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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Intervenor Monsanto Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
ROCKY MOUNTAIN POWER FOR)	Case No. PAC-E-12-03
AUTHORITY TO INCREASE RATES BY)	
\$2.6 MILLION TO RECOVER DEFERRED)	BRIEF IN SUPPORT OF
NET POWER COSTS THROUGH THE ENERGY)	PETITION FOR
COST ADJUSTMENT MECHANISM)	RECONSIDERATION
_____)	

COMES NOW Petitioner Monsanto Company (“Monsanto”) through counsel and hereby submits this Brief in support of its Petition for Reconsideration of IPUC Order No. 32507.

BACKGROUND

On September 29, 2009, the Commission issued Order No. 30904 approving the implementation of an annual Energy Cost Adjustment Mechanism (“ECAM”) by PacifiCorp, dba Rocky Mountain Power (“Company”). Effective January 1, 2011, Monsanto’s and Agrium’s loads are included for the first time in the calculation of the ECAM balances, pursuant to a Stipulation entered into and approved in Order No. 30904, Case No. PAC-E-08-08. Pursuant to a Stipulation approved by the Commission in Order No. 32432 in Case No. PAC-E-11-12, Monsanto and Agrium’s share of the Commission-approved 2011 ECAM balances will be amortized and collected over a three-year period.

This case was initiated on February 1, 2012, when the Company submitted its Application to increase its annual ECAM rates to recover an additional \$18.1 million in the

deferred balance account which included \$7.196 million from Monsanto and \$510,600 from Agrium. To recover these ECAM deferral costs the Company proposes to adjust Schedule 94 (Energy Cost Adjustment Rates) and amortize and collect Monsanto and Agrium in a share of the Commission-approved 2011 ECAM balances over a three-year period.

Comments were filed by Monsanto and Staff proposing several adjustments to the ECAM filing. The Company's reply agreed with Staff and Monsanto that the line loss factor used to adjust Idaho actual loads from sales to input level was incorrect and should properly be based on a 3.605% line loss factor. The Company also agreed with Monsanto's position that replacement energy consumed by Monsanto when it buys through curtailment events rather than physically curtail its load should not be part of the ECAM. However, the Company's Reply Comments disagreed with Monsanto's adjustment that the 3.605% line loss factor should also be made to base loads as well as actual loads and disagreed with Monsanto's wind integration adjustment.

On March 30, 2012, Monsanto attempted to file Reply Comments for the purpose of further addressing line loss adjustments and also present an excess outages adjustment which came to light by reason of Company Data Responses received after the date Monsanto's original Comments were filed. However, the Commission refused to consider Monsanto's Reply Comments stating as follows:

"On March 30, 2012, Monsanto filed 'Reply' to Rocky Mountain's Reply Comments. Monsanto's 'Reply' was not considered because it was filed after our deliberation in this matter. Moreover, our procedural rules do not provide for a party to respond to a reply. See Rule 202."

See, Order No. 32507 at 9.

ORDER NO. 32507

On March 30, 2011, the Commission issued Final Order No. 32507 together with an *Errata to Order No. 32507* dated April 3, 2012 (the "Order"). In pertinent part the Order:

1. Found it appropriate to adjust the transmission line loss factor to 3.605% used to adjust Idaho actual loads from sales, based on agreement of the parties. *Id.* at 9.
2. Declined to accept Monsanto's proposed adjustment to apply the same 3.605% line loss to its Base Load stating: "The Commission finds that once Monsanto's Base Load is established in a general rate case and embedded in Base Rates, it

should not be changed in the ECAM.” *Id.* 8-9.

3. Agreed with Monsanto that replacement energy consumed by Monsanto when it buys through curtailment events should not be part of the ECAM and “should be removed from the actual Monsanto and Idaho jurisdictional loads, as well as subsequent Rocky Mountain Power ECAM filings.” *Id.* at 10.
4. Approved Monsanto’s proposal to remove the costs of integrating wind resources from the Company’s ECAM filing, but only that portion associated with intra-hour charges. *Id.* at 10.
5. Declined to implement Monsanto’s proposal to offset any potential amount of liquidation damages paid to the Company by its construction contractors from the Company’s net power costs finding that “the Company’s current approach of deducting the amount of liquidated damages from its plant-in-service account is a fair and effective approach to ensure that the ratepayers are not subsidizing a potential windfall for the Company.” *Id.* at 10.

The Order summarized the results of the adjustments as follows:

“Based upon the Commission-approved adjustments sent out above, Rocky Mountain is authorized to recover \$17,942,526 in ECAM costs for the deferral period (Tariff Customers \$10,275,984; Agrium \$510,185; and Monsanto \$7,156,358).” *Order* at 11.

