

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) ORDER NO. 32224
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On May 28, 2010, PacifiCorp dba Rocky Mountain Power (“Rocky Mountain” or “Company”) filed an Application for authority to increase its rates for electric service for the Company’s 70,000 Idaho customers. On February 28, 2011, the Commission issued its final Order No. 32196 setting new rates and increasing the Company’s annual revenues by \$13.75 million, or an average rate increase of 6.78%.

PETITIONS FOR RECONSIDERATION/CLARIFICATION

On March 11, 2011, Community Action Partnership Association of Idaho (“CAPAI”) filed a Petition for Clarification/Reconsideration of Order No. 32196. CAPAI sought clarification whether the Company’s funding of the “Low-Income Conservation Education Program” was a one-time expense or an annual expense. Rocky Mountain filed a timely Cross-Petition to CAPAI’s Petition. On March 23, 2011, CAPAI filed an Answer to Rocky Mountain’s Cross-Petition for Reconsideration.

On March 17, 2011, Monsanto Company (“Monsanto”) filed a timely Petition for Clarification. In its Petition, Monsanto sought clarification of the Commission’s final Order concerning the economic value of Monsanto’s “interruptible products” that offset the rates applicable to Monsanto. Monsanto is PacifiCorp’s largest electric customer.

On March 21, 2011, Rocky Mountain filed a timely Petition for Clarification and Reconsideration of Order No. 32196. The Company urged the Commission to reconsider and/or clarify several issues. Rocky Mountain also requested an opportunity to present “additional evidence” on certain issues. On March 28, 2011, Commission Staff submitted an Answer to Rocky Mountain’s Petition. Staff agreed with Rocky Mountain that some of the issues raised by the utility merit reconsideration but opposed reconsideration of other issues. Monsanto also filed a timely Answer to Rocky Mountain’s Petition for Clarification/Reconsideration. On April 1, 2011, Rocky Mountain submitted a reply to Monsanto’s Answer.

After reviewing the Petitions, the Answers and Cross-Petitions, our prior Order No. 32196 and the record, we grant the three Petitions for Clarification and clarify our prior Order pursuant to *Idaho Code* § 61-624. We also grant in part and deny in part Rocky Mountain's Petition for Reconsideration. As set out in greater detail below, we find it just and reasonable to increase the Company's annual revenue requirement by \$595,368 to \$14,351,096, or an average rate increase of 7.07%. *Id.*

PROCEDURAL HISTORY

The procedural history of this proceeding is set out in final Order No. 32196. Briefly, Rocky Mountain filed its Application for a general rate increase in May 2010. In September 2010, Staff conducted two public workshops to provide information about the case and to answer customer questions. In December 2010, the Commission conducted five public hearings with public testimony provided by about 100 people. The Commission also conducted its first technical hearing in this proceeding in November 2010 where nearly 50 technical witnesses testified for the parties.

Nearly four months after Rocky Mountain filed its direct case, the Company filed supplemental testimony, regarding the economic value of Monsanto's interruptible products. Monsanto filed a Motion to Dismiss the Case or Strike the Supplemental Testimony. After oral argument, the Commission found that Rocky Mountain had failed to follow a prior Commission Order "to address [Monsanto's] interruptible product valuation in the context of [this] general rate case. . . ." Order No. 32098 at 3 *quoting* Order No. 31097 at 9. Consequently, the Commission scheduled a second technical hearing in February 2011 to address the issues of Monsanto's interruptible products. After the second technical hearing, the Commission on February 28, 2011, issued final Order No. 32196 addressing and deciding the issues in this proceeding. That final Order is the subject of the various Petitions filed by the parties.

ISSUES FOR RECONSIDERATION AND CLARIFICATION

A. Legal and Procedural Standards for Reconsideration

Reconsideration provides an opportunity for any interested person to bring to the Commission's attention any matter previously determined and thereby affords the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). In accordance with Commission procedural Rule 331, answers to petitions and cross-petitions "must be filed

according to the procedures for cross-petitions for reconsideration.” IDAPA 31.01.01.331.05. The Commission may grant reconsideration by reviewing the existing record, by allowing written briefs, or by conducting an evidentiary hearing. *Id.*, IDAPA 31.01.01.311.03.

If reconsideration is granted, “the matter must be reheard, or written briefs, comments or interrogatories must be filed, within thirteen (13) weeks after the date for filing petitions for reconsideration.” *Idaho Code* § 61-626(2). On April 7, 2011, the Commission granted CAPAI’s Petition for Clarification/Reconsideration. Order No. 32220. The Commission found that the existing record is sufficient to resolve CAPAI’s Petition. *Id.* at 3.

***B. CAPAI’s Petition Regarding the \$50,000 for
Low-Income Conservation Education Programs***

In its Petition for Clarification/Reconsideration, CAPAI argues that the Company mischaracterized the Company’s \$50,000 expense for the Low-Income Conservation Education Program as a “one-time” commitment. CAPAI Petition for Clarification or Reconsideration at 1, 14. CAPAI states that the record, including Staff testimony offered by Mr. Curtis Thaden, confirms CAPAI’s interpretation that the \$50,000 should be an annual expense devoted to conservation education. *Id.* at 4-5; PAC-E-10-07 Technical Hearing Transcript at 2093. CAPAI insists that the settlement stipulation in the Company’s prior rate case (PAC-E-08-07) requires that Rocky Mountain provide \$50,000 annually to two Community Action agencies to fund their energy conservation programs. *Id.* at 1. CAPAI was unaware of Rocky Mountain’s position until the Company filed its rebuttal testimony. *Id.* at 2, n.1.

CAPAI acknowledges that it has not implemented the education program in a timely manner but “this fact has been and is being aggressively remedied by CAPAI.” *Id.* at 7. However, CAPAI requests that the Commission clarify that the program will be funded on an annual basis so that CAPAI can take on the “challenge of competently administering the program in a manner consistent with the spirit and intent of the 08-7 Stipulation (Settlement Agreement).” *Id.* CAPAI emphasizes that annual funding for the education program is consistent with the funding obligations previously approved by the Commission for Idaho Power and Avista. *Id.* at 10-11.

