ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

201 South Main, Suite 2300
Salt Lake City, Utah 84111

RECEIVED
2011 MAR 21 PM 3:25
IDAHO PUBLIC
UTILITIES COMMISSION

March 21, 2011

Via Hand Delivery

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

Re: Case No. PAC-E-10-07 – Rocky Mountain Power's Petition for Clarification and Reconsideration

Dear Ms. Jewell:

Please find enclosed an original and seven (7) copies of Rocky Mountain Power's Petition for Clarification and Reconsideration in the above-captioned case. Electronic copies are being served on the parties today.

Please contact me directly at (801) 220-4014 if you have questions or if I can be of further assistance.

Very Truly,

Rich R Hall
for
Daniel E. Solander

cc: Service List

Enclosures

ORIGINAL

RECEIVED

2011 MAR 21 PM 3:25

IDAHO PUBLIC UTILITIES COMMISSION

Mark C. Moench, *Pro Hac Vice*
Daniel E. Solander, *Pro Hac Vice*
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone No. (801) 220-4014
Facsimile No. (801) 220-3299
mark.moench@pacificorp.com
daniel.solander@pacificorp.com

Paul J. Hickey, *Pro Hac Vice*
Hickey & Evans, LLP
1800 Carey Avenue, Suite 700
P.O. Box 467
Cheyenne, WY 82003-0467
Telephone No. (307) 634-1525
Facsimile No. (307) 638-7335
phickey@hickeyevans.com

Attorneys for Rocky Mountain Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF CHANGES TO ITS ELECTRIC SERVICE SCHEDULES AND A PRICE INCREASE OF $27.7 MILLION, OR APPROXIMATELY 13.7 PERCENT	))))))))	**CASE NO. PAC-E-10-07** **PETITION FOR CLARIFICATION AND RECONSIDERATION**

Comes now, Rocky Mountain Power ("Company") and in accordance with IPUC Rules of Procedure 325 and 331, *et seq.*, respectfully submits this Petition for Clarification and Reconsideration to the Idaho Public Utilities Commission (the "Commission") in response to Order No. 32196 ("Order"), issued February 28, 2011. The Company seeks clarification and reconsideration of the Commission's decision that: (1) 27% of the Populus-Terminal transmission line is not used and useful; (2) actual labor costs of $993,515 should be disallowed;

(3) all wind integration costs, including the previously approved[1] $6.50 per megawatt-hour wind integration costs, be disallowed completely from the Company's base net power costs; (4) the interruptible product valuation credit for Monsanto should be $17 million and other related issues; (5) other errors affecting the revenue requirement calculation; and (6) a return on common equity of 9.9% is reasonable. The Company respectfully submits to the Commission that the Order as it is currently written with respect to each matter above is unclear, unreasonable, erroneous, not supported by the evidence or otherwise affected by errors of law.

Introduction

The Company acknowledges that the Commission has a "dual obligation" to customers and the Company. *See* Order, p.11. The Order, however, fails to strike a reasonable balance between these obligations. The Commission has a responsibility to set just and reasonable rates based on the weight of the credible evidence before it that reflect the Company's reasonable and prudent expenses in the period during which the rates will be in effect. Those rates must allow the Company a reasonable opportunity to realize the authorized return on its prudent capital investments.

The Commission found no costs to be imprudent in this case. Nonetheless, it incorrectly concluded that a portion of the Populus-Terminal investment was not used and useful and that the costs of providing the Company's employees in six states wage increases since 2008 ranging from 0.88% to 3.5% was not reasonable. Exh. No. 2, p. 4.3.7. Both of these findings appear based, in whole or in part, upon the Commission's perception that economic conditions in the Company's Idaho service territory in the test period were, and will be during the rate effective period, worse than in the other five states served by the Company. There is no credible evidence to support that perception nor is there evidence to support the Commission's criticism that the

[1] The $6.50/MWh wind integration costs were approved by the Commission in Case No. PAC-E-09-07.

Company has downplayed "the poor economic conditions that exist in its Idaho service territory". *Id.* To the contrary, there is evidence in the record that in recognition of general financial conditions and its impact on electric usage, the Company has moderated its capital budget and tightly controlled its operations/maintenance/administrative/general expenses. Walje Direct Testimony, pp. 10-11. There is also unrefuted evidence that Populus-Terminal was the lowest cost transmission option and that the Company could not simply stop the project without incurring added costs and threats to reliability that could place it in violation of federal requirements. Cupparo Direct Testimony, pp. 14-16; Gerrard Direct Testimony, pp. 5-7.

The lack of evidence supporting the Commission's decision, and its decision to base its order on public perceptions is very concerning. Ratemaking proceedings in Idaho were not intended to become political referendums determined by majority vote of those attending public hearings. The fact that well-attended public hearings produced public comments in opposition to a proposed rate increase is neither surprising nor unanticipated, particularly given the efforts of some to orchestrate these proceedings. Additionally, public written comments, most of which restate template objections,[2] should not be given the weight of sworn technical testimony, which is subject to rigorous cross-examination.[3] The Commission cannot ignore the weight of the credible evidence[4] and deny the Company any reasonable opportunity to have rates established

---

[2] *See e.g.*, Public Comments, Case No. PAC-E-10-07, evidencing repetitive written public comments.

[3] The Company recognizes that commenters at public hearings are under oath, and the Company, at least in theory, has the right to cross-examine all members of the public that choose to testify. The Company has refrained from doing so to avoid allegations that it is attempting to stifle public participation. However, if the Commission intends to use public comment as evidence to support its decisions, then the Company will have no choice but to exercise its due process rights in future cases. The Company would prefer, however, that the Commission change its procedure to allow the public the option to choose whether to present comments under oath or not. This procedure is available in other states and offers a viable option.

[4] The Commission's reference to fear "that significant increases in energy costs could cause employers such as Monsanto to close and that would have a ripple effect through local communities and the economy," ignores the sworn testimony of Mr. Kevin P. Lawrence, Vice President, Procurement, Engineering and Supply Chain of Monsanto, which unequivocally acknowledged that no proposal has been presented to the Board of Directors of Monsanto suggesting that the Soda Springs facility should be closed. *See* Order, p. 4 and Tr. Vol. VII, p. 1462.

based upon prudently incurred costs of meeting service obligations. That is not the applicable law.

Moreover, the Commission's attempt to characterize the disallowances as mere deferrals is disingenuous. The wage increase costs disallowed by the Commission are expenses incurred by the Company since 2008 that will be incurred in the rate-effective period based on known and measurable contractual obligations to take effect in 2010. Even if the Commission in a future case approves rates allowing 100 % of the compensation expense in the test period in that case, the Company will never recover the actual compensation expense it is currently incurring.

Similarly, as the Order is currently worded, the portion of the Populus-Terminal investment not included in rate base is not a deferral unless the Commission intended for a carrying charge to be applied to the full amount until it is included in rate base. The Order attempts to require the Company to reserve the disallowed investment for future Idaho service without providing compensation for the investment. The Order does this when it directs the portion of the investment not currently used or useful to be placed in plant held for future use but fails to allow for accrual of a return or carrying cost. The Company's investors have already paid for that line and are not being offered any opportunity to be compensated for that investment currently (by inclusion in rate base now) or in the future (by allowing accrual of a carrying charge and suspending depreciation). The treatment in the Order does not result in a deferral, but a taking of shareholder property without compensation.

When it is recognized that the Commission's Order results in non-recovery of prudently incurred actual costs, not deferrals, then the Commission's rationale for selecting only a 9.9% return on equity investment fails. The Order implies that the ROE should be acceptable because the Company's regulatory and business risks are unchanged by the Commission's deferral of recovery of prudent costs. But, as noted, the Order fails to provide a deferral and thus fails to support the Commission's conclusion that resulted in its ROE determination.

