Office of the Secretary
Service Date
October 24, 2013

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF PACIFICORP DBA ROCKY MOUNTAIN POWER TO INITIATE DISCUSSIONS WITH INTERESTED PARTIES ON ALTERNATIVE RATE PLAN PROPOSALS	)	**CASE NO. PAC-E-13-04**
	)	**ORDER NO. 32910**

On March 1, 2013, PacifiCorp dba Rocky Mountain Power ("Rocky Mountain") filed an Application requesting that the Commission open a case "to identify interested parties that would like to participate [in] settlement discussions" regarding alternatives to the Company filing a general rate case. Application at 1. Accompanying the Application was Rocky Mountain's "Notice of Intent" to file a general rate case. Rule 122 requires certain utilities to file a notice of intent at least 60 days before filing a general rate case. IDAPA 31.01.01.122.01. The Company acknowledged in its Notice that it could not file a general rate case before May 31, 2013, and that rates resulting from such rate case would not become effective until January 1, 2014. *See* Notice at 1; Order No. 32432 at 6.

PROCEDURAL BACKGROUND

On March 12, 2013, the Commission issued a Notice of Application and Intervention Deadline directing Staff counsel to convene an informal prehearing conference so that the parties might discuss a schedule for settlement conference and other preliminary matters. Order No. 32761 at 3. Subsequently, the Commission issued Orders granting intervention to Monsanto Company ("Monsanto"); Idaho Irrigation Pumpers Association, Inc. ("IIPA"); Idaho Conservation League ("ICL"); Snake River Alliance ("SRA"); PacifiCorp Idaho Industrial Customers ("PIIC"); and Community Action Partnership Association of Idaho ("CAPAI"). *See* Order Nos. 32761, 32779.

On April 19, 2013 and May 2, 2013, representatives of Rocky Mountain, Commission Staff ("Staff"), Monsanto, IIPA, ICL, SRA, PIIC (collectively referred to as the "Parties"), and CAPAI met at the Commission offices and participated in informal settlement discussions. On June 3, 2013, the Company filed a Stipulated Settlement Agreement ("Stipulation") signed by all the Parties, except CAPAI, that proposes, in lieu of a general rate case filing by the Company, to implement a two-year rate plan beginning on January 1, 2014.

PROPOSED SETTLEMENT

The following is a summary of the relevant terms of the Parties' Stipulation:

Base Rates

1. The Parties agree that the Stipulation is filed in lieu of a general rate case. Rocky Mountain agrees that it will not file another general rate case before May 31, 2015, with new rates not effective prior to January 1, 2016.

2. The Parties agree that the base revenue requirement for all customer schedules will increase by a uniform percentage of 0.77% in the energy rate of each schedule. New rates will be effective on January 1, 2014.

3. These rates allow recovery of the 27% of the Populus to Terminal transmission line investment that was deemed plant held for future use in Order No. 32196. Commission Order No. 32432 determined that this investment is now used and useful and shall be included in rates on or after January 1, 2014. The base rate increase is designed to collect approximately $2.0 million annually from Idaho customers.

ECAM

4. The Parties agree to the inclusion of and paying for a resource adder for the Lake Side II generation facility that will be recovered through the ECAM at 100%, for the period that the investment in the facility is not reflected in rates as a component of rate base, beginning January 1, 2015, subject to the Lake Side II generation facility having achieved commercial operation as of that date. The ECAM deferral will be determined by multiplying the actual megawatt-hours of generation from the Lake Side II generation facility by $1.99 per megawatt-hour Idaho Resource Adder. The recovery of the Lake Side II resource adder will be capped after the first 2,729,500 megawatt-hours of generation, or recovery of approximately $5.43 million from Idaho customers through the ECAM. Pursuant to Commission Order No. 32771 the Parties have agreed to modify the ECAM calculation by removing the wholesale sales line loss adjustment from Monsanto and Agrium's actual load used to calculate all deferral balances except for the Load Change Adjustment Revenue (LCAR) portion of the ECAM deferral. This change will be effective for the ECAM deferral period starting June 1, 2013 and ending on November 30, 2013.