Rocky Mountain answers CAPAI’s claim by filing a Cross-Petition for Clarification and Reconsideration and asks the Commission to “reject CAPAI’s position that the Company [is] committed to ongoing, annual funding of \$50,000.” The Company requests that the Commission

“issue a finding that the funding commitment was for a total of \$50,000.” Rocky Mountain Cross-Petition at 1-2. The Company states that “CAPAI had more than adequate notice of Rocky Mountain Power’s position regarding the Conservation Education program in Case No. PAC-E-08-07. . . .” *Id.* at 5. Moreover, CAPAI has been delinquent in developing and using the funds already allocated to such programs. *Id.* at 2-3.

Although the education program was to be submitted to Rocky Mountain by May 2009, the first invoice from the two agencies were not submitted until May 2010 in the amount of \$7,500. *Id.* at 2.

CAPAI filed a reply to Rocky Mountain’s Cross-Petition and urged the Commission to strike the Cross-Petition because it “relies entirely on hearsay, speculation, misstatement of facts and lack of foundation.” Reply at 1. CAPAI suggests that if the Commission desires to develop a more detailed record on this issue, the Commission could reopen “the 08-7 docket, establish . . . a separate proceeding in this docket, or open a new docket.” *Id.* at 5.

Commission Findings: In Order No. 32220, the Commission granted CAPAI’s Petition for Reconsideration/Clarification. The Commission granted the Petition “for the limited purpose of determining whether the \$50,000 for Low-Income Conservation Education programs referenced in the Commission-approved settlement in Case No. PAC-E-08-07 represented an annual award or a ‘one-time’ payment.” *Id.* at 3.

The relevant portion of the stipulated Settlement Agreement reached in the Company’s last general rate case (PAC-E-08-07) reads as follows:

8. The Parties agree that the demand-side management programs proposed by Rocky Mountain Power in Docket No. PAC-E-08-01 are prudent. Further, the Parties agree that a total of \$50,000 of demand-side management program funds will be made available to Southeastern Idaho Community Action Agency and Eastern Idaho Community Action Partnership to be used to support conservation education as a component of Rocky Mountain Power's low income weatherization program, Schedule 21. Parties agree that it is the responsibility of the Community Action Partnership Association of Idaho to propose said education program to Rocky Mountain Power by May 1, 2009 and that the proposal will contain funding proportioning the \$50,000 between the two agencies, objectives and any savings estimates to assist in program evaluations and reporting requirements. The Parties agree that the low income weatherization program (Schedule 21) and the conservation education component of the program is in the public interest and is determined to be cost-effective even though the explicit quantification of benefits may not

be possible, and furthermore, the Parties agree to support the justification and recovery of these costs through the demand-side management surcharge funding.

Staff Exhibit No. 101 (PAC-E-08-07) at 4-5 (Feb. 25, 2009) (emphasis added). The Settlement Agreement was approved in Order No. 30783.

Staff witness Thaden testified that the \$50,000 contribution was an “annual funding amount.” Tr. at 2095, 2093 (emphasis added). No one questioned this statement on cross-examination. On rebuttal Rocky Mountain’s witness Coughlin testified that the \$50,000 funding for the education program was a “one-time commitment.” Tr. at 1061. On cross-examination by both CAPAI and the Staff, Ms. Coughlin remained adamant that paragraph No. 8 of the Settlement Agreement quoted about only provides for a one-time commitment. Tr. at 1066-1068; 1089.

After reviewing the parties’ arguments and the record pertaining to the funding commitment for the Low-Income Conservation Education Programs, we find that the particular language of the Settlement Agreement is susceptible to two different interpretations. On the one hand, the word “total” may reasonably be construed to mean that the combined funding for the two agencies is not to exceed the “total” amount of \$50,000. On the other hand, the word “total” might be interpreted as a total one-time commitment. Compounding this confusion was the fact that Rocky Mountain did not expressly address this issue until its rebuttal testimony and that efforts to implement the program were delayed. Indeed, the first invoice was not submitted until May 2010 – more than a year after the Settlement Agreement was approved. Cross-Petition at 2; Tr. at 1061.¹ Based upon this record, we find it reasonable to grant CAPAI’s request to “open a new docket” to examine this issue.

We find that it is both reasonable and appropriate to revisit this issue in the Company’s next general rate case. The Commission takes official notice that Rocky Mountain has already filed its advance notice that it intends to file a new general rate case on or after May 29, 2011. Without reaching the merits of the issue, we generally believe that education programs addressing energy conservation provide valuable information to low-income ratepayers. We foresee that this issue will receive careful attention from CAPAI, Rocky Mountain and Staff and will be fully resolved in next general rate proceeding.

¹ Although it is not evidence, Rocky Mountain declares in its Cross-Petition that the two agencies billed the Company for the remaining balance of the \$50,000 in November 2010. Cross-Petition at 3.

C. Monsanto's Interruptible Products

In its final Order, the Commission established a cumulative economic value (or "credit") of \$17 million for the interruptible products² offered by Monsanto to Rocky Mountain. The Commission also urged the parties to enter into a new five-year energy sales contract, as opposed to the customary three-year term the parties have negotiated in the past. Order No. 32196 at 67, Attach. C. In their Petitions, both Rocky Mountain and Monsanto ask the Commission to clarify certain issues regarding the interruptible credit provided to Monsanto. Once the disputed issues are clarified, the Commission expects the parties to enter into a new contract. If the parties are unable to enter into a new contract, then the Commission will set the rates and conditions for service to Monsanto in a tariff schedule.

