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**Comments of the Snake River Alliance
On Rocky Mountain Power's 2013 Application to Initiate Discussions With
Interested Parties on Alternative Rate Plan Proposals**

September 13, 2013

INTRODUCTION

The Snake River Alliance appreciates the opportunity to submit these comments to the Idaho Public Utilities Commission in docket PAC-E-13-04, PacifiCorp dba Rocky Mountain Power's Application to Initiate Discussions with Interested Parties on Alternative Rate Plan Proposals.

The Snake River Alliance is an Idaho-based non-profit organization, established in 1979 to address Idahoans' concerns about nuclear waste and safety issues. In early 2007, the Alliance expanded the scope of its mission by launching its Clean Energy Program. The Alliance's energy work includes advocacy for renewable energy resources in Idaho; expanded energy efficiency, demand response and other demand-side management programs offered by Idaho's regulated utilities and the Bonneville Power Administration; and development of local, state, regional, and national initiatives to advance sustainable energy policies.

The Alliance participated in all settlement negotiations in this case, and has signed the settlement agreement that is before the Commission. We believe the outcome of those negotiations is in the best interests of the customers of Rocky Mountain Power's Idaho customers. The Alliance appreciates and respects the spirit of cooperation on the part of all parties in this case.

PROCEDURAL ISSUES

Not being represented by counsel in this case, the Alliance was prohibited from commenting on the settlement and on related matters raised during the Sept. 11, 2013, technical hearing. However, the Alliance did provide oral comments during the course of settlement negotiations about the proposed stipulation and also on the procedure that led to the stipulation. The Alliance shares many of the concerns raised at the Sept. 11 meeting by the Community Action Partnership of Idaho [CAPAI] as they pertain to the process in this case. Nothing in these comments compromises Commission rules governing the confidential negotiations that led to settlement in this case.

The Commission may recall that in IPC-E-09-30, a similar issue arose in a case titled: "Application of Idaho Power Company for an Accounting Order to Amortize Additional Accumulated deferral Income Tax Credits and an Order Approving a Rate Case Moratorium."

That case evolved into a rate case, and our concerns here are similar to the concerns we raised in our comments submitted to the Commission on Dec. 22, 2009, in IPC-E-09-30.

In that case and in Commission Order 30978, the Commission took notice of the Alliance's concerns and those expressed by CAPAI and the Idaho Conservation League. While SRA and ICL both supported the settlement in IPC-E-09-30, both declined to sign the settlement agreement due to concerns about the process that led up to it. As in this case, we supported the settlement stipulation in IPC-E-09-30.

Commission Order 30978 referenced our concerns and those of our colleagues:

"It is apparent the concerns about the process arise only because meetings were initiated, leading to settlement discussions, prior to, rather than after, the time Idaho Power filed a rate case application..."

"On this record, although it was unusual, the Commission cannot find that the process was inadequate or improper. We encourage the Company, Staff and others to be inclusive in future discussions and will not hesitate to require full evidentiary hearings if we deem it necessary to achieve broad participation."

In that case, what began as a seemingly obscure tax-related application blossomed into a full-blown rate case that included negotiations among parties [including the Alliance] without an application for a general rate case having been filed. We are in a similar situation here but with a slight twist: A rate case settlement was agreed to not only without a utility filing a general rate case application, but also without notice to the public that negotiations would occur. While the outcome of the negotiations was in the Alliance's view favorable, the process that led to that outcome was, in our view, deficient, as we pointed out in our comments to the Commission at the time:

"The Alliance and its members believe a docket of this significance might have been better handled through a more transparent process rather than being limited to meetings between the company and select customer groups. We appreciate that settlements in general rate cases are generally preferable to protracted and expensive formal proceedings. However, we find it somewhat awkward that a settlement was reached in the absence of a filing and without the benefit of input from any interested party choosing to provide it."

The Idaho Conservation League expressed similar concerns in its comments that were also filed with the PUC in IPC-E-09-30 on Dec. 22:

“ICL does not necessarily advocate that the Commission reject the application but seeks clarification on when public notice and the opportunity for the public to participate should be required. Specifically, ICL questions how the decision on who could be a party to these negotiations as made and which IPUC Rules of Procedure apply to this situation...”

It is unclear which IPUC Rules of Procedure apply to this situation. IPUC Rules of Procedure 271-280 govern settlements, but the rules only refer to ‘settlements in formal proceedings.’ If there was no docket filed prior to the negotiations, is this a formal proceeding? If this is not a formal proceeding, which IPUC Rules of Procedure Apply?”