   Effective December 1, 2013, the ECAM deferral will be calculated on a total Idaho basis; Monsanto and Agrium's share will not be calculated and deferred separately. The rates will be designed based on energy sales data. Specifically, as in past ECAMs, the proposed rates will be calculated by

effectively dividing the total target amount for Idaho customers by the energy sales data at their appropriate delivery voltage levels.

Depreciation Study and Carbon Plant

5. The Parties request Commission approval of the proposed accounting treatment for the Company to establish a regulatory asset that would allow the Company to defer, on a monthly basis, any aggregate net increase or decrease in Idaho allocated depreciation expense for the period beginning on the latter of January 1, 2014, or the effective date in the Commission Order approving new depreciation rates, until the date that new depreciation rates are reflected in customer rates.

6. The Parties agree that the Company will be allowed to recover or be required to refund the deferred depreciation expense beginning on the effective date of the next general rate case. The balance shall be amortized over a period not to exceed 10 years from the effective date of the next rate case. The Parties agree that depreciation of the Carbon Plant should not be included in this deferral.

7. Commission Order No. 32701 authorized the Company to create a regulatory asset to transfer the remaining Carbon Plant balances upon retirement from electric plant in service and accumulated depreciation to be amortized from the date of transfer to the regulatory assets through December 31, 2020. The regulatory asset as of the date of transfer will include the un-depreciated book balance assuming that existing depreciation rates were used prior to the plant retirement date. The difference between the depreciation rate effective in 2014 and the current depreciation rate based on the prior decommissioning date of 2020 will be included in the Remaining Carbon Balances regulatory asset until Carbon depreciation rates are updated in the next general rate case.

8. The Parties agree to the creation of a regulatory asset for future recovery from Idaho ratepayers of Idaho's allocated share of the prudently incurred Carbon Removal Costs. The projected removal costs were identified in the calculation of the new depreciation expense as part of Case PAC-E-13-02, which is subject to Commission review and approval.

9. The Parties agree that the Company shall be allowed to recover from customers Idaho's share of the prudently incurred Carbon Removal Costs over a reasonable period determined by the Commission in a future proceeding. The amortization of the Carbon Removal Costs will begin when the amortization expense is included in rates in the next general rate case.

Monsanto Contract

10. The Parties agree that a new Electric Service Agreement ("ESA") between the Company and Monsanto, which is currently set to expire on December 31, 2013, shall begin on January 1, 2014 with an initial term through December 31, 2015; the ESA shall include a new section allowing for an Interruptible Credit Annual True-up; the ESA shall include the increase associated with the Populus to Terminal Transmission line described above; Monsanto and the Company agree to prepare and execute an ESA that reflects these changes to the contract and provide it to the Commission for approval; Monsanto and the Company will continue to work collaboratively and in good faith to address the terms and conditions and to optimize the value of Monsanto's curtailment products to Monsanto and the Company, including a discussion of cost of service methodologies as applied to the Monsanto load and how said methodologies could be utilized in the next general rate case. Monsanto and the Company will report to the Staff and Commission as appropriate on the progress made.

Rate Design

11. If CAPAI is a signatory to the Stipulation, the Parties agree to the following: the Parties agree to conduct a rate design collaborative process to evaluate potential changes to rate design for the Company's residential service, Schedule 1, and general service, Schedule 6 and 23. The Parties further agree to meet within one month after the Stipulation is filed to begin the collaborative discussions. If CAPAI is not a signatory to the Stipulation, the Parties agree that this Paragraph is of no effect and does not apply.

PUBLIC HEARINGS AND PUBLIC COMMENTS

The Commission convened public hearings on August 27, 2013, in Rigby, Idaho, and August 28, 2013 by telephone for the purpose of soliciting public testimony regarding the Company's Application and the Parties' Stipulation. At the Rigby hearing, the Commission took testimony from two Rocky Mountain customers. There were no participants at the telephonic hearing.

The Commission also received two public comments. Both comments opposed the proposed rate increase and asked the Commission deny the Stipulation as a matter of principle. One customer asserted that any improvements to the Company's system should be paid for solely by stockholders.