Monsanto generally asks the Commission to clarify three issues. First, should the firm power energy charges and interruptible credit remain fixed throughout the five-year term of the new contract, or are they subject to change during the five-year term. Monsanto Petition to Clarify at 4. Monsanto argues that, except for the firm rate and interruptible credit declared by the Commission in final Order No. 32196, the terms of its new five-year contract with Rocky Mountain should not change. Second, consistent with the parties' prior contract, the interruptible demand charge of \$4.71 established in Order No. 32196 should apply to Monsanto's full load in excess of 9 MW of firm power. *Id.* Third, should the parties continue to use the Dow Jones index and not the Intercontinental Exchange (ICE) Day Ahead index.³

Likewise, Rocky Mountain asks the Commission to clarify whether the \$17 million interruptible credit should be fixed throughout the term of the contract. Rocky Mountain Petition at 26. Rocky Mountain believes that the Order implicitly fixes the \$17 million valuation as constant throughout the contract term and should not change when energy rates change. *Id.* at 27. Rocky Mountain also asserts that the Western Electricity Coordinating Council (WECC) requires that an executed contract with Monsanto is a prerequisite before the Company is

² A portion of the electric service that Rocky Mountain provides to Monsanto is "interruptible." This means that under certain conditions the Company may temporarily suspend or interrupt service to Monsanto. The value of this interruptibility is a credit offset to the rates Monsanto pays for service.

³ After filing its Petition, Monsanto withdrew its request that the Commission decide whether the parties should continue to use the Dow Jones index and not the Intercontinental Exchange (ICE) Day Ahead index. Monsanto Answer to Rocky Mountain Power's Petition for Clarification and Reconsideration and Cross-Petition for Reconsideration at 2. Monsanto believes that it can work with the ICE Day Ahead index "based upon the Company's representation that the ICE reporting service provides the same information as Dow Jones and is readily available without cost." *Id.* Consequently, we need not address this issue.

permitted to utilize the interruptibility Monsanto provides in order to meet its non-spinning reserve requirements. *Id.* at 26.

Rocky Mountain asserts that the interruptible demand charge should only apply to loads up to 162 MW. The Company maintains there is no evidence in the record supporting Monsanto's position that the credit should apply to load in excess of 162 MW. *Id.* at 28-29. The Company notes that if the credit were applicable to load in excess of 162 MW, nothing would prevent Monsanto from "install[ing] 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." *Id.* at 29. If the credit is applicable to load above 162 MW, "it will result in a value that exceeds the Commission-ordered value of \$17 million." *Id.*

Commission Findings: The Commission agrees with the parties that the terms for the interruptible credit set out in Order No. 32196 warrant clarification. The Commission's valuation of the Monsanto credit was based upon current and forward looking estimates. Accordingly, it was the Commission's initial expectation that the \$17 million valuation would constitute a reasonable valuation of the interruptible credit for each year for at least the first three years of the new contract or tariff. However, the Commission acknowledges the inherent risk of under-valuing or over-valuing the interruptible credit if it remains static over time. Therefore, we find that it is both reasonable and appropriate that the value of the Monsanto interruptible credit remain subject to adjustment commensurate with the Commission-approved adjustments of the Company's firm power and energy charges over time. While we are hopeful that the rates and credits may remain stable for a number of years (via multi-year contract or other method), we recognize that both elements may change.

Next, we clarify Order No. 32196 by unequivocally stating that the interruptible credit established in that Order is applicable only to the first 162 MW of Monsanto's billing demand and not on the entire Monsanto load. The record in this case clearly demonstrates that the cumulative total of interruptible demand for Monsanto's interruptible products, system integrity, economic curtailment and non-spinning reserves, is 162 MW. Tr. at 2889, 2926-27, *et seq.* Monsanto tacitly acquiesced to this finding, stating "that the valuation of Monsanto's products was indeed calculated on the basis of 162 MW. . . ." Monsanto Answer at 3. Allowing Monsanto to apply the interruptible credit to the portion of its load above 162 MW is

impermissible because it would significantly inflate the overall yearly value of the interruptible credit.

The Commission hoped that the parties would reach an agreement and execute another multi-year contract, as they have in the past through an “arms-length” bargaining process. However, the technical hearing and subsequent negotiations between the parties indicate that the parties may be incapable of reaching an accord without specific and detailed guidance from the Commission. It is our hope that this clarification of our prior Order will provide the parties with the necessary rates, terms and conditions to enter into a new contract. Absent a contract, the Commission orders Rocky Mountain to incorporate the terms and conditions consistent with our Orders into the Monsanto-Rocky Mountain Schedule 400 tariff.

The parties are free to arrive at specific terms and conditions that they find mutually agreeable. Absent any modifications mutually agreed upon by Rocky Mountain and Monsanto, the Commission finds that all pre-existing terms and conditions of the parties’ prior contract as clarified above should remain in place. Finally, the Commission notes that the parties have agreed to use the ICE Day Ahead index proposed by the Company during ESA negotiations.

D. Populus to Terminal Transmission Line

Rocky Mountain’s Petition challenges the Commission’s finding that 27% of the Company’s Populus to Terminal Transmission Line (“Transmission Line”) is not currently “used and useful” to provide service to customers and should be classified as “plant held for future use” (“PHFU”). Rocky Mountain Petition at 6. Rocky Mountain also requests that the Commission clarify that if it elects to affirm its prior finding that a portion of the Company’s investment in the Transmission Line must be temporarily excluded from rate base as PHFU, that the Company be allowed to accrue a carrying charge equal to the Commission authorized rate of return “and [the Line] will not be depreciated while recorded in [(PHFU)].” *Id.*

1. Used and Useful. As support for its position that 100% of the Transmission Line is currently “used and useful,” Rocky Mountain cites *Idaho Underground Water Users Ass’n v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965) and the Joint Reply Comments filed by this Commission and other regulatory agencies in FERC Docket No. AD09-8-000, November 23, 2009, supporting comments filed by the Northern Tier Transmission Group (NTTG). *Id.* at 7-8. The Company asserts that the aforementioned Idaho Supreme Court case stands for the proposition that utilities must not be “punished” for planning for reasonable future needs. *Id.*

According to the Company, a 100% subscription rate on the Transmission Line is not required or even advisable. *Id.* at 8. “The fact that certain facilities may be underutilized from time to time does not mean they do not provide value.” *Id.*, citing *Cal. Indep. System Operator Corp.*, 94 FERC ¶ 61,148 (2008). Rocky Mountain argues that there is ample evidence in the record demonstrating that the Transmission Line was built economically and adds value by increasing system reliability and transfer capability. *Id.* at 9. Building a smaller Transmission Line would be less cost-effective. *Id.* Further, Idaho customers “benefit from the [Transmission Line] 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.” *Id.* at 9-10.