It is critical for the Commission to recognize the potential impact of its Order, beyond just the current electric rates. The Commission found a reasonable range of cost of common equity to be 9.5% to 10.5%, and then selected an allowed ROE below the midpoint. In so doing, the Commission picked an ROE below 10%, which almost certainly will be looked upon negatively by credit analysts and markets. While the Commission may believe the difference between 9.9% and 10% is immaterial, it is not immaterial to the credit markets. Moreover, as noted, the Commission's attempt to justify the ROE selected based on the incorrect belief that it has not disallowed recovery of prudent costs, unless corrected, will also be viewed negatively by the markets. This negative view – that Idaho may not be supportive of utility infrastructure investment – may have adverse impact long-term for other Idaho utilities in addition to the Company.

Rates that are set too low are not just and reasonable, nor in the public interest, because they do not send the proper price signal, allow for proper levels of funding to maintain system reliability, allow for recovery of prudently incurred costs, or allow the Company a fair opportunity to earn its rate of return. The Company, like any other well-managed investor-owned business, must provide a reasonable return to its investors. If revenues from Commission-approved rates do not cover the prudent costs the Company expects to incur in providing service to customers during the period rates are in effect, the Company must reduce controllable expenditures where possible to operate within the funding allowed by the Commission

The Company requests the Commission's favorable reconsideration of these issues to enable it to provide safe, reliable and adequate service now and in the future. *See* Bluefield Water Works & Improvement Co. v. Public Service Comm'n of W.Va., 262 U.S. 679, 43 S.Ct. 675 (1923) and Fed'l Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944), cited by the Commission at page 10 of its Order.

A discussion of the issues upon which rehearing is requested follows.

I. The Commission's Finding That the Company Has Not Demonstrated That the Populus-Terminal Line is Presently "Used and Useful" in its Entirety is Unreasonable, Erroneous and Not in Conformity With the Law.

The Commission's finding that 27% of Populus-Terminal transmission line is not used and useful and that this percentage of the costs associated with the Populus-Terminal transmission line should be placed in plant held for future use is unreasonable, erroneous and not in conformity with the law. The Company respectfully requests that the Commission reverse its finding and include 100% of the investment in rates. In the alternative, the Company requests the Commission grant reconsideration and order that additional evidence be presented regarding the amount of investment represented by the 27% of the Idaho portion of the transmission line found not used and useful by the Commission. Finally, if the Commission does temporarily exclude any portion of the investment from rate base, the Company requests the Commission clarify that if the Company elects to record that investment in the plant held for future use account, such investment will accrue a carrying charge equal to the Company's rate of return on invested capital and will not be depreciated while recorded in plant held for future use.

In making its determination, the Commission misapplied the well established legal precept, to-wit:

> The Commission should include in the rate base all items which are proven with reasonable certainty to be justifiably used in providing services. There are two

> good reasons for including these items in the rate base; first, to avoid a rate base which does not adequately demonstrate real revenue needs and second, to reduce the necessity of a future application to adjust the rate base to represent additional investments.

Citizens Utilities Co. v. Idaho Public Utilities Comm'n, 99 Id. 164, 171, 579 P.2d 110, 117 (Idaho 1978).

Generally, for a utility asset to be considered used and useful requires that: (1) the cost was prudently incurred and (2) the result of the expenditure is used and useful in providing service to customers. *See, e.g.* Town of Hingham v. Dep't of Telecommunications & Energy, 433 Mass. 198, 740 N.E.2d 984 (Mass. 2001). With respect to the first criterion, prudence, the Commission did not find any of the investment imprudent. With respect to the second criterion, used and useful, the Commission committed error, as detailed below. The Commission should either clarify the Order as requested by the Company or grant reconsideration on this issue.

A. The entire Populus-Terminal transmission line is used and useful and providing benefits to Idaho customers.

The Commission erred in finding that only a portion of the Populus-Terminal transmission line is used and useful to Idaho customers. The controlling Idaho law is found in Idaho Underground Water Users Ass'n v. Idaho Power Co., 89 Idaho 147, 404 P.2d 859 (Idaho 1965). In making decisions concerning investments, "a public utility, in the nature of its operation, is obligated to anticipate the demands to be made upon it for service in future years." Idaho Underground Water Users Ass'n, 89 Idaho at 160-61, 404 P.2d at 866. As the Idaho Supreme Court noted,

> . . . property or equipment provided or acquired in anticipation of reasonable future need should be allowed as part of the rate base even though wholly or partially unused at the time to which the inquiry relates. In determining whether excess plant capacity shall be included in the rate base, a utility must have some latitude with respect to plant enlargement undertaken to meet the requirement imposed on it to furnish service when and as demanded by the public, and, while

> the utility must bear the burden of an unreasonable extension of its plant and the risk that portions of it prudently acquired may become obsolete or not useful, *it should not be penalized for failure exactly to anticipate future demands for service in a period of depression.[Emphasis supplied]*

Idaho Underground Water Users Ass'n, 404 P.2d at 867.

Indeed, this very Commission has acknowledged the facts that added transmission capacity is needed and that transmission investment must be designed for more than just immediate needs. In FERC Docket No. AD09-9-000, this Commission unanimously supported the comments below from the Northern Tier Transmission Group:

> Transmission planning accounts for variances in loads and resources over a period of time – typically ten years or longer – and capture the magnitude and timing of both current and future needs based on the necessary data provided by actual and potential transmission users. The planning process itself is forward-looking and not designed to meet specific needs at a specific point in time. . . . [T]ransmission lines have always included a margin of capacity for future growth. . . .

FERC Docket No. AD09-8-000, *Joint Reply Comments of Idaho Public Utilities Commission, Montana Consumer Counsel, Montana Public Service Commission, Public Utility Commission of Oregon, Utah Public Service Commission, and Wyoming Public Service Commission in Support of Comments filed November 23, 2009 by Northern Tier Transmission Group, December 7, 2009* and *Comments of Northern Tier Transmission Group*, pp. 17-18, November 23, 2009.

The FERC has also recognized that even when 100% of transmission investment is not fully scheduled on the day it is placed in service, it is still used and useful.[5] "The fact that certain facilities may be underutilized from time to time does not mean they do not provide value (*e.g.*, reliability) to the . . . transmission system or that the facilities are an improvident investment, and [the company's] preserving sufficient blocks of transmission capacity in anticipation of contingencies or future load growth should not now be subject to review for possible disallowance." Cal. Indep. System Operator Corp., 94 FERC P61, 148 (2001). *See also*, Pacific Power & Light Co., 27 FPC 623 (1962) ("Any anticipation of future growth is a gamble, and

[5] In fact, if 100% of a line is scheduled on the day it is placed in service, it could be argued that the utility has been imprudent in delaying the project too long.

failure to anticipate such growth may be a worse gamble. The electricity industry, above all, is one in which making provision for future expansion is customary and prudent.").

The Company provided substantial evidence demonstrating customer benefits derived from the entire line. Mr. Cupparo's testimony first established that the Populus-Terminal project provides the immediate benefit of enhancing reliability across PacifiCorp's six state system, including Idaho, along with increased transfer capability. Cupparo Direct Testimony, p. 16. Mr. Darrell Gerrard testified that prudent investment in transmission facilities is necessarily "lumpy." That is, it is constructed in the most economical increments available to the Company at the time the investment is made. Gerrard Rebuttal Testimony, pp. 3-4; *see also*, Tr. Vol. IV, pp. 778-79. Mr. Gerrard noted specifically, that the Company has:

> ...achieved an appropriate balance between building transmission infrastructure to meet current service and reliability needs while also ensuring that future needs are met which also support the transmission system as a whole on a long-term basis.

Gerrard Rebuttal Testimony, p. 3.

Mr. Gerrard's testimony explained that the benefits of adding this transmission line are to meet current and future load and resource requirements for customers and to maintain system reliability. In addition, his testimony described that the project as planned, designed and constructed has a lower cost to customers, and lower impact on communities, the environment, and public and private lands compared to an alternative proposing multiple projects, and that it is more cost-effective than building a smaller transmission line now that would have to be increased in size at a later date. Gerrard Rebuttal Testimony, pp. 5-6.