THE TECHNICAL HEARING

A. Motion to Strike

On September 11, 2013, the Commission convened the technical hearing in this case. As a preliminary matter, the Commission took up the Company's Motion to Strike a portion of CAPAI's prefiled direct testimony. Argument was heard from counsel for Rocky Mountain and counsel for CAPAI. The Commission issued a bench ruling granting the Motion in part and denying the Motion in part. In particular, the Commission ruled that the legal brief attached to the prefiled direct testimony of CAPAI witness Ms. Christine Zamora should not be admitted, and the remainder of Ms. Zamora's testimony allowed in the record and accorded the weight it deserves. Tr. at 30-31.

B. Rocky Mountain

The Company presented its witness, J. Ted Weston, Idaho Regulatory Affairs Manager, in support of the Stipulation. Mr. Weston's direct and rebuttal testimony, including exhibits, was spread upon the record. Tr. at 33. Mr. Weston's testimony provided an overview of the Company's 2013 alternative rate plan and an explanation of the terms and conditions of the Stipulation, set forth in more detail above. He stated that the Notice of Intent (NOI) filed with the Commission on March 1, 2013, was made in order to comply with the Commission's noticing requirements and allow for the Company to file a general rate case on June 1, 2013, if the alternative rate plan discussions did not lead to an agreement by the Parties.

Mr. Weston noted that, following the settlement discussions referenced above, the Company filed its annual Result of Operations. The Test Period for the Result of Operations was based on the historical 12-month period ended December 31, 2012, adjusted for known and measurable changes through December 31, 2013. The Result of Operations was prepared consistent with past Commission practice and the Company's general rate cases filed previously in Idaho. The Company utilized rate base on an end-of-period basis, which includes the actual rate base at December 31, 2012, plus major capital additions that were expected to go into service by December 31, 2013.

The Company believes that absent a rate change the Company would earn 7.6% return on equity ("ROE") on a normalized basis for calendar year 2013. Based on the most recent Commission authorized ROE of 9.9% the Company could justify a $15.7 million price increase. Weston remarked that most of that price increase was driven by three factors. First, is

the difference between net power cost currently included in base rates and actual net power costs approved in the Company's 2013 ECAM filing, which is approximately $7 million on an Idaho basis. Second, the market for renewable energy certificates ("RECs") has drastically declined from the level currently in rates. Idaho customers are currently receiving a $6.5 million credit annually from REC sales, and these sales are expected to be reduced in 2013 by approximately $6.0 million. Third, the impact of the new depreciation study's proposed rates would increase Idaho's allocated depreciation expense by $4.5 million annually.

The Stipulation did not modify the ECAM's current level of base net power costs of $1.385 billion on a total Company basis or REC revenues included in rates on a total Company basis of $78.8 million (or $6,526,622 allocated to Idaho). Both amounts will remain the base for purposes of tracking in the Company's ECAM mechanism. The Company identified both as major drivers of its purported revenue deficiency.

The Stipulation also did not modify the Idaho base load in the ECAM that is applied to the net power cost differential or the load change adjustment rate ("LCAR"). As specified in Commission Order No. 32432 from Case No. PAC-E-11-12, the 2011 load reported in the Annual Result of Operations report will continue to be used as base load for the calculation of the load change adjustment in the ECAM deferral. The LCAR will remain at $.5.47 per MWh.

Mr. Weston concluded his direct testimony by asserting that the two-year rate plan demonstrates the Company's conscious effort to control its costs, help mitigate customer impacts and use electricity more efficiently. The Company lauded this alternative to a general rate case through auditing, qualitative discovery, and careful negotiations. The Company supports the Stipulation and respectfully requests that the Commission approve it as filed.

C. Commission Staff

At the technical hearing Staff presented the testimony of Randy Lobb, Utilities Division Administrator, in support of the Stipulation. His direct and rebuttal testimony, including exhibits, was spread upon the record. Tr. at 78. In his testimony, Mr. Lobb addressed the complaints expressed by CAPAI regarding the negotiation of a settlement prior to a general rate case filing by Rocky Mountain. Mr. Lobb stated that Staff supported the Stipulation because the limited impact of the provisions of the Stipulation represented a reasonable alternative to a general rate case filing by the Company.

