

2. Regarding its request for additional detail, the Commission identified seven (7) categories of work by CAPAI's legal counsel into which CAPAI could specify the number or percentage of its overall hours worked. Those categories included: 1) reviewing and investigating the Application, 2) discovery, 3) participating in the settlement conferences, 4) the discovery dispute (Motion to Compel), 5) witness/hearing preparation, 6) the hearing, and 7) preparing the intervenor funding petition and reply." *Id.* The Commission reserved its final ruling on CAPAI's funding petition and directed CAPAI "to submit a more particularized statement of costs and fees." *Id.*

3. On November 5, 2013, CAPAI filed a Supplement to Petition for Intervenor Funding providing the Commission with the additional detail required, breaking CAPAI's expenses out into the seven specific categories identified by the Commission in Order 32910. In its Supplement, CAPAI noted that the information requested by the Commission and provided by CAPAI was, by necessity, somewhat subjective because CAPAI and its legal counsel could not have anticipated the Commission's request for greater specificity than that required by procedural rule 162 of the Commission's procedural rules [*IDAPA 31.01.01.162*] pertaining to the required contents of intervenor funding petitions and could not have anticipated the seven specific categories identified by the Commission in its final order.

4. On December 6, 2013, the Commission issued Order No. 32946 awarding CAPAI the sum of twelve thousand dollars (\$12,000.00) in intervenor funding. In explaining its ruling, the Commission found that "not all of CAPAI's efforts materially contributed to the effective resolution of this case, including but not limited to the 'costs associated with CAPAI's Motion to Compel and associated pleadings.'" *Order No. 32946 at p. 3 [quoting Rocky Mountain Power's Opposition to Intervenor Funding]*.

5. Order No. 32946 concluded with the following statement of guidance to CAPAI regarding how its legal counsel should structure his billing for matters pertaining to CAPAI as it pertains to future petitions for intervenor funding:

We urge counsel to develop or obtain a system to more accurately track and document his professional services related to Commission proceedings. Such actions would greatly assist the Commission in evaluating and expediting the resolution of future requests for intervenor funding.

Id.

II. CLARIFICATION

A. Introduction:

For the reasons set forth below, CAPAI seeks clarification of the Commission's statement that it urges counsel to "develop or obtain a system to more accurately track and document his professional services related to Commission proceedings." *Id.* Regarding the Commission's apparent perspective that CAPAI's legal counsel does not already maintain such a system, and without waiving any confidential attorney-client information, CAPAI offers the following.

B. Explanation of CAPAI Legal Counsel's Tracking/Documentation of Professional Services:

CAPAI's legal counsel tracks and documents his professional services for PUC-related matters through the monthly creation of two separate documents, an "invoice" and a "statement." As counsel works throughout any given day, he maintains temporary, hand-written notes of the tasks he performs and the amount of time spent on each task. These temporary notes are then converted at day's end to a formal, type-written invoice entry. Counsel breaks down the tasks he completes in increments of one-tenth of an hour, a customary practice within the local, private-sector legal profession. Because it would create an invoice of unmanageable size for counsel to include the time for every single task completed during a given day on that day's invoice entry, CAPAI'S PETITION TO INTERVENE

he simply totals the work done at the end of each day and includes that amount in the final monthly invoice which is then sent to the client. A written description of the actual tasks completed throughout every day worked, however, does appear in the invoice.

CAPAI's invoices are often several pages long. Counsel's invoice entries include, among many other things, the details of internal discussions with CAPAI personnel including litigation and client strategy. Counsel maintains invoices of considerable detail for numerous reasons not only related to intervenor funding petitions. First and foremost, the client needs to understand precisely what work counsel is performing and billing them for budgeting and strategy/objective reasons. Furthermore, CAPAI is a unique intervenor in that its activities are somewhat regulated and restricted by the federal government, it is essential that CAPAI's executive director and billing officer fully understand the nature of counsel's work on every case. Finally, detailed invoices serve as a summary of work performed in a case, the date a particular meeting or telephone call occurred and what was discussed, and other useful information.