Commission Order No. 30978 does not specifically address the question posed by ICL above.

The Commission and its staff are in a difficult position in this case, but the Alliance agrees with CAPAI’s testimony that the events in this case, like those in the Idaho Power case referenced above, may be a sign of a trend that is troublesome in that it may have the inadvertent effect of reducing transparency in a case as important as this and also curtail public participation in commenting on or even understanding some of the basic issues that led to a settlement.

As a signee to the settlement agreement and a party to this case, the Alliance finds itself in the unusual position of being a public policy advocate that participated and agreed to a settlement but due to Commission rules dealing with settlement negotiations cannot adequately explain to its membership why it agreed to the settlement. The alternative – not participating in negotiations – is not one that is realistic for an organization that represents public interests in electric utility regulatory cases such as this.

The Alliance was not invited to participate in negotiations in this case and, like CAPAI, petitioned to intervene only after learning that such negotiations were taking place. Like CAPAI, the Alliance is growing increasingly concerned that important dockets such as rate cases are essentially being negotiated in a setting not accessible to utility customers, unless the Commission chooses to accept all interested customers to be parties in such a case. The Alliance is not proposing that all rate cases [or dockets that morph into rate cases such as this one] be litigated, and we acknowledge that the issues in this settlement are narrowly defined and that, if this was a more transparent process, they might render this case a good candidate for settlement negotiations. Litigating a case such as this poses significant financial and other burdens on all parties, and to the extent that can be avoided, the Alliance believes it should be, especially since PUC rules prohibit the Alliance from presenting testimony or evidence without benefit of counsel.

The fact that the Applicant in this case essentially selected the parties with which it would try to negotiate a settlement is problematic and is an issue that the Alliance believes requires

Commission attention and direction for future cases. The Commission has shown a commitment to making its work and that of its staff more transparent, and we hope that trend continues.

Regardless of how this case is titled, it is for all practical purposes a general rate case. Customer rates will be impacted by its resolution and supply side resources will be constructed. Settlement among parties in a rate case such as this was not been noticed to the public and the public would have been prohibited from participating in any case. We agree with CAPAI's argument in the Community Action Partnership Association of Idaho's Brief in Support of Motion to Compel that:

"The atypical procedure adopted in this case is troubling because there is no way of knowing to what extent the public was confused by this filing and whether parties who might otherwise have intervened but chose not to believing that this was something other than a rate case if, for no other reason, than the caption of the Application itself, and the wording of the Notice of Intent and Application which would be interpreted in numerous different ways."

The Alliance further agrees with CAPAI's argument in the same motion that:

"It was not until sometime after the Commission issued its Notice of Application and Order No. 32761 that CAPAI even became aware that the Company had made its filing and, prior to that filing, had already discussed the substance of it with the Commission Staff and a select group of the Company's largest customer groups. CAPAI, the Idaho Conservation League, and the Snake River Alliance have all been regular intervenors in PacifiCorp filings in recent years but were not listed in paragraph 4 of the Application as having been involved in these prefilling discussions."

In that same motion, CAPAI states that, and the Alliance agrees with:

"The Company has never proffered any explanation of why it discussed the substance of its rate case filing with certain regular intervenors but not others. It is very concerning that substantive discussions were held between select groups of customers and the Commission Staff ..."

Conclusion

The Alliance is not suggesting that the Commission, its staff, or other parties engaged in improper behavior in this case. As stated, the Alliance endorses the settlement agreement in this case. Our concern is that the process that led to the agreement may be the beginning of a procedural trend that, as experienced in this case and in the above-referenced 2009 Idaho

Power case before it, threatens to further remove the public and affected customers from participating in a PUC case that directly affects their energy bills.

Any erosion of public engagement in utility regulatory matters is an issue of concern.

The Alliance understands and appreciates the need for confidential negotiations in certain cases such as this. At the same time, even Commission Staff acknowledges that this case is extraordinary in the manner in which it was processed. We recommend that the Commission consider the circumstances and rules under which a case such as this will be processed in the future. We acknowledge that public hearings were held in this case, as is required, but we ask that the Commission consider reviewing the circumstances in which regulated utilities can seek rate alterations and other Commission approvals without thorough and transparent public participation.

Respectfully submitted,



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