He explained that Staff conducted a broad and expansive audit of the Company's Results of Operations to determine reasonableness, identify potential rate issues, and evaluate the magnitude of potential adjustments. Staff also reviewed general rate cases filed by the utility in other jurisdictions, and conducted settlement workshops wherein the Parties thoroughly discussed and negotiated the terms of the Stipulation. Staff averred that the Stipulation is in the best interest of customers and should be approved by the Commission.

Mr. Lobb remarked that all of the expenses proposed for recovery in rates pursuant to the Stipulation were either already approved by the Commission for future rate recovery or are currently being considered by the Commission in an existing case. The proposed base rate increase of approximately $2 million (0.77%) represents the revenue requirement for the 27% of the Populus to Terminal transmission line previously approved for rate recovery in Commission Order No. 32432.

Mr. Lobb listed the specific provisions of the Stipulation, more fully described above. He emphasized that a full review of project costs and justification for the generating plant will be conducted as part of the Company's next general rate case. At that time, up to a year of actual plant operation will be available to assess the value of the plant to Idaho customers. Any subsequent adjustment in cost recovery can be included as an offset to costs previously tracked through the ECAM process.

Mr. Lobb reported that the Stipulation calls for a slight shift of ECAM cost responsibility from Monsanto and Agrium to other customer classes. The modification results in an approximate $90,000 shift in the last six months of 2013. According to Mr. Lobb, this becomes a non-issue when the ECAM deferral is calculated on a total Idaho basis on December 7, 2013. The parties agreed that the temporary cost shift was equitable given reduced line losses experienced by these transmission service level customers. Mr. Lobb also stated that the Stipulation resolves a long-standing dispute between the Company and Monsanto regarding the annual true-up of Monsanto's interruptible credit.

Mr. Lobb next asserted that there is value in the stay-out provision prohibiting further base rate increases until January 1, 2016. He noted that the Company has current rate case filings pending in Oregon and Washington. Mr. Lobb believes that it is in the best interest of customers to implement a small uniform increase in revenue requirement that limits the impact on all Company customers.

Mr. Lobb remarked that results of operations indicated the Company was preparing a general rate case filing with an Idaho revenue requirement increase that could be greater than $15 million, before adjustment by Staff and Intervenors. Staff determined through its audit that even with typical rate case adjustments similar to the Staff position in the last few general rate cases, the resulting Idaho revenue requirement would be greater than the approximate $2 million (0.77%) increase proposed in the settlement discussions to be effective January 1, 2014. Staff also verified the revenue requirement associated with the inclusion of the remaining 27% of the Populus to Terminal transmission line investment and evaluated the ECAM adder associated with the Lake Side II facility.

Mr. Lobb stated that Staff ultimately determined that while a more formal filing could have provided more information upfront for parties to evaluate, it likely would have included a proposal and justification for a much larger increase.

The Stipulation does not directly address cost of service and rate design issues but those issues were addressed in the Company's 2011 general rate case, PAC-E-11-12, wherein the Company agreed to make a 50% move toward cost of service over a two-year period (2012-2013). Staff witness Lobb does not believe that conditions have changed significantly enough since 2011 to warrant an adjustment of cost of service and/or rate design for such a small uniform base rate increase (0.77%).

Mr. Lobb also testified on rebuttal in response to CAPAI's testimony in opposition to the Stipulation. Similar to the Company's rebuttal testimony, Staff objected to CAPAI's characterization of the process leading to the Stipulation. Staff believed CAPAI had numerous opportunities in this and other recent general rate cases, whether fully litigated or settled, to explore the topics of the settlement or make its case directly to the Commission at hearing. Staff noted that, like every other party in this case, CAPAI was informed of the settlement workshops, participated fully and had more than enough time to obtain the information it needed to address its issues.

Mr. Lobb stated that Ms. Zamora's claims regarding an abbreviated period for discovery are simply wrong. The Commission Staff has processed four electric utility general rate cases since 2011. During that time period, Staff processed two Avista cases and one each for Idaho Power and Rocky Mountain. The average discovery period in those cases was 3.6 months and Staff asked an average of 197 discovery requests. Additionally, numerous other

discovery requests were asked by other parties to the case. For the 10 rate cases processed since 2008, the average time allotted for discovery was approximately 4 months where Staff asked an average of 147 discovery requests. CAPAI was a party in all of these cases.