To create his monthly billing statement, counsel simply takes the total hours worked as stated in the invoice and transfers that figure to the statement where it is multiplied by counsel's stated hourly rate to calculate total attorney fees. Counsel's stated hourly rate is \$150.00 which, incidentally, is considerably below his non-public interest rate, market rate for his experience and expertise, and the Commission's intervenor funding rate of \$185.00 for the purposes of Case No. IPC-E-13-16, Order No. 32846 at p. 18. Finally, the statement adds any expert fees and out-of-pocket expenses including significant copy or postage costs for a total expense for the case. The statement is typically a one page document.

C. Specific Billing System Desired by Commission:

Counsel respectfully submits, therefore, that there is no failure on his part to fully and thoroughly track and document his professional services. Any perspective that the Commission might have in this regard would understandably be the result of attorney-client confidentiality, the fact that procedural rule 162 does not require the disclosure of timesheets/ invoices, and the fact that the Commission has never specifically required timesheets/invoices or expressed any concerns of the nature voiced in this case regarding counsel's billing practices. Thus, the Commission has never seen nor been provided with counsel's method of tracking and documenting his professional services. Counsel is unaware of any method of tracking and documenting professional services that can possibly be more detailed than actually tracking every single task performed throughout a given day, documenting those completed tasks in a written invoice, and totaling the time worked every single day of the month on which work was completed. CAPAI respectfully seeks clarification as to whether the Commission has a specific alternative system of tracking and documenting professional services.

D. Confidentiality:

Because CAPAI typically seeks funding only in formal, contested case proceedings, *[Rule 25, IDAPA 31.01.01.025]* the timesheets maintained by its legal counsel will be similar in content to timesheets maintained by any attorney in any litigated matter and, if disclosed, would reveal litigation strategy and other sensitive information such that disclosure of it would undoubtedly violate CAPAI's rights to the attorney-client privilege and might well constitute a violation of the Rules of Professional Responsibility adopted and enforced by the Idaho State Bar Association. CAPAI respectfully seeks clarification, therefore, as to whether the Commission is requiring the inclusion of CAPAI's actual timesheets to future funding petitions and, if so, what specific information those timesheets must contain.

E. Are Criteria Required in Order No. 32910 Applicable to Future Funding Petitions:

CAPAI understands that the Commission felt that it needed additional information based on the unique aspects of the current proceeding and attempted to provide that information to the best of its ability. The seven categories identified in Order No. 32910 are, obviously, specific to this case and CAPAI assumes that the Commission is not suggesting that these same seven criteria form the basis for the future time-keeping system urged by the Commission. For example, prior to the current proceeding, CAPAI has never found it necessary to file a motion to compel a utility to comply with discovery requests. CAPAI has no reason to expect that such motions will become common in the future. CAPAI respectfully seeks clarification as to whether its interpretation of Order 32946 in this regard is accurate.

F. Equality in Enforcement:

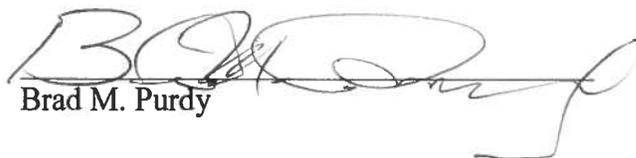
CAPAI notes that the only administrative rule currently in existence that identifies the information required to be included in a funding petition is contained in procedural rule 162 and that there has not been any contention that CAPAI has not complied with that rule. If it is the Commission's intention to expand upon that administrative rule, then CAPAI respectfully seeks clarification as to whether any funding petition content requirement imposed on CAPAI will be imposed equally on all intervenors seeking funding.

G. Conclusion:

CAPAI desires to provide the Commission with whatever non-privileged information it can and counsel will certainly to amend the nature of future funding petitions if he is provided with clear guidance on how to accomplish this. Though CAPAI does not wish to presume to know what the Commission deems necessary, one possible means of providing greater detail includes maintaining a shadow set of timesheets for funding petition purposes from which all

privileged information has been removed or redacted. Regardless, should the Commission deem it worthy, CAPAI would fully cooperate in any manner of collaborative discussion regarding what is required to be included in funding petitions outside of that stated in Rule 162.

DATED, this 30th day of December, 2013.



Brad M. Purdy

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 30th day of December, 2013, served a copy of the foregoing document on the following by electronic mail and/or U.S. mail, first class postage.

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