The Company also argues that it was compelled to build the Transmission Line because “new federal standards required the Company to increase system reliability or face serious penalties.” *Id.* at 10. Rocky Mountain claims that the transmission studies in its most recent IRP revealed a “pressing need” to construct the Transmission Line “in order to maintain reliability for Idaho customers.” *Id.* at 11.

The Company declares that excluding 27% of its investment in the Transmission Line from rate base is arbitrary and unreasonable because “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.” *Id.* Rocky Mountain states that, given the Commission’s finding that 1,022 MW of new capacity was currently “used and useful,” out of a capacity of 1,400 MW, the amount included in rate base should be no less than the investment required to acquire that amount of new capacity. *Id.* The amount excluded from rate base “should be based on cost that would have been avoided by reducing the capacity of the [Transmission Line].” *Id.* at 12. Building a smaller Transmission Line would have reduced its capacity “by half.” *Id.* The Company seeks Reconsideration “to determine the cost of the portion of the [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.” *Id.* at 13.

Rocky Mountain states that once investment in property is presented for recovery by the Company and disallowed by the Commission, it then “becomes nonutility property.” *Id.* at 14. The Commission lacks authority to compel the utility to make “nonutility property” available to the public or hold it in reserve. *Id.* Rocky Mountain goes so far as to suggest that

such action constitutes a regulatory taking. *Id.*, citing *Boise Tower Assoc., LLC v. Hogland*, 147 Idaho 774, 215 P.3d 494 (2009).

2. Carrying Charge and Depreciation. If the entire cost of the Transmission Line is not placed into the rate base, the Company seeks clarification regarding a carrying charge and depreciation on the excluded amount. *Id.* The Commission can “incentivize the Company to record the disallowed portion as plant held for future use if it allows a carrying charge on it” and clarifies that the PHFU “balance does not depreciate while in that account.” *Id.*

The Company argues that a carrying charge is warranted on the 27% disallowed from immediate rate base recovery. It stated that the situation regarding the Transmission Line is analogous to construction work in progress (“CWIP”). *Id.* “If no carrying charge is permitted, the Company will not be fairly compensated. . . .” *Id.* If the Company is not allowed to delay depreciation on the 27% or implement a carrying charge then it “will be forced to contract the associated capacity or otherwise seek means to obtain a return on the investment.” *Id.* at 15. Rocky Mountain warns that if Idaho needs added transmission capacity in the future then it will likely be at it a higher cost, “if the transmission capacity will be available at all.” *Id.*

3. Staff Answer. In its Answer to Rocky Mountain’s Petition for Reconsideration, Staff states that the Commission’s finding that a portion of the Transmission Line is not currently “used and useful” is well supported by the record. Order No. 32196 at 37-38 and citations therein. The Commission specifically found that only 1,022 MW of the Transmission Line’s 1,400 MW is currently used and the unused portion will not be fully utilized until other segments of the Gateway transmission system are completed. *Id.* at 38. Staff also asserts that no carrying charge should accrue on that portion of the Transmission Line held for future use. *Id.* Staff did agree with the Company that the Commission should clarify its prior Order to reflect that depreciation is not required to be taken on the Transmission Line in PHFU until it is included in rate base. *Id.*

Commission Findings: The Commission denies Rocky Mountain’s Petition for Reconsideration of the Commission’s finding that 27% of the Transmission Line is not currently “used and useful” and grants clarification on the issues of allowing a carrying charge and taking depreciation on the portion of the Transmission Line placed into PHFU. Tr. at 772, 779-80, 786, 807-08.

A utility “is entitled to recoup in its rates its overhead costs, but the actual amount necessary to compensate the company is addressed to the sound discretion of the commission, and absent an abuse of that discretion, the commission’s ruling will not be set aside.” *Utah Power & Light Co. v. Idaho PUC*, 105 Idaho 822, 826, 673 P.2d 422, 426 (1983). A significant portion of the evidence (testimony and exhibits) and argument presented in the instant case, including Rocky Mountain’s Petition for Reconsideration and Clarification, is devoted to whether and what portion of the Transmission Line is currently available, let alone “used and useful.” The Commission has dutifully examined the evidence on this issue and rendered its decision in accordance with all of the evidence available in the record.

As set out in Order No. 32196, there is substantial and competent evidence that the entire Transmission Line is not “presently ‘used and useful’ in its entirety.” Order No. 32196 at 37 (emphasis added). The Order provides many references to the testimony of witnesses that the line was built to meet both present and future needs. *Id.* For example, the Company stated in a response to a Staff production request “the full benefits of the capacity upgrade will not be realized until additional [transmission line] segments are built as part of Energy Gateway [transmission system]. *Id.*, Tr. at 1953. The Company tacitly admitted that no more than 1,040 MW of the 1,400 MW total capacity can be used at present. *Id.* at 38; Tr. at 2185, l. 13; 1962, ll. 11-12.

“The project [Populus to Terminal] will not be fully utilized unless or until Energy Gateway is completed.” Tr. at 1956. The Commission’s decision to temporarily exclude a portion of the Transmission Line from rate base is further bolstered by the fact that, until other segments of the Energy Gateway Projected are completed, only 700 MW of the Transmission Line’s potential capacity is presently available. Tr. at 1957.

Idaho Code § 61-502A prohibits the Commission from granting a return on property held for future use which is not currently used and useful. In pertinent part, this statute states:

The commission is hereby prohibited . . . from setting rates for any utility that grants a return on . . . property held for future use and which is not currently used and useful in providing utility service.

Idaho Code § 61-502A. This statute is clear and unambiguous. Only when property is put into service and becomes used and useful should ratepayers be required to pay for the capital expense associated with the property. The Company is currently authorized to receive a return on 73% of

the cost of the Transmission Line and will receive a full and fair return on the remainder of its investment if and when it presents evidentiary support for moving the balance of the investment (27%) into rate base.

Contrary to the Company's argument, the Commission has not denied recovery of a full portion of the investment made in the Transmission Line. Recovery has simply been deferred until such time as the Transmission Line is fully utilized and available to the benefit of Idaho ratepayers. This is exactly the type of scenario that the PHFU account was meant to address. The Company does not lose out on the 27% of the investment in the Transmission Line that is currently slated for the PHFU account. If, at some later date, Rocky Mountain is able to present sufficient evidence which confirms that 100% of the Transmission Line is "used and useful" this Commission will include that additional amount in Idaho rate base.