According to Mr. Lobb, attempting to settle a case before non-utility parties file direct testimony does not mean the period for discovery is significantly shorter or case review is less rigorous. In Case No. PAC-E-11-12, the first settlement conference was held three months after the Company filed its Application, and the Settlement Stipulation was filed with the Commission 13 days before original prefile was due.

Staff works very closely with CAPAI on the issues, funding levels for the Low Income Weatherization program (LIWA) and the impact of rate structure on low-income customers that are typically of the most concern to the organization. Without exception, CAPAI is given the opportunity to address these issues before the Commission. Staff cited numerous general rate cases since 2010 wherein CAPAI was able to attain value for its constituents.

Mr. Lobb remarked that Staff did not take a position in the discovery dispute between the Company and CAPAI because it was mostly unaware of CAPAI's request. CAPAI did not file its production requests with the Parties. He stated that CAPAI had roughly three months following the Stipulation to obtain information from Rocky Mountain and conduct its analysis.

Finally, he disagrees with CAPAI's assertion that the organization is the only advocate for low-income customers. Staff advocates on behalf of all customers, including low-income residential customers. The Stipulation reached by the Parties achieves rate stability with a very minimal increase over a two-year period.

D. CAPAI

CAPAI presented its witness, Christine Zamora, Executive Director of CAPAI. At the technical hearing Ms. Zamora's direct testimony, not including Exhibit A – Brief in Support of Motion to Compel,[1] was spread upon the record. Tr. at 124.

Ms. Zamora's chief complaint centered upon the procedure utilized in this case and the purported impact it had on the Stipulation. CAPAI believed that the way the case was processed negatively affected its ability to fully and effectively participate in this case. In CAPAI's view, the procedure in this case was "unprecedented." CAPAI maintained that the

[1] At the start of the technical hearing, the Commission issued a bench ruling striking the attachment of CAPAI's Brief in Support of Motion to Compel from Ms. Zamora's testimony. *See supra* at 5.

Company's initial Notice did not comport with Commission rules and that CAPAI was not included in discussions that took place before the Company's initial filing.

These complaints relate to another general concern regarding the increased frequency of utility general rate case filings. She stated that CAPAI has limited resources to effectively contest these filings. She conceded that the Stipulation may or may not be a "good deal" for customers but the process leading to the Stipulation did not allow for a comprehensive analysis. In CAPAI's view, no alternatives to a general rate case filing were discussed by the Parties.

A large portion of Ms. Zamora's testimony referenced the discovery dispute between CAPAI and the Company. The dispute was settled when the Company agreed to provide certain usage and rate impact information and CAPAI withdrew its Motion to Compel. Ms. Zamora made several legal conclusions in her testimony, going so far as to declare that the procedure in this case was "unlawful."[2] Ms. Zamora cited her recent experience in Avista's 2012 general rate case, AVU-E-12-08, to suggest that Rocky Mountain was not as responsive to CAPAI's concerns as other utilities.

FINDINGS AND DISCUSSION

Based upon the record established in this case, the Commission finds that the present rates do not provide the Company with an opportunity to earn a fair and reasonable return on its investment. *Idaho Code* § 61-122. The Commission finds that the Company's Notice of Intent, filed on March 1, 2013, comports with the Commission's Rule 122 notice requirements.

The Commission finds that increasing the Company's Idaho base rates for electric service by approximately $2 million annually will allow Rocky Mountain to earn a fair and reasonable return. We further find that the Settlement Stipulation filed by the Parties is fair, just and reasonable. The record presented to the Commission reflects the reality that the Company may well have opted to file for a more substantial increase. *See* Tr.at 36-37, 88.

The Commission believes that the value of a small, less than 1%, uniform increase for all rate classes over a two-year period and the Company's agreement to not file another general rate case until May 31, 2015, provides significant value for customers. In particular, it assures multi-year rate stability and is in the public interest.

[2] Upon cross-examination, Ms. Zamora recanted this assertion. *See* Tr. at 147; *infra* at 13.

The Commission also finds that the specific provision of the Parties' Stipulation proposing the inclusion of the remaining 27% of the Populus to Terminal transmission line investment in rates on or after January 1, 2014, is fair, just and reasonable. The Parties confirmed and memorialized what the Commission has previously deemed "plant held for future use" in Order No. 32196 and "used and useful" in Order No. 32432. The Commission now authorizes the remainder to be included in rates.