Accordingly the Commission approved Tariff Schedule 94 as adjusted effective April 1, 2012.

PETITION FOR RECONSIDERATION

Monsanto petitions for reconsideration pursuant to Rule 331.01 of the IPUC Rules of Procedure which provides:

“**Petition for Reconsideration.** Within 21 days after the service date of issuance of any Final Order, any person interested in a Final Order or any issue decided in a Final Order of the Commission may petition for reconsideration. Petitions for Reconsideration must set forth specifically the ground or grounds why the Petitioner contends that the Order or any issue decided in the Order is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quality of evidence or argument the Petitioner will offer if reconsideration is granted. See §61-626, Idaho Code.”

Monsanto does not request an evidentiary hearing, instead that its Petition be decided based upon the file and record before the Commission, including the Direct Testimony of Kathryn E. Iverson and Mark T. Widmer filed herewith.

Monsanto respectfully requests reconsideration and adjustments to the ECAM rates applicable to Monsanto and Agrium based on two fundamental issues. First, Monsanto requests that the Commission properly and accurately split the monthly Idaho jurisdictional base loads between Monsanto, Agrium and the remaining tariff customers, together with adjustments to the monthly actual loads to account for additional losses as described in the Testimony and Exhibits of Iverson. Second, Monsanto requests that the Commission make an adjustment for excessive forced outages as described in the Testimony and Exhibits of Widmer. Without consideration of this new evidence which was not previously considered by the Commission, the Order would give rise to ECAM rates in Tariff Schedule 94 for Monsanto and Agrium that do not meet the regulatory fair, just and reasonable standard and therefore unlawful and erroneous as a matter of law. Additionally, Monsanto will recommend changes to the Commission's procedure for handling ECAM filings because the compressed time schedule presented by the modified procedure used in this filing impaired due process and did not afford Monsanto with a reasonable opportunity to conduct discovery, make thorough analysis and provide detailed Comments given the significant dollar amounts and complexity involved in the ECAM filing, necessitating this Petition for Reconsideration.

1. THE ACTUAL AND BASE LOADS USED BY THE COMPANY SHOULD BE CORRECTED.

In Case No. PAC-E-10-07, the Idaho jurisdictional monthly base loads were established only as a total Idaho jurisdictional number, and not split by customer class. *McDougall Ex. 2, p. 10.14, Iverson, Di, p. 5, lines 7-18.* The ECAM balances for Monsanto and Agrium must be tracked separately through their three-year amortization periods. *See, Duvall Di, p. 10.* However, since Case No. PAC-E-10-07 did not split Mr. McDougal's monthly Idaho jurisdictional base loads between customers, it is critical to develop a proper method to do so in this ECAM proceeding which the Company has not done.

The Company's filing and the Commission's Order results in the use of a loss factor of 3.605% on the actual loads and 9.884906% on base loads for Monsanto and Agrium. The consequence is an ECAM calculation for Monsanto and Agrium that is neither fair, just or reasonable. *See, Iverson, Di, p. 8, lines 4-13.* Ms. Iverson's testimony describes corrections to

the split of the base load which is an improvement upon the Company's since it: (1) removes replacement energy from the tariff customers' base load, (2) is based on customer loads found in Attachment A to Order No. 32196 in Case No. PAC-E-10-07, (3) reflects the appropriate losses to all customer classes, and most importantly, (4) allocates the "extra" losses for moving wholesale sales to all customer classes on the basis of their energy at input. *See, Iverson, Di, p. 11, lines 7-21.*

While the Company corrected the transmission loss factor for Monsanto and Agrium to 3.605% for actual loads and properly removed replacement energy from both the jurisdictional total as well as Monsanto, the Company's actual load calculations for purposes of the ECAM are still incorrect. This is because the base loads include "extra" losses associated with moving energy for wholesale sales. Since base loads have been increased upwards for those "extra" losses, the actual sales each month must likewise be adjusted to account for the "extra" losses to ensure we are comparing apples to apples. *See, Iverson Di, p. 12, lines 9-13.*

Based upon the foregoing adjustments to base load and actual loads as described in greater detail in the Testimony and Exhibits of Ms. Iverson, the ECAM ending balances should be reduced \$14,523 for tariff customers, \$407,631 for Monsanto, and \$41,402 for Agrium, a total of \$463,556. *See, Iverson Di, p. 13, Table 1*