Mr. Cupparo's testimony also demonstrated that the Company's Idaho customers derive a further benefit from the project because it allows the Company to use the least-cost dispatch of resources to serve loads and manage power costs by selling excess energy off-system or importing lower-cost market energy to serve load. Cupparo Direct Testimony, p. 16.

The Company provided substantial evidence that the unsubscribed percentage of the line provides present value to the project and to Idaho customers. The Company provided the September 2008 PacifiCorp Analysis of the Populus-Terminal Project, demonstrating the need for the additional capacity provided by this line. Gerrard Rebuttal Testimony, p. 5; Confidential Attachment Monsanto 1.11-2. Mr. Gerrard testified that, by planning for incremental transmission capacity, Populus-Terminal is used and useful in meeting longer term customer needs. Gerrard Direct Testimony, p. 18. In addition, when integrated with the other proposed segments of Energy Gateway, the project will strengthen the grid's transmission infrastructure necessitated by projected future energy service requirements. Gerrard Direct Testimony, p. 19. Idaho customers realized benefits of this improved reliability.

Not including investment costs associated with the Populus-Terminal transmission line in rate base will lead to a situation exactly like that described by the Court in Citizens Utilities: the Company's allowed rate base will not adequately reflect the investments it has made to serve customers. The Commission applied incorrect standards to determine whether the transmission investment is used and useful in its entirety. When the correct standards are applied, the overwhelming credible evidence supports that 100% of the investment satisfies the standards.

B. The Order is unreasonable, arbitrary and capricious because it ignores unrefuted evidence that the transmission line is required to meet federal requirements.

Mr. Cupparo presented unrefuted evidence that new federal standards required the Company to increase system reliability or face serious penalties. He testified that the project is needed to comply with those requirements. Cupparo Direct Testimony, pp. 8-11.

The transmission studies performed as part of the Company's integrated resource planning ("IRP") process and described in Mr. Cupparo's testimony, demonstrate that the project is required at this time in order to maintain reliability for Idaho customers. Cupparo Direct Testimony, pp. 4, 8-11. The 2008 IRP concluded that PacifiCorp's existing transmission system, as well as the transmission grid across the western region, is severely constrained, and numerous regional study groups have identified the pressing need for investment in new transmission infrastructure. Cupparo Direct Testimony, p. 4.

Mr. Gerrard's rebuttal testimony discussed the Path C constraint, and how it was mitigated by placing the Populus-Terminal transmission line into service:

> The project addresses existing constraints across Path C, eliminates the existing reliability concerns and constraints identified by the Western Electricity Coordinating Council ("WECC") following disturbances on Path C and portions of the system directly south, and provides an immediate increase in capacity necessary to meet existing customer load service and reserve obligations.

Gerrard Rebuttal Testimony, p. 3. *See also*, PAC-E-10-07, Tr. Vol. IV, pp. 770-73.

It would be unreasonable and capricious for the Commission to ignore the Company's responsibility to comply with applicable federal law.

C. Even if the Commission concludes that some percentage of the transmission line is not used and useful, the record is not sufficient to allow the Commission to do as it has done and exclude that same percentage of investment from rate base.

The Commission's decision to exclude 27% of the project costs from rate base is also arbitrary and unreasonable since there is nothing in the record to support a conclusion that reducing the capacity of the project by 27% would result in a 27% reduction in the cost of the project. The amount included in rate base should in no event be less than the investment necessary to acquire 1022 MW of new capacity, the amount the Commission found to be presently used and useful. That investment cannot be properly determined by the simple expedient of reducing total investment by a percentage amount equal to the percentage of capacity found not to be used and useful by the Commission.

The fact that reducing the capacity of the Populus-Terminal transmission line by 27% does not result in a 27% decrease in costs is most readily illustrated with reference to right of way costs. Reducing project capacity by 27% does not reduce the cost to acquire right of way by any substantial amount because 135 miles of right of way must be acquired regardless of whether the capacity is 1400 MW or 1022 MW. Likewise, costs attributable to project planning, design, engineering and management are not significantly reduced by reducing the capacity of the project by 27%.

Other commissions have correctly determined that a percentage of capacity that is not presently used and useful does not necessarily translate into the percentage of investment that should be excluded from rates. In Gold Canyon Sewer Co. v. Arizona Corporation Commission, 2010 WL 2025198 (Az. App. Div. 1, 2010), the Court upheld a decision of that commission to exclude from rate base only $1.0 million (6.4%) of the total $15.7 million dollar cost to upgrade a wastewater plant even though 400,000 gallons per day ("gpd") (44%) of the 900,000 gpd upgrade was determined to be excess capacity.

Similarly, any amount excluded from rate base in this case should be based on costs that would have been avoided by reducing the capacity of Populus-Terminal to 1022 MW, the amount the Commission has determined to be immediately used and useful. The Company provided alternatives that were evaluated prior to selecting the final configuration for Populus-Terminal. Building any other smaller increment would have been a step change down by half in capacity and accordingly no evidence was presented on this issue, because building in a smaller increment than the 1,400 MW was not a viable economic option. The Company is prepared to present evidence on this point should the Commission grant rehearing.

Excluding 27% of the investment in the Populus-Terminal transmission line from rate base is in error and deprives the Company of rate-base treatment of a significant portion of the investment necessary to provide new transmission capacity of 1022 MW. The Order improperly allows ratepayers the benefits of that new capacity at well below its real cost. The Commission should grant reconsideration to determine the cost of the portion of the Populus-Terminal transmission line capacity that it finds to be currently used and useful if the Commission refuses to allow 100% of the costs to be recovered in rates.

D. The Company seeks clarification of the Commission's decision regarding carrying charges and depreciation related to the amounts excluded from rate base.

If the Commission refuses to grant the Company's request for inclusion of all of the Populus-Terminal investment in rate base, then it is critical for the Commission to recognize that it lacks authority to reserve the disallowed transmission for future use of Idaho customers. It can, however, incentivize the Company to record the disallowed portion as plant held for future use if it allows a carrying charge on it while in the plant held for future use account and clarifies that the plant held for future use ("PHFU") balance does not depreciate while in that account. Therefore, the Company respectfully requests the Commission grant reconsideration to clarify its intentions regarding carrying charges and depreciation related to the amounts not properly included in rate base.

Whether, when and in what amount the Company will invest in new plant and equipment are decisions ordinarily reserved to Company management. 73B C.J.S. PUBLIC UTILITIES § 31 (Commission cannot take over the management of utility property or interfere unreasonably with the rights of management). When, as in this case, plant investment proposed by the Company for dedication to public service is not accepted by the Commission for inclusion in rates, that plant investment becomes nonutility property. The Commission cannot require the Company to utilize that nonutility property for the provision of utility services or to hold that capacity idle, generating no earnings for the Company, waiting for the day when the Commission concludes to include it in rate base. Such requirements, if imposed by the Commission, would violate constitutional prohibitions against uncompensated taking of property for public use. *See generally*, Boise Tower Assoc., LLC v. Hogland, 147 Idaho 774, 215 P. 3d 494 (2009).

The Populus-Terminal transmission line capacity that the Commission has determined is not presently used and useful to serve Idaho customers is analogous in some respects to construction work in progress ("CWIP"). *See* Idaho Code § 61-502A (providing that a carrying charge be allowed on construction work in progress). The Company has made an investment in plant that is being treated as PHFU, and the Order does not clearly allow the Company to recover the return of its investment in rates. As is true with CWIP, it has been recognized that the cost of capital used to pay for PHFU may be recognized as part of the investment in that plant. Petition of New England Tel. & Tel. Co., 116 Vt. 480, 80 A.2d 671 (1951) (When property held for future use is excluded from rate base, it may be appropriate to add carrying charges to the value of the plant when it is placed in rate base at a future time). If no carrying charge is permitted, the Company will not be fairly compensated for its investment in plant if the Company at a later time proposes, and the Commission accepts, that property be dedicated to public service.