The Parties' decision to include a resource adder to the ECAM deferral calculation for the Lake Side II generation facility and to include Monsanto and Agrium in the yearly Idaho ECAM process is approved. The Commission finds that any shift in costs resulting from this change from Monsanto and Agrium to other customer classes is de minimis and will not adversely affect the rates of other rate schedules. *See* Tr. at 86-87.

The Commission applauds the Company and Monsanto's steadfast efforts to reach agreement on a new ESA. However, the Commission does not issue a specific ruling on this issue in this Order. We reserve our approval of the substance and the relative merits of the new Rocky Mountain-Monsanto ESA upon submission of the agreement in a separate docket.

The Commission also notes that depreciation of the Carbon Plant is an issue currently before the Commission in Case No. PAC-E-13-02. Notwithstanding the issues presented in that case, the Commission approves the specific provisions of the Stipulation regarding the Company's Depreciation Study and Carbon Plant. The Commission authorizes Rocky Mountain to establish a regulatory asset to allow the Company to defer any aggregate net increase or decrease in Idaho allocated share of depreciation expense, as well as the amortization and recovery of prudently incurred carbon removal costs.

Finally, the Commission addresses the procedural concerns expressed by CAPAI. The Commission does not take lightly the serious allegations levied by CAPAI about the integrity of the ratemaking process. Honest disagreement and reasonable argument are welcomed by the Commission and can often lead to productive insight. However, the purposeful use of inflammatory language does nothing to illuminate the issues or aid the Commission's decision-making.

The Commission has reviewed similar procedural complaints in the past. The procedure in this case is not unprecedented. For instance, Idaho Power's Application, IPC-E-12-14, seeking authority to increase its rates/rate base to recover its investment in its Langley Gulch

Plant was processed via Modified Procedure. In that case, an intervenor party objected to the process and asked the Commission to "deny this Application and schedule a general rate case to examine rate base and revenue issues." Order No. 32585 at 13. We noted in that case that the parties agreed during a scheduling conference "to process this case by Modified Procedure." *Id.* Further, a Notice of Modified Procedure was issued wherein the parties' agreement to process the case via Modified Procedure was memorialized. *See* Order No. 32523 at 1.

Similarly, in this case the Parties were given ample opportunity to file motions with this Commission formally objecting to the procedure utilized in this case. CAPAI attended both settlement conferences and was given considerable time to conduct discovery. *See* Tr. at 94. Approximately five months elapsed between the Company's initial Application and CAPAI's Motion to Compel Discovery. *See* Tr. at 98.

The Commission notes that CAPAI's Motion to Compel Discovery was obviated by the Company's acquiescence to provide the requested discovery and CAPAI's subsequent decision to withdraw its Motion to Compel. *See* CAPAI's Withdrawal of Motion to Compel filed August 14, 2013. However, in an effort to avoid potential discovery disputes in the future, we remind the Parties that the kinds and scope of discovery authorized are outlined in Commission Rule 221 and, unless otherwise provided by the rules, order or notice, governed by the Idaho Rules of Civil Procedure (IRCP). *See* IDAPA 31.01.01.221.05.

IRCP 26(b)(1) states:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter....

Implicit in Rule 26(b)(1) is the notion that a document is only discoverable if it exists. Thus, the Parties have no legal right to compel the production of a document/report/analysis that does not exist during the time that the discovery request remains in effect.

Finally, a technical hearing was convened to allow all of the Parties, including CAPAI, to present evidence, direct testimony and to cross-examine witnesses. It was at the technical hearing that CAPAI softened its rhetoric and plainly conceded that the process utilized

in this case was not unlawful. *See* Tr. at 147. In fact, witness Zamora explained that what she really meant was that this process was merely "being handled in a different way." *Id.*

Therefore, after reviewing the entire record in this case, including the Company's Application, Stipulation, witness testimony and exhibits and the technical hearing transcript, the Commission finds that this case was conducted in accordance with the Commission's duly established rules and procedures.