Moreover, Rocky Mountain's assertion that the Commission's deferral of a portion of the rate recovery for the Transmission Line constitutes a 'regulatory taking' does not comport with the current state of the law. The Commission has not caused Rocky Mountain "to suffer a physical invasion" of its property, nor has it deprived the Company of "all economically beneficial use" of its Transmission Line. *Boise Tower Assocs. v. Hogland*, 147 Idaho 774, 783, 215 P.3d 494, 503 (1999)(citing *Lingle v. Chevron U.S.A.*, 544 U.S. 528, 537, 125 S.Ct. 2074, 2081 (2005)). Indeed, the Commission has authorized a return on 73% of the capital investment.

Next, we find that using the capacity allocation of the Line is a reasonable means of allocating the amount added to rate base (73% of the capital costs), and the amount allocated to PHFU (23%) at this time. In our Order below, we rejected Staff's position to allocate 50% of the costs to PHFU. Many of the costs in this case are based on allocations among the six states served by Rocky Mountain and its sister affiliates. Order Nos. 14683, 15408, 16491; *see also* Order Nos. 25640, 26876, and 27100. At the urging of the Company, the Commission in 2005 approved a multi-state allocation system that, "allocate[s] and assign[s] generation transmission and distribution costs to PacifiCorp's six retail jurisdictions." Order No. 29708 at 9. For example, under the "Revised Protocol" transmission costs are allocated among the states based on the "SE" factor, where the costs of transmission assets are allocated 75% to demand and 25% to energy. *Id.* at 4. Thus, the use of allocation methodologies is a traditional tool for ratemaking.

Finally, as we have noted previously, the Company has filed a notice that it intends to file a new rate case as soon as next month. If the Company wants to pursue the PHFU issue, we believe the new case is an appropriate proceeding in which to do so.

We do grant clarification of Order No. 32196 regarding the carrying charge and the issue of depreciation. Consistent with *Idaho Code* § 61-502A, we do not approve a carrying charge on the amount of the Transmission Line held for future use. As to depreciation, we agree with Rocky Mountain that “no depreciation of the investment occurs” on that portion of the plant held for future use. Petition at 15.

E. Labor Costs

Rocky Mountain believes that “the Commission erred by disallowing \$993,515 of known labor costs.” *Id.* at 15. The Company states that these are known costs that were put into effect in 2008 and 2009, “or known and measurable changes in expenses occurring during the 2010 test period.” *Id.* As a result, the Commission’s ruling “set the test period labor costs at an actual 2008 level for costs that will be incurred in 2011.” *Id.* at 16. Correcting this error would increase the Company’s labor expense by \$95,597 on an Idaho allocated basis. *Id.* at 20.

Rocky Mountain asserts that the State of Idaho awarded a 3% increase in state employee wages in 2009 and points to this assertion as evidence that the Company’s base wage increases were reasonable. *Id.* Rocky Mountain reiterated its argument made at the first technical hearing that its union employees are paid commensurate with a collective bargaining agreement that was negotiated and entered into prior to the current economic recession. *Id.* at 18.

In its Answer, Staff agrees with Rocky Mountain’s labor adjustment. Staff Answer at 2. According to Staff, it used the wages paid during 2008. *Id.* However, Staff did not adjust its wage calculation to account for “annualized” wage increases granted in 2008 to reflect those increases as if they were in place for a full 12 months. *Id.* Staff agrees with the Company that correcting this error would increase the Company’s wage expense by \$1,660,215 on a total Company basis, or \$95,597 on an Idaho-allocated basis. *Id.* Staff acknowledges that the annualized 2008 amount better reflects the January 1, 2009 level of salaries and wages. *Id.*

Staff did dispute the Company’s assertion that the State of Idaho awarded a 3% increase in wages to its employees in June 2009. *Id.* Staff stated that in 2009 there were only 838 State employees who received a raise, which is approximately 3% of all State of Idaho

employees. *Id.* at 2-3. In fact, Idaho Governor Butch Otter ordered state agencies to reduce payroll costs by 5% in 2009. *Id.* at 3. Finally, Staff cited 5.7581% as the appropriate wage and benefit and SERP allocation to Idaho. *Id.* Staff also agrees that the pension adjustment should be allocated using the “SO” factor. *Id.*

Commission Findings: The Commission denies Rocky Mountain’s Petition for Reconsideration challenging the exclusion of \$993,515 in labor expenses. We stand by our previous finding that while the Company may elect to award wage increases to its employees, “we will not allow recovery of that expense from its Idaho customers.” Order No. 32196 at 19. The Commission finds that Rocky Mountain has failed to present any evidence which would compel us to revisit the issue of wage increases. Instead, the Company has made spurious and false assertions regarding alleged wage increases received by state of Idaho employees during 2009.

The Commission grants Rocky Mountain’s Petition for Reconsideration pertaining to the annualization of Idaho jurisdictional labor expenses during the 2010 test year. Correcting this issue increases the labor expense by \$95,597 for Idaho. We also adjust the SERP allocation and use the “SO” factor for pensions. Therefore, we order that the calculation of the Company’s revenue requirement deficiency, laid out fully in Order No. 32196 at page 41, be adjusted to reflect these changes pursuant to *Idaho Code* § 61-624.

F. Wind Integration Costs

Next, the Company asks the Commission to reconsider its findings on wind integration costs. The Commission found that the Company failed to present a “verifiable study depicting its wind integration costs.” Order No. 32196 at 30. The Commission rejected the Company’s attempt to use integration costs developed for PURPA projects or BPA. While the Commission acknowledged that integration costs are real, the Commission concluded that the Company did not calculate its integration costs “with verifiable accuracy” and disallowed \$34.2 million from base net power costs. The Commission suggested the Company and other parties to study this issue and work toward a resolution. “Until then the Company must look to the [Energy Cost Adjustment Mechanism] to recover wind integration costs.” *Id.*

The Company argues that the Order failed to explain why the PURPA \$6.50 per MWh integration rate is applicable to qualifying facilities (QFs) but does not apply to “Company-owned or non-qualifying facilities.” Petition at 21. Rocky Mountain alleges that the

\$6.50 per MWh is a conservative estimate “compared to the Company calculated costs in the past and in the present . . .” and that the Commission erred in finding that the Company did not produce a verified wind study. *Id.* at 21-22. “[T]he appropriate remedy is not to disallow these [wind integration] costs but to set wind integration costs at \$6.50 per megawatt-hour. . . .” *Id.* at 22.