The Company also requests clarification that if a carrying charge is not allowed on the balance ordered included in PHFU, then the amount included in rate base at a future date will be calculated at a future replacement value. To do otherwise would be to require the Company to hold an asset for a period of time without compensation for the future use of customers at today's historical construction cost, a clear benefit to customers but a confiscation of utility property through a denial of a fair return on its full investment for the Company.

Finally, the Company must be allowed to recover the full value of the plant (including accumulated carrying charges) over its expected service life through depreciation after the plant is included in rate base or the Company will be denied the return of its investment. The Company requests the Commission confirm that if the Company elects to record the disallowed investment in plant held for future use, no depreciation of the investment occurs while in that account.

If the Commission grants the treatment above, the Company will seriously consider recording the disallowed investment in plant held for future use. If the Commission does not grant the treatment above, the Company will be forced to contract the associated capacity or otherwise seek means to obtain a return on the investment. That would mean that when Idaho needs added transmission capacity, it will be at a different (likely higher) cost, if transmission capacity will be available at all.[6]

II. <u>The Commission Erred by Disallowing Actual, Prudently Incurred Labor Costs Paid During the Test Period.</u>

The Commission erred by disallowing $993,515 of known labor costs. The Company respectfully requests the Commission reverse its finding and include 100% of compensation expense in rates.

The costs disallowed by the Commission are not estimates, but known costs that have actually been incurred as a result of wage increases implemented in 2008 and 2009, or known and measurable changes in expenses occurring during the 2010 test period. In other words, the

6 The Commission is well aware of the difficulty of obtaining rights of way and permits for transmission facilities. It may not be possible to build future transmission facilities, regardless of need.

Commission's labor adjustment set the test period labor costs at an actual 2008 level for costs that will be incurred in 2011. *See* Citizens, 579 P.2d at 118 (overturning Commission exclusion of operating expense, finding instead that the weight of the evidence established the expense to be a justifiable expense). The Company presented evidence establishing the need and prudence of the expenses associated with the wage increase. Under Citizens, these expenses are therefore justifiable and the Commission erred in disallowing them.

A. There is no evidence that the Company's use of the market average in establishing labor costs was imprudent.

The Commission found that "challenging economic times in the local economy" warranted disallowance of the Company's actual labor costs. Order, p. 18. However, the Commission made no finding that the Company's reliance on market data and industry averages was imprudent. The Commission's disallowance thus violates the prudent cost principle, as articulated by the United States Supreme Court, that the utility be compensated for all prudent costs. Duquesne Light Co. v. Barasch, 488 U.S. 299, 309, 109 S. Ct. 609, 616 (1989).

Erich Wilson's testimony confirmed that the labor costs were prudently incurred and necessary to support the business and customers. Wilson Rebuttal Testimony, pp. 4,18; Tr. Vol. V, p. 848, ll 22-25, p. 849, l 1; Exh. No.70. In determining the appropriate compensation package, Mr. Wilson explained that the Company's primary objective is to provide an opportunity for each employee to receive total base plus incentive equal to the market average, assuming satisfactory goal performance. Wilson Rebuttal Testimony, p. 2; Tr. Vol. V, p. 844, ll 24-25, p. 845, ll 1-11. The Company annually conducts a thorough assessment of the market, utilizes various compensation studies, and reviews practices of its competitors to determine market averages for each position. Wilson Rebuttal Testimony, pp. 4,18; Tr. Vol. V, p. 848, ll 22-25, p. 849, l 1; Exh. No. 70. In its Order, the Commission did not find that the Company's reliance upon market averages was imprudent. Thus, the Commission erred by removing $993,515 of prudent expense in establishing an appropriate level of test period labor costs.

B. There is no evidence that the Company's wage increase was unreasonable.

The Commission did not cite any evidence that the Company's wage increase was unreasonable. Indeed, the Company provided substantial evidence that the increase was reasonable. Mr. Wilson testified that compensation at the market average "is critical to attracting and retaining qualified employees to support the business and customers." Wilson Rebuttal Testimony, p. 2.

Offering a total compensation package below market average would place risk on the Company and its customers of not being able to hire or retain labor to provide safe and reliable service. Wilson Rebuttal Testimony, p. 17. Indeed, the Company is already at some risk, even before considering the impact of the Commission's Order. For 2009 and 2010, taking into account the current economic situation, the Company's base wage adjustment increase was actually less than the market average. Tr. Vol. V, p. 849, ll 16-17; Exh. No. 70.

In fact, the Company's average wage increases in this docket were less than those found reasonable by the State of Idaho. The State of Idaho determined that a 3% increase in state wages effective June 2009 was reasonable. *See* http://dhr.idaho.gov/compensation.html. Citing economic conditions in the state of Idaho to claim the Company's wage increases are unreasonable while ignoring the 3 % increase the state awarded its own employees in 2009 is disingenuous and capricious.

The Commission's decision to exclude actual prudent employee wage increases also ignored other testimony regarding the reasonableness of the Company's compensation levels.

> In 2006, A&G costs were $239 million, compared to $163 million in the current application. That is a 32 % decrease in A&G expenditures over a four year

> period. The Company has worked hard to strike the right balance between operational expenses, customer service, and preventive maintenance. In addition, the Company has focused on controlling labor costs. At the time of MEHC ownership in March 2006 the Company's employee headcount was 5,997 full-time equivalents ("FTEs"), as of the end of December 2009 there were 5,650 FTEs. This is a reduction of almost six % of the Company's workforce. Over that same period of time the Company has added three new gas plants and 10 new wind facilities. Employee contributions for medical and other benefits have gone from modest amounts to 16 - 30 % of the cost. Personal time-off has been reduced and the defined benefit plan for pensions was frozen and a new cash contribution plan implemented. The success of these cost control efforts are demonstrated by the reduction in A&G costs.

Walje Rebuttal Testimony, pp. 5 -6.

In addition, labor costs for the Company's union represented population are a result of the collective bargaining process. These contracts were prudently entered into by the Company and contain known and measurable wage levels that are reasonable. Wilson Rebuttal Testimony, p. 17. The Company's union contracts are the result of significant efforts to reach a multi-year agreement which were entered into prior to the current economic downturn. Work stoppage is always a risk if such agreement is not reached.

The Company provided evidence that to attract and retain qualified employees it must offer competitive compensation as established by market data and industry study. Tr. Vol. V, p. 849; Exh. No. 70. The Company further demonstrated that the costs associated with the wage increases in this case are reasonable, necessary and prudent. The Commission erred in disallowing these prudently incurred expenses and should reconsider this issue.

C. The Commission's Order creates a new and capricious test for determining the reasonableness of wage increases.

In an attempt to justify its result, the Commission's Order has also created a test totally devoid of any nexus to the reasonableness of the compensation expense incurred and proposed to be included in rates. That new test is whether there are "challenging economic times in the local economy in the Company's service area." Order, p. 18. This new test is unreasonable and impossible to satisfy.

First, very few of the Company's employees working to provide safe, reliable service in Idaho actually live in southeastern Idaho. Even if the Company assumed that conditions in southeast Idaho are worse than elsewhere, local conditions are not the only factor to be considered. Mr. Wilson testified that it is appropriate to examine the national market as well as industry specific data, in addition to the Idaho market. Tr. Vol. V, p. 844, ll 24-25, p. 845, ll 1-1. The Company must rely upon market data in order to continue to attract and retain qualified employees.