INTERVENOR FUNDING

On September 25, 2013, CAPAI filed a Petition for Intervenor Funding seeking recovery of its attorney fees and costs in the amount of $16,050. The bulk of this amount ($15,300) was for attorney fees. On September 27, 2013, Rocky Mountain filed an opposition to CAPAI's request for intervenor funding. In particular, Rocky Mountain objected to the funding "associated with CAPAI's Motion to Compel and related pleadings . . . as well as costs associated with" preparing the intervenor funding petition. Opposition at 3. On September 30, 2013, CAPAI filed an affidavit and response to Rocky Mountain's opposition to CAPAI's Petition for Intervenor Funding. CAPAI generally objects to Rocky Mountain's request for specificity for attorney fees. It argues that Rule 162 does not require a detailed breakdown of legal fees and providing such detailed information in the form of timesheets may violate the attorney-client privilege and is not practical.

A. Legal Standards for Intervenor Funding

Intervenor funding is available pursuant to *Idaho Code* § 61-617A and Commission Rules of Procedure 161 through 165. It is the "policy of (Idaho) to encourage participation at all stages of all proceedings before this Commission so that all affected customers receive full and fair representation in those proceedings." *Idaho Code* § 61-617A(1). The statutory cap for intervenor funding that can be awarded in any one case is $40,000. *Idaho Code* § 61-617A (2). Accordingly, the Commission may order any regulated utility with intrastate annual revenues exceeding $3.5 million "to pay all or a portion of the costs of one or more parties for legal fees, witness fees, and reproduction costs not to exceed a total for all intervening parties combined of $40,000. . . ." *Id.*

Rule 162 of the Commission's Rules of Procedure provides the form and content requirements for a petition for intervenor funding. The petition must contain: (1) an itemized list of expenses broken down into categories; (2) a statement of the intervenor's proposed finding or

recommendation; (3) a statement showing that the costs the intervenor wishes to recover are reasonable; (4) a statement explaining why the costs constitute a significant financial hardship for the intervenor; (5) a statement showing how the intervenor's proposed finding or recommendation differed materially from the testimony and exhibits of the Commission Staff; (6) a statement showing how the intervenor's recommendation or position addressed issues of concern to the general body of utility users or customers; and (7) a statement showing the class of customer on whose behalf the intervenor appeared.

Commission Findings: The Commission has reviewed CAPAI's request for intervenor funding and Rocky Mountain's objection. Without addressing the merits of the funding request, the Commission finds that the request does not provide us with enough specific information to decide whether CAPAI should be allowed to recover all of its intervenor funding. Although we are sensitive to attorney-client communications between CAPAI and its attorney, we find that additional detail or specificity for the recovery of attorney fees would be helpful. Without divulging the actual communications, we direct CAPAI to indicate the amount of hours or the percentage of hours spent on areas such as reviewing and investigating the Application, discovery, participating in the settlement conferences, the discovery dispute (Motion to Compel), witness/hearing preparation, the hearing, and preparing the intervenor funding petition and reply.

The Commission reserves a final ruling on the funding petition and directs CAPAI to submit a more particularized statement of costs and fees.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over PacifiCorp dba Rocky Mountain Power, an electric utility, and the issues presented in this case, pursuant to the powers granted it under Title 61 of the Idaho Code and pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*, including specifically Rules 272 through 280 as they pertain to settlements.

ORDER

IT IS HEREBY ORDERED and the Commission herein approves the terms and conditions of the Parties' Stipulation, put forth in Case No. PAC-E-13-04, approving a two-year rate plan resulting in an approximately $2.0 million annual increase by a uniform percentage of 0.77% in the energy rate for each schedule/class of customers. New rates will be effective on

January 1, 2014. Inasmuch as the Company has submitted new tariffs reflecting the express terms of the Stipulation approved by this Order those tariffs are approved.

IT IS FURTHER ORDERED that CAPAI is directed to prepare and submit a more itemized statement of its attorney fees within 14 days of the service date of this Order. The Commission expressly reserves resolution of this issue until it reviews CAPAI's supplemental information.

THIS IS A PARTIAL FINAL ORDER. Any person aggrieved by issues decided in this Order (other than intervenor funding) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24th day of October 2013.

PAUL KJELLANDER, PRESIDENT

MACK A. REDFORD, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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