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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorney for Idaho Conservation League

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE )  
APPLICATION OF ROCKY )  
MOUNTAIN POWER FOR AN ) CASE NO. PAC -E-10-03  
INCREASE TO THE CUSTOMER )  
EFFICIENCY SERVICES RATE )

**MOTION TO STRIKE THE REPLY COMMENTS OF ROCKY MOUNTAIN POWER  
OR, IN THE ALTERNATIVE, MOTION TO FILE OUT OF TIME IDAHO  
CONSERVATION LEAGUE'S REponce**

COMES NOW Idaho Conservation League, pursuant to IDAPA Rule 31.01.01.056 and .256, with the following alternative motions. As provided in Rule 256, the Commission may approve these motions with or without a hearing as it finds appropriate. Likewise, ICL is not seeking expeditious relief and thus the Commission has fourteen days to rule on these motions.

**1. MOTION TO STRIKE THE REPLY COMMENTS OF ROCKY MOUNTAIN  
POWER**

Facts: Rocky Mountain Filed Their Reply Outside the Deadline Established by the Commission

On May 7, 2010, the Commission issued the Notice of Modified Procedure in this matter. Order No. 31076. This Order notified all "that any person desiring to state a position on this Application may file a written comment in support or opposition with the Commission **no later than 28 days** from the date of this Order." *Id.*, at 2 (emphasis retained). Rule 202 explains the

Notice of Modified Procedure will, “establish the deadline for filing written protests or comments, and a reply by the moving party.” IDAPA 31.01.01.202.01(d). Despite the authority to do so conferred by this Rule, Order No. 31076 did not establish a deadline for a reply. Therefore, the plain language of the Order establishes June 4, 2010 as the deadline for all written submissions.

The PUC Staff, members of the public, Idaho Irrigation Pumpers Association, and the Idaho Conservation League all managed to file their comments within this deadline. Rocky Mountain did not. They could have asked for, and the Commission could have granted, an additional deadline to file a reply. They did not. Despite the unequivocal deadline established in Order No. 31076 Rocky Mountain Power filed their reply on June 14, 2010 -- ten days late.

The Rules: Modified Procedure is Premised Upon Adequate and Reliable Public Notice

The rules governing Modified Procedure are premised on the notion that the public interest is adequately served by deciding matters on written submissions alone. To ensure the public interest is adequately served, the Rules require the Notice of Modified Procedure to, among other things, “establish a deadline for filing written protests or comments, and a reply by the moving party.” IDAPA 31.01.01.202.01(d). Rule 204 explains that “[i]f protests, supports, comments or a reply are filed within the deadlines, the Commission will consider them and . . . may decide the matter and issue its order on the basis of the written positions before it.” IDAPA 31.01.01.204. The Commission’s Rules do not appear to allow consideration of written submissions filed outside the established deadline.

Rule 13 explains the Commission’s Rules of Procedure “will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Commission.” IDAPA 31.01.01.013. Allowing one party some undefined timeline to file a written submission

is not just, speedy, or economical. In fact, adhering to established deadlines is critical to securing just, speedy and economical determinations. When written submissions provide the entire basis for the Commission's decision, adherence to the established deadlines is even more important.

Rule 13 does allow the Commission to "deviate from these rules when it finds compliance with them is impracticable, unnecessary or not in the public interest." *Id.* Requiring all parties to comply with the deadlines for written submission is eminently practicable and necessary. Moreover, deviating from the established deadline in this matter is not in the public interest. The only way to adequately protect the public interest when utilizing Modified Procedure is to ensure the Notice explains the rights and obligations for all interested persons. The Notice in the case established a single deadline for all written submission, which according to Rule 204 would provide the basis for the Commission's decision. If the members of the public and other parties cannot rely on the contents of the Notice and the plain language of the Rules of Procedure, their interest in fully participating in this matter is not served.

Prayer for Relief: The Commission Should Not Consider Rocky Mountain's Reply Brief

Rocky Mountain could have requested, and the Commission could have approved, an additional deadline for a reply. They did not. The rules governing Modified Procedure state the Commission will consider only on those written submissions filed within the deadlines. Because Rocky Mountain did not file their reply brief within the deadline, the Commission has no authority to consider it and should strike it from the record in this case.

**2. MOTION TO FILE OUT OF TIME IDAHO CONSERVATION LEAGUE'S RESPONSE**

If the Commission denies the above Motion to Strike, ICL, in the alternative, respectfully requests the Commission also accept Idaho Conservation League's Response.