Second, the Commission stated that to satisfy this new test the Company must demonstrate that employees will leave if they are not provided an adequate wage. Order, p. 19. Such requirement cannot realistically be satisfied. The Company would first have to allow compensation levels to degrade to the point that employees were leaving in significant numbers, which is hardly compatible with the requirement to provide reliable service. Then the Company would have to attempt to confirm, presumably by exit interviews, that employees were leaving due to inadequate compensation levels. Exit interviews would set a ridiculous standard of establishing that wages are below market.

D. The Order contains errors which effectively disallow more compensation expense than expressed by the Commission.

The Commission may not be aware that the effect of its Order is to set Company wages at a calendar year 2008 unadjusted level for costs the Company will incur for a rate effective period in 2011, or a three year denial of any wage increase. Staff's adjustment of $14,375,075 (total Company) removes wage increases given from 2008 through 2010. Actual 2008 wages were $476,243,638 (total Company). The $14,375,075 difference from 2008 through 2010 is a 3.0 %

total increase over that period, on average 1 % a year. Almost half of staff's wage adjustment, $7,109,927, is associated with wage increases given in 2008 and 2009.

Finally, the Company believes that the Commission unintentionally removed the annualization of wage increases given to employees in 2008, the year *prior* to the historical period relied on in this case. Staff's adjustment of $14,375,075 is the difference between the Company's requested total labor costs of $490,618,713 and the 2008 unadjusted labor of $476,243,638 (a number reported in the Company's earnings reports and provided at Staff's request). The 2008 unadjusted labor does not annualize wage increases given during 2008 which understates January 1, 2009 labor by $1,660,215 total Company or $95,597 on an Idaho allocated basis. Staff's adjustment excluded the 2008 annualized level of wages, and known and measurable changes in 2009 and 2010, in setting rates for the rate effective period in 2011.

III. The Commission's Finding That the Approved Wind Integration Costs Be Completely Disallowed From the Company's Base Net Power Costs is Unreasonable and Not Supported by the Evidence.

The Commission's finding that the approved wind integration costs be disallowed from the Company's base net power costs ("NPC") is unreasonable and not supported by the evidence. The Commission correctly acknowledged that these costs are real costs ("we acknowledge that the costs of integration are embedded in the Company's actual power supply costs") and supported the inclusion of integration costs in base rates ("We are not happy with this end result, because we believe these integration costs belong in base rates"). Order, p. 30. Yet, it arbitrarily disallowed $34.2 million from the Company's base net power costs, on the basis that the Company did not present a verifiable study depicting the costs. *Id.* The Company respectfully requests the Commission reverse its finding and approve a charge equal to the $6.50 per megawatt-hour charge previously approved by the Commission in Case No. PAC-E-09-07 or, at a minimum, allow wind integration costs at the BPA cost of $5.89 per megawatt-hour. In the alternative, the Company requests the Commission allow parties to present additional evidence. The Company further requests the Commission reverse its finding that the ECAM provides an adequate alternative to recover 100% of wind integration costs.

A. The evidence and publicly available analyses support a wind integration charge of at least $5.89 per megawatt-hour and more reasonably $6.50 per megawatt-hour.

Contrary to the Commission's finding, the Company provided substantial evidence establishing the reasonableness of its wind integration costs and met its burden to include such costs in NPC. Company witness Hui Shu testified regarding the bases for the Company's proposed wind integration costs. Shu Direct Testimony, p. 14. First, the Company recognized the $6.50 per megawatt-hour charge approved by the Commission in Case No. PAC-E-09-07. In its Order, the Commission does not provide its reasoning to explain why a $6.50 charge is appropriate to apply to determine avoided costs for wind qualifying facilities in Idaho, but not appropriate to apply to Company-owned or non-qualifying facilities. Second, the Company recognized the wind integration cost study included in the Company's 2008 IRP[7] and application in Case No. PAC-E-09-07, which included the verifiable study that led to the adoption of the $6.50 per megawatt-hour. In fact the $6.50 per megawatt-hour proposed by the Company is conservative compared to the Company calculated costs in the past and in the present, which are more than $9.00 per megawatt-hour. *See* Case No. PAC-E-09-07, authorizing $6.50 per megawatt-hour as opposed to the Company's proposed range of $9.96 to $11.85 per megawatt-hour, based upon the Company's 2008 IRP.

[7] The Order in Case No. PAC-E-09-07 references the 2008 IRP as the 2009 IRP in certain instances. They are one and the same and, accordingly, are referred to herein as the 2008 IRP.

In Case No. PAC-E-09-07, and relying on the wind integration study included in the Company's 2008 IRP, Staff recognized that the Company's wind integration charge should increase from the then current $5.10 per megawatt-hour charge to $6.50 per megawatt-hour, although Staff declined to support the $9.96 per megawatt-hour requested by the Company and supported by the wind integration study. Staff opined that their proposal was less than the amount determined in the Company's wind integration study to account for the uncertainty of the computation of wind integration charges and to be consistent with the cap for Idaho Power and Avista. *Staff Comments*, Case No. PAC-E-09-07. To now claim that the $6.50 per megawatt-hour charge was not based on a verifiable study is unreasonable.

A widely known and referenced wind integration charge is that used by the Bonneville Power Administration ("BPA").[8] BPA's Final Record of Decision, in the *2010 Wholesale Power and Transmission Rate Proceeding (BPA-10)*, established wind integration costs at $1.29 per kW-month, which is equivalent to approximately $5.89 per megawatt-hour based on a 30 % capacity factor. BPA Administrator's Final Record of Decision, July 2009, Appendix C, Wind Balancing Service.

Despite these studies, the Commission determined that it did not have sufficient evidence to allow any amount of wind integration costs in base net power costs. This result is made even more unreasonable by the Commission's failure to indicate what evidence it required to establish a verifiable study. Rather, it arbitrarily excluded all costs from base NPC. But, all stakeholders recognize that wind integration costs are universally accepted as real costs. The Commission stated its discomfort with this aspect of its decision and confirmed that wind integration costs are real. Against these observations, the appropriate remedy is not to disallow these costs but to set wind integration costs at $6.50 per megawatt-hour as previously approved by the Commission

8 *See*, Shu Direct Testimony pp., 4, 14.

and testified to by Ms. Shu[9] or, at a minimum, allow wind integration costs at the BPA cost of $5.89 per megawatt-hour.

In the alternative, the Company requests the Commission grant reconsideration and allow additional evidence to be presented. If reconsideration were granted, the Company would present as additional evidence the wind integration studies cited here.[10]

B. The Commission erred in finding that the ECAM provides an adequate alternative to recover 100% of wind integration costs.

The Commission's reliance on the energy cost adjustment mechanism ("ECAM") as a substitute to recover wind integration costs is misplaced. Ms. Shu testified that the wind integration costs are not the same as the variation between base NPC and actual NPC that the ECAM is designed to capture. Shu Rebuttal Testimony, p. 12. "Instead of addressing the variation between normalized and actual wind generation as the ECAM is designed for, wind integration costs are costs incurred due to additional reserve requirements to integrate the intermittent generation from the wind projects into the Company's portfolio of resources." *Id.*

In the Idaho ECAM, the Company is only allowed to recover 90 % of NPC that exceeds base NPC. Any wind integration costs recovered through the ECAM would be subject only to 90 % recovery. Thus, the impact of the Commission's decision is to disallow 10 % of wind integration costs. This is not deferral but rather denial of the full recovery that the Order claims. If the Commission continues to find that the ECAM is the proper place to address recovery of the wind integration costs, then it should order that the first $34.2 million of cost differential on a

---

9 Shu Direct Testimony, pp. 14-15.

10 See, *e.g.*, Idaho Power wind integration study: $10.72/MWh (2007) available at: http://www.idahopower.com/pdfs/AboutUs/PlanningForFuture/wind/Petition_ReviseAvoidedCostRates1.pdf?id=238&.pdf; *see also* The Northwest Wind Integration Action Plan, Table 1, available at: http://www.uwig.org/NWWindIntegrationActionPlanFinal.pdf, which provides preliminary wind integration costs from investor-owned utility studies ($/MWh) of wind generation at various levels of wind penetration.

total Company basis between base NPC set in this case and actual NPC approved for recovery through the ECAM should be recovered at 100 % rather than the 90 % sharing level.

