request covers 31 hours including supporting ICL's initial review, presentation at public workshops, and settlement negotiations, as well as directly producing testimony and assisting during the technical hearing.

Recognizing ICL's expert witness Mr. R. Thomas Beach charged a relatively high rate ICL used several means to ensure the overall amount would be reasonable. First, ICL considered other experts, but there are very few experts in the country well versed in conducting cost/benefit analysis for net metering programs. With his extensive background, Mr. Beach could assist ICL in relatively few hours compared to other experts. Further, Mr. Beach's analytical model had been accepted by other state Commissions. Second, ICL choose to address only one of several issues raised in this proceeding. But all of these issues raised affected the interests of ICL and our membership. By limiting our testimony to only the cost/benefit issues ICL risked relying on other parties to address issues that were essential to full and fairly representing our interests. Third, ICL carefully designed our fee agreement to limit the number of hours Mr. Beach would incur by, for instance, requiring explicit authorization to proceed to testimony after attempting to resolve the issue through settlement. By only adjusting the hourly rate, without considering the relatively few hours expended, the Commission did not conform to the legal standard to determine whether ICL's request was "reasonable in amount."

By reducing ICL's expert witness's hourly rate, the Commission also undercuts the policy of Idaho to encourage full and fair representations in all proceedings. I.C. § 61-617A; *Idaho Fair Share*, 751 P.2d at 110. This case involved a highly complex proposal to create wholly new rate schedule for a unique set of customers. Idaho Power's proposal was a relatively novel issue not just in Idaho, but in most of the United States. Reviewing the proposal to understand its impact on ICL's interests and then developing a substantive response required technical expertise that is in short supply. Intervenors like ICL can only ensure full and fair representation of our interests in this type of highly complex and novel proceeding by incurring expert witnesses costs.

Recognizing that hourly rates vary by location and qualifications, ICL deployed the cost control methods described above with an eye to the legal standard that expert witness fees be "reasonable in amount". A new standard based on an arbitrary hourly rate will chill ICL's ability to fully and fairly our interests and thereby undercut Idaho policy enshrined in I.C § 61-617A. Instead, the Commission can uphold state policy and accurately apply the "reasonable in amount" standard by acknowledging ICL's full request is based on a balance of hourly rate to the hours expended.

III. Conclusion

The Commission abused their discretion, and did not conform to the applicable legal standard, by reducing ICL's witness's hourly rate without considering the hours expended in relation to the complexity of the case. By limiting the hours, ICL incurred a reasonable total. Awarding all of ICL's intervention costs is consistent with the applicable legal standards and an exercise in reasoned discretion. *Bingham*, 987 P.2d at 1042. By doing so the Commission will uphold "the policy of this state to encourage participation at all stages of all proceedings . . . so that all affected customers receive full and fair representation[.]" I.C. § 61-617A.

Respectfully submitted this 23rd day of July 2013,



Benjamin J. Otto
Idaho Conservation League

Exhibit A
Hours for ICL's expert witness R. Thomas Beach

		<u>Hrs/Rate</u>	<u>Amount</u>	
<u>Idaho Power NEM Case</u>				
2/14/2013	RTB	Review Idaho Power IRP; prepare cost/benefit analysis of NEM.	3.00 300.00/hr	900.00
2/15/2013	RTB	Prepare cost/benefit analysis of NEM. Review Idaho Power GRC data on marginal transmission costs.	3.50 300.00/hr	1,050.00
2/19/2013	RTB	Confer with Ben Otto on NEM analysis. Revise analysis to reflect correct marginal transmission costs.	1.25 300.00/hr	375.00
2/28/2013	RTB	Confer with Ben Otto on next steps, discovery responses. Send him confidentiality signature.	0.25 300.00/hr	75.00
SUBTOTAL:		[8.00	2,400.00]
For professional services rendered			8.00	\$2,400.00