Facts: ICL's Response is Timely, Succinct, and Clarifies the Issues Before the Commission

On May 7, 2010, the Commission issued the Notice of Modified Procedure in this matter. Order No. 31076. This Order notified all "that any person desiring to state a position on this Application may file a written comment in support or opposition with the Commission **no later than 28 days** from the date of this Order." *Id.*, at 2 (emphasis retained). Rule 202.01(d) explains the Notice of Modified Procedure will "establish the deadline for filing written protests or comments, and a reply by the moving party." IDAPA 31.01.01.202.01(d). Despite the authority to do so conferred by this Rule, the Order did not establish a deadline for a reply. Therefore, the plain language of the Order establishes as deadline for all written submissions June 4, 2010.

Rocky Mountain Power filed their reply on June 14, 2010 -- ten days after the deadline for established in Order No. 31076. ICL's response is attached to this motion and is submitted to the Commission just two days after Rocky Mountain's late filing. This response quickly address three key issues that Rocky Mountain misrepresents in their reply. ICL feels compelled to take this unorthodox step because of our concern the mischaracterization of both our comments and the prior Orders of the Commission cannot go unanswered.

The Rules: Deviation for the Rules of Procedure Must Serve the Public Interest.

The rules governing Modified Procedure are premised on the notion that the public interest will be adequately served by deciding matters on written submissions alone. To ensure the public interest is adequately served, the Rules require the Notice of Modified Procedure to "establish a deadline for filing written protests or comments, and a reply by the moving party."

IDAPA 31.01.01.202.01(d). Rule 204 explains that “[i]f protests, supports, comments or a reply are filed within the deadlines, the Commission will consider them and . . . may decide the matter and issue its order on the basis of the written positions before it.” IDAPA 31.01.01.204. The Commission’s rules do not appear to allow consideration of written submissions filed outside the established deadline.

Rule 13 does allow the Commission to “deviate from these rules when it finds compliance with them is impracticable, unnecessary or not in the public interest.” IDAPA 31.01.01.013. It cannot be that compliance with the Modified Procedure rules is impracticable because those rules authorize the Commission to establish a separate deadline for a reply, an authority not exercised here. Likewise, it cannot be that compliance with deadlines is unnecessary, otherwise matters could go unresolved while parties file written submissions within some unspecified timeline. Therefore, if the Commission accepts Rocky Mountain’s late reply then this deviance must be in the public interest. If the public interest is served by allowing one party to file mischaracterizations outside of the established deadline, then the public interest requires allowing other parties to correct the record.

Rule 13 explains the Commission’s Rules of Procedure “will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Commission.” IDAPA 31.01.01.013. If the Commission believes that accepting one late filing will secure a just, speedy, and economical determination, then it stands to reason so will an additional filing that is timely, succinct, and corrects the record.

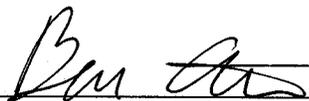
Prayer for Relief: If You Accept Rocky Mountain’s Reply, Then Please Accept ICL’s

The Notice of Modified Procedure issued in this case established a single deadline for all written submissions. If the Commission intends to accept the late filing of Rocky Mountain,

thereby deviating from the Rules of Procedure, then the public interest requires allowing others to do the same. This is particularly true when the public interest is being served solely through written submissions. Accepting ICL's response is just because it corrects the mischaracterizations made by Rocky Mountain. It is speedy because this response comes just two days after Rocky Mountain's late filing. It is economical, because the response is brief, timely, and clarifies the issues. In short, if you accept Rocky Mountain's late filing, then ICL respectfully requests the Commission consider ours.

**WHEREFORE**, for the reasons stated above, ICL respectfully requests the Commission grant this Motion to Strike the Reply of Rocky Mountain as filed outside the deadline established by Order No. 31076. In the alternative, ICL respectfully requests the Commission grant this Motion to File Out of Time Idaho Conservation League's Response in order to serve the public interest in this matter.

Submitted this 16<sup>th</sup> day of June, 2010

  
Benjamin J. Otto  
Idaho Conservation League

## CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2010, true and correct copies of the foregoing MOTIONS IN THE ALTERNATIVE OF IDAHO CONSERVATION LEAGUE were delivered to the following persons via the method of service noted:

### Hand delivery:

Jean Jewell  
Commission Secretary (Original and seven copies provided)  
Idaho Public Utilities Commission  
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