The ECAM process is not an “adequate alternative to recover 100% of wind integration costs” because the ECAM is not properly designed to capture these costs. *Id.* at 23. The ECAM allows only a 90% recovery. *Id.* The Company requests a hearing to provide additional evidence consisting of several different wind integration studies cited as a footnote to its Petition. *Id.*, fn. 10. Further, the Company believes that the “Commission incorrectly valued the amount of the exclusion” at \$34.2 million. *Id.* at 24. The correct amount is \$32.8 million, Addendum A of Exhibit No. 71 of the Company’s rebuttal case. *Id.*

Finally, the Company believes that the Commission erred in finding that Rocky Mountain neglected to recover certain wind integration costs from its wholesale transmission customers. *Id.* Rocky Mountain avers that it is prohibited by FERC from extracting a wind integration charge from its wholesale transmission customers as part of its Open Access Transmission Tariff (OATT). *Id.*

Staff agrees that the adjustments to net power supply costs for wind integration, CAL CAISO fees and Call Option Contracts were incorrectly allocated by the Commission using the “SE” factor. Staff Answer at 3. Staff acknowledges that the “SG” factor is consistent with the allocation of these costs in the Company’s case and should be used for these adjustments. *Id.*

Staff states that the removal of \$1,367,359 in wind integration costs appears as “a double removal” of those costs in the final Order. *Id.* However, this inadvertent removal was partially offset by an integration charge of \$285,007 that was included in the Company’s rebuttal for the “Top of the World” purchase contract. *Id.* According to Staff, inclusion of this charge is not consistent with the methodology approved for wind integration costs in net power supply cost. *Id.* Staff calculates the net amount of these adjustments as \$1,082,352. *Id.* Staff supports the Commission’s decision to exclude wind integration costs from base power supply costs. *Id.* After Reconsideration, Staff believes that the revised wind integration adjustment should be approximately \$33.1 million. *Id.*

Commission Findings: Rocky Mountain's Petition for Clarification of the disallowance of wind integration costs from base net power costs is partially granted. The Commission finds that Rocky Mountain has provided sufficient evidence on Reconsideration that \$1,082,352 should have been included in the Company's base net power costs.

We affirm our findings that the remainder of the wind integration costs be excluded from base net power costs. This adjustment will result in a new base power supply for ECAM purposes of \$1,024,788,968 (1,082,352+1,023,706,616) for the Company.

The Company is entitled to a recovery of its wind integration costs but the Company failed to adequately prove its own (as opposed to others' costs) integration costs. As we stated in our prior Order, the Company should develop a verifiable wind integration study that demonstrates its own costs and mitigates the "over recovery of [integration] costs." *Id.*

The Commission acknowledges the potential, referenced by Rocky Mountain in its Petition, p. 23, that a portion of the wind integration costs will evade recovery in the ECAM process. However, we find that if wind integration costs are included in base rates there is at least an equal risk of the Company experiencing a windfall attributable to the over recovery of those costs. Wind integration costs may be real but due to their amorphous and speculative nature they are often not amenable to precise calculation. In short, the Commission finds that in this instance it is fair, just and reasonable to ask the utility and not its customers to bear the risk of recovery.

G. Revenue Requirement Calculation

In its Order, the Commission accepted Staff's recommendation that interest not be included in the regulatory accounts. Order No. 32196 at 59-60. In its testimony, Staff "recommended no carrying charge on the regulatory asset." *Id.* Rocky Mountain seeks clarification that the interest referred to by Staff in its testimony pertains to a carrying charge and "not interest paid to or received from the IRS. . . ." *Id.*

The Company's Petition also included an attachment, as Addendum 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." *Id.* at 31. Rocky Mountain requests that the Commission fix these alleged errors on reconsideration, amounting to an increase of \$432,314 to the Company's annual revenue requirement. *Id.* Alternatively, the Company states that it will "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." *Id.*

Staff's Answer accepts five of the Company's proposed corrections revenue requirement. These five corrections (load control; use of the "SG" factor; wind integration adjustments; wage allocation of 5.7581%; and pension adjustment using the "SO" factor) will increase the Company's revenue requirement. Staff Answer at 3. Staff calculates the corrected revenue requirement as \$14,351,096 or 7.07%. *Id.* Staff agrees that the \$261,233 reversal related to the Idaho Irrigation Load Control Program was overlooked as well. *Id.*

Commission Findings: The Commission grants Rocky Mountain's Petition with regard to the revenue requirement established by the Commission in Order No. 32196. Upon further examination, it is evident that the Company's revenue requirement should be adjusted to reflect certain corrections regarding the Company's known labor expenses; the Idaho situs allocation of \$261,233 in costs associated with the Irrigation Load Control Program; and the five items in Addendum A to Rocky Mountain's Petition.

In its Petition, Rocky Mountain alleges that the Commission based its decision on "public perception" and allowed this ratemaking proceeding to become a "political referendum." Rocky Mountain Petition at 5. The Commission strongly disagrees with the Company's characterization of the ratemaking process. Our decisions are based on the evidence in the record- most of which was presented in the technical hearings. We are bound by statute and its own rules to provide the public with an opportunity to express their concerns pertaining to the Company's Application to increase its rates. Public participation in the process is essential, but not dispositive of the issues presented.

H. Return on Equity

Rocky Mountain argues that the Commission's award of 9.9% return on common equity (ROE) was erroneous because it invented a new standard based on "poor economic conditions." *Id.* at 31-32. The Company believes that the Commission's ruling violates the *Bluefield* and *Hope* decisions cited in its Order because, *inter alia*, it does not "authorize a return sufficient to maintain financial integrity and attract capital. . . ." *Id.* at 32. Rocky Mountain believes that market conditions (i.e., rising bond rates) have changed since the December 2010 hearing and therefore the Commission's decision will not allow the Company to recover a sufficient amount when the rates are actually in effect. *Id.* The ROE chosen by the Commission

is “below even the midpoint of its range . . .” and inappropriately relied on public comments regarding the state of the Idaho economy. *Id.* at 32-33.