In addition, the Commission incorrectly valued the amount of the exclusion. The $34.2 million it excluded from NPC is derived from the Company's direct case, which includes inter-hour wind integration costs associated with non-owned wind project. In the Company's rebuttal case, the Company agreed to exclude this. The correct valuation is $1,367,359 less. Exh. No. 71, l 5. This correction is called out as Item 3 in Addendum A, leaving $32.8 million in dispute.

C. The Commission also erred in claiming the Company has failed to avail itself of an ability to recover wind integration costs from wholesale transmission customers.

The Commission has arbitrarily and unreasonably disallowed costs related to integrating non-owned wind projects into the transmission system. In finding that it is the Company's responsibility to recover wind integration costs from wholesale transmission customers, not retail customers, the Commission apparently agreed with intervenors' argument that PacifiCorp's lack of a wholesale charge in its Open Access Transmission Tariff ("OATT") warrants this disallowance.

In providing for a disallowance on these grounds, the Commission apparently presumes that the Company could implement a wind integration charge for wholesale customers if it simply made an application to the FERC. Such presumption would be in error. FERC has indicated that such charges are not currently permitted. In fact, FERC has rejected several requests by utilities, including Puget Sound Energy, Inc., to include a wind integration charge in their OATTs.[11]

[11] Puget Sound Energy, Inc., 132 FERC ¶ 61,128 (Aug. 13, 2010) ("Order Rejecting Proposed Tariff Revisions"), FERC Docket No. ER10-1436. *See also*, Shu Rebuttal Testimony, p. 16.

Importantly, FERC also recently issued a notice of proposed rulemaking ("NOPR") prohibiting such charges until such time as transmission providers implement certain operational reforms contemplated by the NOPR.[12] Based on the recently-released NOPR, it is evident that the status of FERC's investigation into including wind integration charges in the OATT is in development. There is, therefore, no basis to find that the Company has been less-than-diligent in addressing the issue of wind integration charges for wholesale wind facilities. Tr. Vol. V., pp. 993-997.

IV. The Commission Should Clarify Significant Points Regarding the Monsanto Contract or Grant Rehearing if the Clarification Requests are not Granted.

A. The Commission should clarify that the interruptibility credit is effective only when the Company has contractual rights to interrupt Monsanto.

The Company seeks clarification from the Commission that the $17 million interruptible product valuation established by the Order is effective only if, and when, the Company and Monsanto have entered into a contract specifying the terms and conditions allowing the Company's interruption of service to Monsanto. The March 1, 2011 date for a contract to become effective must be subject to the precondition that an acceptable contract compliant with the Order has been negotiated. As acknowledged in Monsanto's March 15, 2011 Petition to Clarify Order No. 32196, ("Monsanto's Petition"), no such contract yet exists.[13]

---

[12] Integration of Variable Energy Resources, 133 FERC ¶ 61,149 at P 97 (Nov. 18, 2010), FERC Docket No. RM10-11 ("Accordingly, a public utility transmission provider may not require different volumes of generator regulation service from transmission customers delivering energy from [variable energy resources] as opposed to conventional generators without implementing intra-hourly scheduling and power production forecasting. . .").

[13] Aside from the argument put forth by Monsanto in its Petition to Clarify, the Commission should disregard the affidavit submitted by Monsanto's attorney. Such an affidavit is neither called for nor allowed under the Commission's rule regarding petitions for clarification, and is an improper attempt to present evidence on an issue that was not addressed in the hearing in this case—the terms of a new electric service agreement to be negotiated by the Company and Monsanto. The Company has in good faith presented a draft agreement to Monsanto, and with the clarification requested herein, expects that the Company and Monsanto will be able to enter into a new agreement.

Indeed, Monsanto recognizes the need for a "new" electric service agreement. Monsanto Petition p. 5. The prior contract expired, and the new one does not exist. Without such a contract in place, the Company would have no right, and Monsanto would have no obligation, to interrupt service. Moreover, the Western Electricity Coordinating Council ("WECC") Minimum Operating Reliability Criteria sets forth the criteria under which the Company can meet its non-spinning reserve obligation by using load which can be interrupted within 10 minutes notification.[14] In order to include Monsanto's non-spinning reserve product towards its WECC compliance obligation, the Company must have an executed agreement clearly defining the Company's interruptible rights in a manner that meets the non-spinning reserve requirements set forth by WECC. Absent that signed agreement the Company cannot count Monsanto's reserves product towards its compliance obligation. Without the right to interrupt, the Company's service to Monsanto would be firm service, like the service received by the Company's other industrial customers in Idaho, for which Monsanto could not lawfully be entitled to a $17 million credit. Idaho Code § 61-315.

B. The Commission should clarify that the interruptibility credit is to be fixed for a five-year contract.

The Company seeks clarification that the interruptibility credit is applicable specifically during the term of a contract with a 5-year term, to be negotiated by the parties and submitted to the Commission for approval, with the credit to be $17 million for each of those five years.[15] In its findings regarding the largest component of the interruptibility credit (non-spinning reserve product), the Commission stated:

---

[14] Western Electricity Coordinating Council Minimum Operating Reliability Criteria, Revised April 6, 2005, page 3.

[15] The Company understands that the rates for electric service provided to Monsanto are now established according to the "tariff standard," (Order No. 30197), while the credits for interruptibility products provided *by* Monsanto pursuant to contract are a matter of a negotiated commercial transaction, which can be fixed for the term of the contract.

> This approach is also consistent with our desire and expectation that the parties will execute a five-year contract as opposed to the three [year] contracts that have been the norm for the parties in the recent past. In addition to promoting greater price certainty and stability for Monsanto, . . . it would also allow the Company to plan more effectively into the future. Therefore, the Commission finds that an extended contract period would serve the public interest. Order, p. 57.

The Company requests that the Commission make explicit that which is implicit in the Final Order—that the $17 million credit for interruptibility is only applicable if fixed for a five-year term.

C. The Commission should clarify that the interruptibility credit is to be fixed and does not change when base rates change.

Nowhere in the Order did the Commission indicate that the Commission-determined $17 million credit should be subject to change during the expected five-year term of a new contract. Indeed, the Commission found that the largest component, and the largest adjustment to the Company's proposed values (the capacity component of non-spinning reserves), "properly blends the current condition with *the longer term capacity view* (italics added) that corresponds with Monsanto's demonstrated long-term interruptible commitment." Order, p. 57. Moreover, the capacity value set forth in Attachment C to the Order is based on levelized capital costs over the life of the asset. These levelized costs will not change over a five year term. Therefore the credit based on these costs should not change either.

In its Petition, Monsanto complains that the effect of the Company's proposed electric service agreement "is to subject Monsanto's firm rates to adjustments but not Monsanto's Interruptible Credit to adjustments during the five-year term of the ESA."[16] Monsanto Petition p. 3. Indeed, that is the effect of the Company's proposed agreement, and the result of the Commission's Final Order. If it were otherwise, as proposed by Monsanto in its first proposed

---

[16] As referenced above, the Commission has already determined that Monsanto is subject to the "tariff standard," under which Monsanto's rates for retail electric service are subject to adjustment in the same manner as other customers' rates.

clarification on this point ("That the firm power and energy charges and interruptible credit should remain fixed for the five-year terms [sic] of the Agreement"), Monsanto would be positioned with a five year price freeze on retail rates that no other customer in Idaho would enjoy. Nowhere in the record was there any evidence or discussion that presumed that their cost of service would be flat for a fixed term of five years.

The alternative suggested by Monsanto, adjustability of the interruptibility credit, is inconsistent with the record and the Commission's Order, as discussed above. Monsanto's position would add significant value to the curtailment credit that is not justified, and was not presented to the Commission at any point during Phase II of these proceedings. There is no evidence correlating the interruptibility period to rate increases.

