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 IDAHO PUBLIC  
 UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION	)	
OF PACIFICORP DBA ROCKY MOUNTAIN	)	CASE NO. PAC-E-10-07
POWER FOR APPROVAL OF CHANGES TO	)	
ITS ELECTRIC SERVICE SCHEDULES	)	COMMUNITY ACTION
	)	PARTNERSHIP ASSOCIA-
	)	TION'S PETITION FOR
	)	CLARIFICATION/
	)	RECONSIDERATION
	)	

CAPAI, in reply to the Cross-Petition for Reconsideration filed by RMP on March 18, 2011 in response to CAPAI's Petition for Reconsideration/Clarification states as follows. CAPAI notes that RMP's "Cross-Petition" is actually a response to CAPAI's Petition for Clarification/Reconsideration and will be treated accordingly.

RMP's response contains numerous references to unspecified emails, purported "phone conversations," and quotations to "statements" allegedly made by CAPAI staff, without a shred of information as to where these purported statements came from, from whom, whether they were recorded or documented and how, in what manner they were supposedly made by CAPAI staff, when and under what circumstances they were made, or any other meaningful information. RMP's response relies entirely on hearsay, speculation, misstatement of facts and lack of foundation. While CAPAI is well aware that the Commission is not strictly bound to the Idaho

Rules of Evidence or Rules of Civil Procedure, RMP's Cross-Petition should be stricken entirely from the record under the circumstances and CAPAI so moves. It is inappropriate and inequitable for a seasoned participant before this Commission such as RMP, represented by highly competent and experienced legal counsel, to base arguments involving an issue important to CAPAI and RMP's low-income customers on undocumented, unidentifiable, unsubstantiated, and unverifiable "statements" and narrative from legal counsel.

RMP places considerable weight on Production Request No. 5 submitted by CAPAI in this proceeding arguing that the Company's response to this request fully apprised CAPAI that RMP did not intend to fund conservation education on an ongoing basis. This argument fails for several reasons. First, as stated in RMP's own words, and as reflected in the production request, CAPAI was inquiring whether and why RMP was not proposing an increase to the conservation education program in this proceeding and was not inquiring about what RMP agreed to in the 08-7 Stipulation.

The sole point of CAPAI's Petition for Clarification is to seek a ruling from the Commission whether the program is ongoing. In this case, CAPAI was inquiring why RMP had not increased the amount of funding to the program. CAPAI never became fully aware that RMP did not intend to honor its commitments set forth in the 08-7 Stipulation until after the rebuttal and cross-examination testimonies Company witness Coughlin in this proceeding. The suggestion that CAPAI could somehow have remedied or resolved the issue by presenting witness testimony on the issue is not rational. Until the rebuttal testimony of Ms. Coughlin and cross-examination of her at hearing, CAPAI believed in good faith that the Company would continue to invest in conservation education absent a ruling from the Commission that it was not obligated to. To this day, the Company has never even sought such a ruling.

Furthermore, even if CAPAI should have been aware that RMP did not intend to continue funding conservation on an ongoing basis, this case was still the first point in time at which CAPAI became aware of this fact and the issue is being raised in this case because it contains the sole evidentiary basis for RMP's position. CAPAI's petition remains viable. RMP is breaching the terms of the 08-7 Settlement Stipulation. Whether the Commission prefers to rule on the Petition in this docket, by reopening the 08-7 docket, or by creating a new docket, the issue is still very much in play.

CAPAI noted in its original Petition that it was not attempting to introduce evidence that was not found within the record in this case, in the 08-7 case, or in matters that the Commission may take Official Notice of. Unlike RMP's response, any reliance by CAPAI on evidence in its Petition was clearly and succinctly identified and can be easily verified. RMP's three page narrative statement of facts should not be allowed to derail this issue in a manner that amounts to simply creating a record, *post facto*, for the first time without recognition of or adherence to any semblance of proper procedure.

Moreover, CAPAI strongly disagrees with much of what RMP contends has or has not occurred in the implementation of conservation education. Simply stated, much of what the Company declares to be factual is not true. CAPAI acknowledged in its Petition that there were shortcomings in the manner in which conservation education has been implemented and does not claim to be free from any and all responsibility for these shortcomings. It is the nature of implementing any new program for a utility that there will be a learning curve. Mistakes will be made. In this case, RMP committed its share. CAPAI's reaction has been to attempt to resolve these mistakes in a collaborative fashion with the Company and is currently doing that with RMP staff.

If the Commission orders a procedure to flesh out these types of issues, CAPAI stands ready to provide proper admissible evidence explaining what has transpired regarding conservation education since the 08-7 case. That evidence will demonstrate that RMP is also responsible for some of the bumps in the road that have occurred in implementing the program. It would be far more productive, however, to engage in productive dialogue to resolve issues rather than casting stones based on anonymous and specious evidentiary sources.

Along these lines, CAPAI points out that RMP has never made any formal filing with the Commission regarding the alleged failure of CAPAI to properly implement conservation education. It simply argues, without any evidence, that CAPAI failed and then makes the quantum leap that this somehow justifies RMP's position that conservation education is not an ongoing program all the while arguing that it never agreed to an ongoing program. This reasoning is circular. The threshold issue of ongoing program is not at all related to program implementation issues that have arisen. RMP is confusing CAPAI's Petition by correlating unrelated issues.

In actuality, since last autumn, CAPAI staff has been diligently working with RMP staff to develop, among other things, a "curriculum" for the conservation education program. Again, there is no point in developing a curriculum for a program that has no future. There seems to be a disconnect between RMP senior management and legal counsel and RMP's on the ground staff who administer programs such as conservation education. Regardless, CAPAI's concern is that the ongoing efforts to develop the program will be wasted should the Company's senior management suddenly put a stop to ongoing collaboration between the staffs of the two parties. Based on Ms. Coughlin's rebuttal and cross-examination testimony and the Company's response to CAPAI's Petition, it seems quite apparent that this will occur. CAPAI will continue to

collaborate with RMP's staff, but seeks assurance via Commission order that such efforts will not be in vain. That and that alone, is the point of CAPAI's Petition.

In summary, CAPAI respectfully requests that the Commission issue an order in this case that pursuant to the 08-7 Stipulation, RMP's conservation education program is ongoing. Once this occurs, CAPAI is confident that the parties will be able to resolve any remaining implementation issues. Indeed, they are doing this as this Reply is being prepared. Should the Commission prefer to be fully and accurately apprised of the details and status of RMP's conservation education program, then CAPAI requests an abbreviated process through which admissible, relevant and helpful evidence can be presented to the Commission. This could be accomplished by reopening the 08-7 docket, establishing a separate procedure in this docket, or opening a new docket.

Whatever procedural path the Commission deems appropriate, CAPAI fears that the unverifiable arguments of legal counsel in post-hearing briefing are not a solid basis on which to resolve such technical issues.

#### POST-SCRIPT NOTE

The undersigned is currently out of office and country and is with limited access to modern communication facilities including fax and Xerox machines and international telephone capability. The undersigned respectfully seeks and requests the Commission's and parties' indulgence in the abbreviated and unique manner in which this Reply is being filed (solely by email) until such time as he is able to personally sign a copy of this Reply and file the requisite hard copies with the Commission and other parties.

RESPECTFULLY SUBMITTED, this 23<sup>rd</sup> day of March, 2011.

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Brad M. Purdy

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the 23rd day of March, 2011, I served a copy of the foregoing document on the following by email.

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DATED, this 23<sup>rd</sup> day of March, 2011.

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