Commission Findings: The Commission denies Rocky Mountain’s Petition regarding reconsideration of the ROE authorized in Order No. 32196. The Commission’s decision to allow a 9.9% ROE is based on expert testimony and exhibits available in the record. As we noted previously and Rocky Mountain acknowledged in its Petition, the Commission is mindful of its legal duties and obligations in accordance with the United States Supreme Court decisions in *Bluefield* and *Hope*. Order No. 32196 at 10. However, the direction that regulated utilities like Rocky Mountain are permitted to earn a return that is “sufficient to maintain financial integrity” and “attract capital under reasonable terms” does not lead, as the Company has suggested, to a guaranteed minimum rate of return.

Rocky Mountain claims that “the Commission chose an allowed ROE below even the midpoint of its range. . . .” Rocky Mountain Petition at 32. The Company’s bold claim fails to acknowledge that, in matters pertaining to the determination of appropriate rates of return for regulated utilities, the Idaho Supreme Court has declared that the Idaho Constitution allows the Commission a “broad zone of reasonableness” from which to establish appropriate rates of return (i.e., ROE):

The Constitution permits a ‘broad zone of reasonableness in rates of return, and we will not hold that any rate of return lower than the precise average rate of return of comparable companies or beneath the rate of return that expert witnesses testify is necessary under the ‘capital attraction’ or ‘comparable earnings’ test is necessarily beyond the ‘broad zone of reasonableness permitted by the Constitution.

Intermountain Gas Co. v. Idaho Public Utilities Comm’n, 97 Idaho 113, ___, 540 P.2d 775, ___ (1975). As we observed in our prior Order, the authorized 9.9% ROE was within the ranges proposed by Staff and Monsanto witnesses. Order No. 32196 at 11. Thus, our 9.9% is within the “broad zone of reasonableness” mandated by the Idaho and U.S. Supreme Courts.

In its ratemaking decisions, the Commission is not bound “to the service of any single formula or combination of formulas. . . .” *Industrial Customers of Idaho Power v. Idaho PUC*, 134 Idaho 285, 290, 1 P.3d 786, 791 (2000) (quoting *City of Los Angeles v. Public Utilities Comm’n*, 542 P.2d 1371, 1383 (Cal. 1975) (citation omitted)). Rather, once a fair hearing is

given and proper findings are made the Commission is free to make “pragmatic adjustments which may be called for by particular circumstances. . . .” *Id.*

The Commission is fully aware of the benefits and limitations of the Energy Cost Adjustment Mechanism (ECAM) and PHFU. Rocky Mountain Petition at 32. Nevertheless, the Commission finds that Company concerns are overstated. As we noted earlier in this Order, Rocky Mountain has not been permanently deprived of the opportunity to obtain a full recovery on its investment in the Transmission Line.

FINDINGS OF FACT ON CONCLUSIONS OF LAW

Rocky Mountain is an “electrical corporation” and “public utility” according to the definition of those terms found in *Idaho Code* §§ 61-119 and 61-129, and is therefore subject to the Commission’s jurisdiction.

As set out in greater detail above, the Commission finds that certain adjustments to final Order No. 32196 are warranted and that Order is amended to reflect the adjustments pursuant to *Idaho Code* § 61-624.

With the changes reflected in the body of this Order, we conclude that the adjusted rates are fair, just and reasonable.

ORDER

IT IS HEREBY ORDERED that CAPAI’s Petition for Clarification and/or Reconsideration is partially granted. The Commission orders that the parties address the duration of the funding for Low-Income Conservation Education Programs will be addressed in Rocky Mountain Power’s next general rate case.

IT IS FURTHER ORDERED that Monsanto’s Petition for Clarification is granted. The Commission orders that the \$17 million valuation for Monsanto’s interruptible products established in Order No. 32196 is subject to revision as are the Schedule 400 base firm rates.

IT IS FURTHER ORDERED that the \$17 million interruptible credit is applicable only to the first 162 MW of Monsanto’s billing demand and not the entire Monsanto load. If Monsanto and Rocky Mountain are unable to agree to a new Energy Sales Agreement, the Commission orders Rocky Mountain to submit a new Schedule 400 that includes the provisions of the previous Commission approved contract between the parties. The new Schedule 400 tariff shall be redacted in a manner so as to adequately preserve the confidentiality of the parties involved.

IT IS FURTHER ORDERED that Rocky Mountain Power's Petition for Clarification and Reconsideration is granted in part and denied in part. The Commission denies Reconsideration on the following issues: (1) the 27% of the costs of the Populus to Terminal Transmission Line placed into plant held for future use; (2) carrying charges on the 27% of plant held for future use; and (3) the return on equity of 9.9%.

IT IS FURTHER ORDERED that Rocky Mountain's Petition is granted in part and denied in part on the following issues: (1) the exclusion of wind integration costs from base net power costs; (2) the exclusion of certain labor expenses; and (3) the Addendum A issues regarding the revenue requirement discussed above. The Commission orders that an additional \$1,082,352 shall be included as part of Rocky Mountain Power's base net power costs. The inclusion of this amount shall result in a new base power supply for ECAM purposes of \$1,024,788,968 for the Company

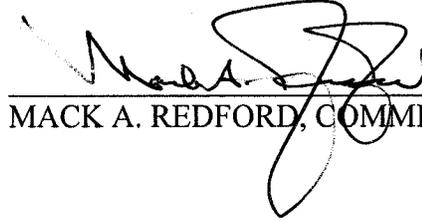
IT IS FURTHER ORDERED that \$95,597 on an Idaho jurisdictional basis in known labor expenses, and \$261,233 pertaining to the Idaho Irrigation Load Control Program shall be included as part of the revenue requirement calculation for the Company. The Commission denies reconsideration on the issue of the Company's wage increases to its employees for 2009-2010. Rocky Mountain's corrected revenue requirement shall be \$14,351,096 or a 7.07% overall increases in rates.