D. The Commission should clarify that the interruptibility credit is applicable to only 162 MW of load.

Although Monsanto refers repeatedly in its Petition to the "interruptible Credit of $8.74 per kW-month established by the Order", the Order does not specify that value. That value is based on the Commission's ordered value of $17m and Monsanto's offered level of interruption at 162 MW.[17] In Monsanto's Petition, it argues that the interruptibility credit of $8.74 per kW-month should "apply to Monsanto's full load in excess of the 9 MW of firm power and energy consistent with the previous Agreement."[18] Monsanto Petition p. 5. Yet, understandably, Monsanto does not point to any record evidence that the interruptibility credit should apply to any load above the 162 MW load of its interruptible furnaces. There simply is no such evidence, while there is record evidence that the interruptibility credit was calculated based on an interruptible load of 162 MW – no more, no less. Order p. 48. According to Monsanto's

---

17 $17 million/(162MWx12months) = $8.74/kW-month.

18 Again, by reference to the "previous Agreement," Monsanto recognizes that there is not an existing agreement allowing for interruption.

argument, it could install new equipment (whether or not it was truly interruptible), increasing its load to, for example, 400 MW, and everything above 9 MW would be entitled to the interruptible credit.

The only thing the record supports is an interruptibility credit based on 162 MW of interruptibility. If the interruptibility credit is based on anything other than 162 MW, it will result in a value that exceeds the Commission-ordered value of $17 million.

E. Reconsideration is necessary if clarification is denied.

If the Commission does not clarify the Order as requested above, the Company respectfully requests that the Commission reconsider its $17 million interruptible product valuation on the basis that this determination is unreasonable and not in conformity with the law.

The record does not support the $17 million credit ordered by the Commission. The credible upper limit of the credit that has support in record is the total credit proposed by Commission Staff – $14.2 million. Hessing Direct Testimony, p. 12; Staff Exh. No. 135. *See* Tr. Vol. XVII, pp. 2863-65 (Monsanto witness, Brian Collins, acknowledging flaws in Monsanto's valuation method). Company witness Paul Clements provided evidence that the appropriate valuation for Monsanto's interruptible products is more appropriately $6.1 million, $7.1 million and $7.6 million for 2011-2013, respectively. Clements Direct Testimony, p. 24. Staff agreed with the Company's valuation of operating reserves, economic curtailment and system integrity. Tr. Vol. XVII, p. 2940, ll 20-25, p. 2941, ll 11-14. The difference between the Company's calculation and Staff's is that Staff included incremental operating reserve capacity to assign a total valuation of $14.2 million. Nowhere in the record is there evidence to establish the $17 million credit authorized by this Order.

The $17 million credit is further unreasonable because the "longer term capacity view" used by the Commission to arrive at the $17 million is unsupported by the Commission's findings. Order, p. 57. The Commission rightfully rejected the value proposed by Monsanto, yet adopted a value that is higher than the next-highest value proposed by Staff. It did so by averaging, to find value that "properly blends the current condition with the longer term capacity view that corresponds with Monsanto's demonstrated long-term interruptible commitment." Order, p. 57. A fatal flaw in the Commission's finding is that there is no long-term interruptible commitment from Monsanto. As the Commission recognizes in the Order, the parties have no contract for future service, let alone a long-term contract.

If the Commission declines the Company's request to clarify the issues above in the affirmative, it should reconsider the $17 million valuation on the basis that it is not supported by the record and not in conformity with the law.

V. The Commission's Order Includes Other Errors Affecting the Revenue Requirement Calculation That Should Be Corrected

A. Tax issues

The Company requests clarification concerning accounting changes related to deductibility of capital repairs for tax purposes. In the Order, the Commission states that it accepts, "Staff's recommendation that interest received or charged not be included in the regulatory accounts." Order, pp. 59-60. Staff Witness Joe Leckie acknowledged the inclusion of Internal Revenue Service ("IRS") interest in the regulatory account but recommended no carrying charge on the regulatory asset. Leckie Direct Testimony, pp. 12-13. The Company requests that the Commission clarify that the interest referred to in the Order is a carrying charge, not interest paid to or received from the IRS, consistent with the staff testimony.

B. Adjustment calculations

Attached as Addendum A is a listing of calculation errors in the Order discovered in a review of the Jurisdictional Allocation Model ("JAM") and Regulatory Adjustment Model ("RAM") used by the Commission to support the order. The Company requests that these errors, with a combined impact of approximately $432,314, be corrected and a new revenue requirement increase be ordered for these and any other changes the Commission deems necessary as a result of this Petition. Alternatively, the Company would accept the establishment of a regulatory asset to defer the impact of these changes from January 1, 2011 until the effective date of the Company's next general rate case.

VI. The Commission's Approval of a Return On Common Equity of 9.9% is Unreasonable, Erroneous and Not in Conformity With the Law.

The Commission's finding of an allowed return on common equity of 9.9% is unreasonable, erroneous and not in conformity with the law. The Commission correctly acknowledged, "the standards to be considered provide that the authorized return should: (1) be sufficient to maintain financial integrity; (2) be sufficient to attract capital under reasonable terms; and (3) be commensurate with returns investors could earn by investing in other enterprises of comparable risk." Order, p. 10 (*citing* Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n of W.Va., 262 U.S. 679 (1923) and Fed'l Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944)). While the cases cited reflect the applicable law, the Order effectively ignores it, relying instead upon a newly articulated standard- "the poor economic conditions that exist in the Idaho service territory where many are on fixed incomes, unemployed and underemployed." Order, p. 11.

The Order's reliance is premised on faulty assumptions and is not compatible with the cases cited by the Commission. First, it assumes that the economic situation in Idaho is comparably worse than other states in which the Company provides service. That assumption is not supported by the record.

Second, the Order assumes that the economic conditions in Idaho impact the cost of equity in the markets in which the Company competes for capital. In so doing, the Commission violates the well established legal precepts of Bluefield and Hope, requiring that the Commission authorize a return sufficient to maintain financial integrity and attract capital, based upon the return generally being made on investments with commensurate risk.

Third, the allowed ROE as determined by the Commission fails to reflect the expected cost of common equity in the time period that the rates will be in effect. The Commission's decision was based on a period reflecting a trough in single-A utility bond interest rates. Between the time that Dr. Hadaway prepared direct testimony in this case (April 2010) and the data that he had available when he prepared rebuttal testimony in (October 2010), single-A utility bond rates fell 71 basis points (0.71%). However, as the Commission is aware, interest rates have risen since the December hearing concluded. *See Moody's Aaa Rated Industrial Corporate Bond Rates*, available at http://www.federalreserve.gov/releases/h15/data.htm. The Commission's decision fails to recognize this condition, one that is expected to continue when the rates are in effect.

Fourth, the Commission chose an allowed ROE below even the midpoint of its range based on the erroneous belief that it had not disallowed recovery of prudently incurred costs but had only deferred recovery. Order, p. 12. This is simply not correct with respect to the disallowed costs of compensation, the 10% of wind integration costs that will not be recovered through the ECAM, and the 27% of transmission investment associated with the Populus-Terminal line. The Commission must reverse its disallowance of those costs or its rationale for selecting its authorized return fails. As previously noted, the Commission can rectify its error regarding the transmission investment by including the investment in rates or allowing a carrying charge on plant held for future use and clarifying that the deferred portion of the plant will not depreciate.

Fifth, the Order, without supporting rationale beyond misplaced reliance on public comments regarding the Idaho economy, authorizes an ROE below the midpoint of the range found appropriate by the Commission and below the authorized ROEs approved for other utilities. Hadaway Rebuttal Testimony, pp. 2-3, 10 (Table 3), 26, Exh. No. 59.