2. EXCESSIVE FORCED OUTAGES ADJUSTMENT.

The Commission's Order No. 32460 dated February 15, 2012, gave notice of the Company's Application, notice of modified procedure with a Comment deadline of March 13, 2012, and established a February 28, 2012 deadline to file a Petition to Intervene. Even though Monsanto made an early filing of its Petition to Intervene on February 13, 2012, normal delays were experienced in getting the Company's complete unredacted filings and supporting workpapers which required the Company's standard Protective Agreement be secured, circulated and signed by Monsanto's consultants. A review of these filings by Monsanto consultants gave rise to questions addressed in Monsanto's First Data Requests dated March 1, 2012. The Company's Response filed March 13, 2012, indicated a possible problem with boiler tube failure forced outages, giving rise to Monsanto's Second Data Requests filed March 15, 2012, to obtain more information to determine whether a forced outage adjustment was appropriate. Monsanto's ECAM Comments were filed on March 19, 2012, to meet the March 20, 2012 Comment

deadline. The Company's Response to Monsanto's Data Request 33 filed on March 20, 2012, gave rise to the proposed excess outage adjustment after Monsanto's Comments had already been filed. Monsanto attempted to present the excess outage adjustment in its March 30, 2012 Reply Comments, but they were not considered by the Commission because it was filed after deliberations in the matter and because the procedural rules do not provide for a party to respond to a reply. *Order at 9, fn 5*. Accordingly, Monsanto's proposed adjustment for excess outages is presented for the first time in the Petition for Reconsideration through the Testimony and Exhibits of Mark T. Widmer.

PacifiCorp's forced outages significantly exceed industrial averages, is not representative of prudent operations and warrants adjustments. As demonstrated by Mr. Widmer's Table 1, PacifiCorp's outages exceed industry averages by a range of approximately 219% to 489%. *See, Widmer Di, p. 4*. As a result the Commission should disallow recovery of the excess forced outages resulting in reductions in the ECAM balance for Idaho retail customers of \$303,072, for Monsanto in the amount of \$173,703, and for Agrium in the amount of \$6,601. *See, Widmer Di, p. 5, lines 5-10, Exhibit 207 (MTW-2)*.

3. PROCEDURAL RECOMMENDATIONS FOR FUTURE ECAM FILINGS.

The Commission's February 15, 2012 Order No. 32460 giving notice of the application and modified procedure established a comment deadline of March 13, 2012, less than a month later. Even though this was extended by one week to March 20, 2012, upon motion of Monsanto, the compressed modified procedure schedule imposed a heavy burden and unreasonable constraint on Monsanto's ability to conduct discovery and thoroughly review and carefully analyze the ECAM filing. This was particularly true given the size and complexity of the ECAM adjustment and the fact that Monsanto became subject to the ECAM for the first time in this case. While Monsanto could and perhaps should have objected to modified procedure and requested a full hearing, Monsanto did not do so based on the understanding that the Company and Commission desired to adhere to an expedited schedule to ensure that the ECAM adjustment went into effect April 1, 2012.

To address the timing and procedural problems posed by modified procedure, Monsanto recommends a different procedure and expanded time frame to decide future ECAM filings. Monsanto recommends that the Commission convene a workshop or other appropriate

collaborative process to address technical aspects of the next ECAM filing if the Commission intends to continue to rely upon modified procedure. If not resolved by the Commission's Order on Monsanto's Petition for Reconsideration, the issues raised pertaining to the proper split of jurisdictional load into the three customer classes (Monsanto, Agrium and tariff customers), the handling of "extra" losses associated with moving wholesale energy, the questions concerning excess outages, and other complex issues should be reviewed and addressed in advance of the ECAM filing. This is reasonable and necessary to permit thorough analysis and an adequate opportunity to provide detailed comments. Alternatively, Monsanto recommends that an expanded schedule be set to process future ECAM filings to better address due process concerns and affords sufficient time to analyze the filing, conduct necessary discovery, make a thorough analysis and provide detailed comments given the significant dollar amounts and complexity of the ECAM filings.

CONCLUSION

Monsanto's Petition for Reconsideration should be granted based upon the foregoing and the additional testimony and evidence presented. The Commission should adopt Monsanto's proposed adjustments to the ECAM balances based on corrections to base load and actual loads to reduce tariff customers' balances in the amount of \$14,523, Monsanto's by \$407,631, and Agrium's by \$41,402, a total of \$463,556. Additionally, the forced outage adjustments should be accepted to further reduce the ECAM balances of tariff customers by \$303,072, for Monsanto in the amount of \$173,773, and for Agrium in the amount of \$6,601. The Commission's prior Order No. 32507 and Tariff Schedule 94 should be modified accordingly.

RESPECTFULLY SUBMITTED this 19th day of April, 2012.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By  _____
RANDALL C. BUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of April, 2012, I served a true, correct and complete copy of the foregoing document, to each of the following, via the method so indicated:

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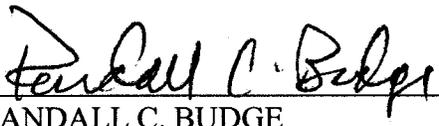
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