IT IS FURTHER ORDERED that Rocky Mountain file conforming tariff schedules to reflect the adjusted revenue requirement in this case. The revised rates shall be spread across the Company's various schedules and customer classes in conformance with Attachment A, attached to this Order. The rates contained in these revised tariffs shall be effective seven days from the service date of this Order.

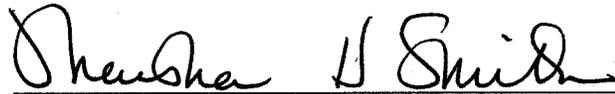
THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. PAC-E-10-07 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. *See Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 18th
day of April 2011.

PAUL KJELLANDER, PRESIDENT*

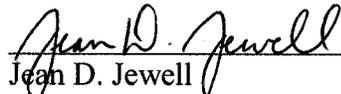


MACK A. REDFORD, COMMISSIONER



MARSHA H. SMITH, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:PAC-E-10-07_np_Reconsideration

* Commissioner Kempton participated in the deliberation of this matter and concurred in this Order prior to the end of his term.

CASE NO. PAC-E-10-07
 IDAHO PUBLIC UTILITIES COMMISSION
 COMPARISON OF PRESENT AND
 COMMISSION APPROVED RATE STRUCTURE
 AND RATES

Line No.	Description (1)	Sch. (2)	Billing Component (3)	Present (4)	Commission Approved (5)
Residential Sales					
1	Residential Service	1	Minimum Charge	\$10.64	none
2			Customer Charge	none	\$5.00/month
3			<u>May-Oct</u>		
4			First Block kWh Rate	10.4093	0-700: 9.6018
5			Second Block kWh Rate	10.4093	> 700: 12.9624
6			<u>Nov-Apr</u>		
7			First Block kWh Rate	8.015	0-1,000: 7.3496
8			Second Block kWh Rate	8.015	> 1,000: 9.9220
9	Residential Optional TOD	36	Customer Charge	\$13.63	\$14.00
10			May-Oct On-Peak	11.3497	12.2191
11			May-Oct Off-Peak	3.873	4.1697
12			Nov-Apr On-Peak	9.695	10.4377
13			Nov-Apr Off-Peak	3.5447	3.8162
Commercial & Industrial					
14	General Service - Large Power (a)	6, 6A	Cust. Charge (Secondary)	\$30.97	\$33.00
15			Cust. Charge (Primary)	\$97.91	\$99.00
16			Demand (May-Oct) (KW)	\$11.34	\$12.22
17			Demand (Nov-Apr) (KW)	\$9.33	\$10.05
18			kWh Rate	3.138	3.3805
19			Voltage Discount	(0.53)	(0.57)
20					
21	General Service - High Voltage (a)	9	Customer Charge	\$301.10	\$324.00
22			Demand (May-Oct) (KW)	\$7.88	\$8.48
23			Demand (Nov-Apr) (KW)	\$5.96	\$6.41
24			kWh Rate	3.2519	3.5006

(a) Rocky Mountain Power proposes a greater increase in demand components than energy components. The Commission approves a uniform increase to all components.

CASE NO. PAC-E-10-07
 IDAHO PUBLIC UTILITIES COMMISSION
 COMPARISON OF PRESENT AND
 COMMISSION APPROVED RATE STRUCTURE
 AND RATES

Line No.	Description (1)	Sch. (2)	Billing Component (3)	Present (4)	Commission Approved (5)
25	Irrigation (a)	10	In-Season (June 1-Sept 15)		
26			Small Cust. Charge	\$11.74	\$12.00
27			Large Cust. Charge	\$34.14	\$35.00
28			Demand (KW)	\$4.55	\$4.69
29			First 25,000 KWh	7.1315	7.3477
30			Next 225,000 KWh	5.275	5.4349
31			All add'l KWh	3.9095	4.04116
32			Post Season (Sept 16- May 31)		
33			Customer Charge	\$18.08	\$19.00
34			KWh Rate	6.0315	6.2144
35	Comm. & Ind. Space Heating	19	Customer Charge	\$20.10	\$21.00
36			KWh Rate (May-Oct)	7.8457	8.2953
37			KWh Rate (Nov-Apr)	5.8133	6.1465
38	General Service	23, 23A	Customer Charge Secondary	\$13.72	\$14.00
39			Customer Charge Primary	\$41.16	\$43.00
40			KWh Rate (May-Oct)	7.6737	8.0585
41			KWh Rate (Nov-Apr)	6.6985	7.0345
42			Voltage Discount	(0.3706)	(0.3892)
43	General Service Optional TOD	35, 35A	Customer Charge Secondary	\$54.75	\$59.00
44			On-Peak Demand (KW)	\$13.48	\$14.52
45			KWh Rate	4.0167	4.3260
46			Voltage Discount	(0.69)	(0.74)

(a) Rocky Mountain Power proposes a greater increase in demand components than energy components. The Commission approves a uniform increase to all components.

CASE NO. PAC-E-10-07
 IDAHO PUBLIC UTILITIES COMMISSION
 COMPARISON OF PRESENT AND
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 AND RATES

Line No.	Description	Sch.	Billing Component	Present	Commission Approved
	(1)	(2)	(3)	(4)	(5)
47	Special Contract 1 (b)	400	Customer Charge	\$1,227.00	\$1,345.00
48			Demand (KW)	\$12.27	\$13.50
49			kWh Rate	2.381	2.6180
50			Excess KVar	\$0.75	\$0.82
51	Special Contract 2	401	Customer Charge	\$341.33	\$375.00
52			<u>May-October</u>		
53			HLH kWh Rate	2.808	3.0820
54			LLH kWh Rate	2.106	2.3110
55			Demand (KW)	\$13.60	\$14.93
56			<u>November-April</u>		
57			HLH kWh Rate	2.336	2.5630
58			LLH kWh Rate	2.106	2.3110
59			Demand (KW)	\$10.97	\$12.04
60	<u>Public Street Lighting</u>	7, 11, 12	All Components	N/A	No Change

(b) Does not contain rate adjustments due to interruptibility credit.