The Company supported its proposed ROE of 10.6%. The Commission's ROE of 9.9% is unreasonable, erroneous and not in conformity with the legal precepts of Bluefield and Hope, as set forth above. The Commission should therefore grant rehearing and reconsider the issue of setting a reasonable return on equity.

CONCLUSION

For the above stated reasons, the Company respectfully requests the Commission grant the requested relief regarding the findings: (1) that 27% of the Populus-Terminal transmission line is not used and useful and that this percentage of the costs associated with the Populus-Terminal transmission line be placed in plant held for future use; (2) that actual labor costs incurred in the test period of $993,515 should be disallowed; (3) that the approved wind integration costs be disallowed from the Company's base net power costs; (4) that the interruptible product valuation credit established for Monsanto at $17 million is reasonable or lawful and other issues; (5) involving other errors affecting the revenue requirement calculation; and (6) that a return on equity of 9.9% is reasonable.

WHEREFORE, the Company respectfully requests the Commission grant its petition for reconsideration in this matter.

DATED this 21st day of March, 2011.

ROCKY MOUNTAIN POWER

Richard R. Hall for

Paul J. Hickey
Hickey & Evans, LLP
1800 Carey Avenue, Suite 700
P.O. Box 467
Cheyenne, WY 82003-0467
Ph. 307-634-1525
Fx. 307-638-7335
phickey@hickeyevans.com

Mark C. Moench
Daniel E. Solander
201 South Main Street, Suite 2300
Salt Lake City, Utah 84111
Telephone No. (801) 220-4014
Facsimile No. (801) 220-3299
mark.moench@pacificorp.com
daniel.solander@pacificorp.com

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March, 2011, I caused to be served, via E-mail, a true and correct copy of Rocky Mountain Power's Petition in PAC-E-10-07 to the following:

Eric L. Olsen
Racine, Olson, Nye, Budge & Bailey, Chartered
201 E. Center
P.O. Box 1391
Pocatello, ID 83204-1391
E-Mail: elo@racinelaw.net

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chartered
201 E. Center
P.O. Box 1391
Pocatello, ID 83204-1391
E-Mail: rcb@racinelaw.net

Tim Buller
Jason Harris
Agrium, Inc.
3010 Conda Road
Soda Springs, ID 83276
E-Mail: tbuller@agrium.com
JAHarris@agrium.com

Paul J. Hickey
Hickey & Evans, LLP
1800 Carey Ave. , Suite 700
PO Box 467
Cheyenne, WY 82003
E-Mail: phickey@hickeyevans.com

Brad Purdy
CAPAI
2019 N. 17th St.
Boise, ID. 83702
E-mail: bmpurdy@hotmail.com

Benjamin J. Otto
Idaho Conservation League
710 N. 6th St.
P.O. Box 844
Boise, Idaho 83702
E-mail: botto@idahoconservation.org

Anthony Yankel
29814 Lake Road
Bay Village, Ohio 44140
E-mail: tony@yankel.net

Katie Iverson (E-mail only)
Brubaker & Associates
17244 W. Cordova Court
Sunrise, Arizona 85387
E-Mail: kiverson@consultbai.com

James R. Smith (E-mail only)
Monsanto Company
P.O. Box 816
Soda Springs, Idaho 83276
E-Mail: jim.r.smith@monsanto.com

Melinda J. Davison
Davison Van Cleve, P.C.
333 S.W. Taylor, Suite 400
Portland, OR 97204
E-mail: mjd@dvclaw.com

Ronald L. Williams
Williams Bradbury, P.C.
1015 W. Hays St.
Boise ID, 83702
E-mail: ron@williamsbradbury.com

Scott Woodbury
Deputy Attorney General
Idaho Public Utilities Commission
472 W. Washington (83702)
PO Box 83720

Boise, ID 83720-0074
E-Mail: scott.woodbury@puc.idaho.gov

Dr. Don Reading (E-mail Only)
Idaho Conservation League
6070 Hill Road
Boise, ID 83703
E-mail: dreading@mindspring.com

Carrie Meyer

Carrie Meyer
Coordinator, Administrative Services

Rocky Mountain Power
Petition for Reconsideration of Order No. 32196
CASE NO. PAC-E-10-07
Addendum A - Adjustment Corrections

1. In its adjustment to system allocate the cost of the Irrigation Load Control Program, the Commission erroneously left $261,233 situs assigned to Idaho. In the Company's adjustment 4.5, $261,233 of customer incentives were added as a situs expense in the test period. The Commission adjustment adds $261,233 as a system expense in the test period, but never removes the situs amount originally included. The Commission adjustment correctly removes the additional $7.3 million of customer incentives that were situs assigned by the Company.

Irrigation Allocation Correction	System Amount	Factor	Idaho's Percent	Idaho Allocation
Irrigation LCSC (Adj 4.5 TYPE 3 Was Not Reversed)	(261,233)	ID	100%	(261,233)

2. The Commission incorrectly allocated its adjustments to net power costs using the SE factor. The items identified by the Commission are originally allocated on an SG factor in the test period, so corresponding adjustments should also be allocated on the SG factor.

NPC - Correct Allocation of Adjustments	System Amount	Factor	Idaho's Percent	Idaho Allocation
Wind Integration	34,187,931	SE	6.3575%	2,173,505
CAL ISO Fees	4,041,991	SE	6.3575%	256,970
Call Option Contract	1,293,489	SE	6.3575%	82,234
Wind Integration	(34,187,931)	SG	5.9056%	(2,018,992)
CAL ISO Fees	(4,041,991)	SG	5.9056%	(238,703)
Call Option Contract	(1,293,489)	SG	5.9056%	(76,388)
				178,626

3. The Commission's adjustment to wind integration costs did not account for the fact that the Company already reduced wind integration costs from $34.2 million to $32.8 million in its rebuttal filing.

RMP's Rebuttal Position was not Accounted for in Adj	System Amount	Factor	Idaho's Percent	Idaho Allocation
Wind Integration - Company's Rebuttal Position	(32,820,572)			
Double Removal of Wind Integration	1,367,359	SG	5.9056%	80,750

4. The Commission's adjustments to remove wage increases in 2009 and 2010 are improperly allocated to Idaho. The composite allocation rate of labor expenses to Idaho in the test period is 5.7581% as shown below. However, the Commission's downward adjustments to labor costs are allocated to Idaho at a rate of 6.9114%. The apparent miscalculation is in the assignment of situs labor costs to Idaho -- the Commission assigned 12.5332% of situs labor to Idaho, distorting the overall allocation.

Correct Allocation of Wages	
Total Wages & Benefits Allocated to Idaho	1,198,944
Total Wages & Benefits	20,821,914
	5.7581%

Idaho Percent of Wage & Benefit Allocation	System Amount	Factor	Idaho's Percent	Idaho Allocation
Staff Allocation	(14,375,075)		6.9114%	(993,515)
Correct Allocation of Wages	(14,375,075)		5.7581%	(827,729)
				165,786

5. The Commission's adjustments to remove SERP expense and reduce the level of contributions to the Company's pension plan also relied on the erroneous allocation of labor costs to Idaho. Additionally, the Company's original adjustment to include cash contributions to the pension plan was done on an SO factor (Refer to Adjustment 4.13), and any related adjustments should be done on the same factor.

Correct Allocation of SERP	System Amount	Factor	Idaho's Percent	Idaho Allocation
Staff's Allocation of SERP Adjustment	(2,600,000)		6.9114%	(179,696)
Correct Allocation of SERP	(2,600,000)		5.7581%	(149,710)
				29,986

Correct Allocation of Pension Contributions	System Amount	Factor	Idaho's Percent	Idaho Allocation
Staff's Allocation of Pension Adjustment	(19,100,000)		6.9114%	(1,320,072)
Correct Idaho Allocation (Refer to Adj 4.13)	(19,100,000)	SO	5.6632%	(1,081,673)
				238,399

Total Corrections	**$ 432,314**