		<u>Hrs/Rate</u>	<u>Amount</u>	
<u>Idaho Power NEM Case</u>				
4/30/2013	RTB	Confer with Ben Otto on testimony. Review testimony template; analysis of Idaho Power NEM costs and benefits.	1.00 300.00/hr	300.00
5/4/2013	RTB	Draft testimony on costs and benefits of solar PV for Idaho Power.	4.50 300.00/hr	1,350.00
5/5/2013	RTB	Draft testimony; send draft to Ben Otto. Work on tables and numbers. Revise capacity value of solar.	3.50 300.00/hr	1,050.00
5/6/2013	RTB	Review initial edits to testimony; send revisions to Ben Otto.	1.50 300.00/hr	450.00
5/7/2013	RTB	Review final testimony; send note to Ben Otto. Modify Table 2. Review City of Boise draft testimony.	1.50 300.00/hr	450.00
5/14/2013	RTB	Confer with Ben Otto on filed testimony; review.	1.00 300.00/hr	300.00
SUBTOTAL:		[13.00	3,900.00]
For professional services rendered			13.00	\$3,900.00

		<u>Hrs/Rate</u>	<u>Amount</u>	
6/4/2013	RTB	Confer with Ben Otto on cross topics. Review rebuttal before call.	0.75 300.00/hr	225.00
6/5/2013	RTB	Call on cross topics. Review rebuttal before call. Review CPUC excess gen order.	1.75 300.00/hr	525.00
6/10/2013	RTB	Prepare for hearing in Boise. Review filed testimony. Send CPUC excess generation order to Ben Otto.	2.25 300.00/hr	675.00
6/11/2013	RTB	Attend hearing in Boise. Testify. Assist in cross-examination of IPC witnesses. Confer with Ben Otto.	5.25 300.00/hr	1,575.00
For professional services rendered			10.00	\$3,000.00
Additional Charges :				
Meals/Meetings			5.66	
Parking/Tolls			44.00	
Travel Expenses			462.80	
Total costs			\$512.46	
Total amount of this bill			\$3,512.46	

CERTIFICATE OF SERVICE

I certify that on the 23rd day of July 2013, I delivered true and correct copies of the foregoing PETITION FOR RECONSIDERATION OF THE IDAHO CONSERVATION LEAGUE to the following persons via the method of service noted:

Hand delivery:

Jean Jewell
Commission Secretary (Original and seven copies)
Idaho Public Utilities Commission
427 W. Washington St.
Boise, ID 83702-5983

Electronic Mail:

Lisa D. Nordstrom
Regulatory Dockets
Matt Larkin
Greg Said
Idaho Power Company
P.O. Box 70
Boise, Idaho 83707
lnordstrom@idahopower.com
dockets@idahopower.com
mlarkin@idahopower.com
gsaid@idahopower.com

PowerWorks, LLC

Chris Aepelbacher, Project Engineer
5420 W. Wicher Road
Glenns Ferry, Idaho 83623
ca@powerworks.com

Pioneer Power, LLC

Peter J. Richardson
Richardson & O'Leary
515 N. 27 th St
Boise, Idaho 83702
peter@richardsonandoleary.com

John Steiner
24597 Collett RD
Oreana, Idaho 83650-5070
jsteiner@rtci.net

City of Boise

R. Stephen Rutherford
City of Boise City, Idaho
P.O. Box 500
Boise, ID 83701-0500
BoiseCityAttorney@cityofboise.org

John R. Hammond, Jr.
Batt Fisher Pusch & Alderman, LLP
P.O. Box 500
Boise, ID 83701
jrh@battfisher.com

Idaho Clean Energy Association

Dean J. Miller
McDevitt & Miller, LLP
P.O. Box 2564-83701
Boise, Idaho 83702
joe@mcdevitt-miller.com

Snake River Alliance

Ken Miller
Clean Energy Program Director
Snake River Alliance
P.O. Box 1731
Boise, ID 83701
kmiller@snakeriveralliance.org


Benjamin J. Otto