

RECEIVED

2011 APR 13 AM 8:33

IDAHO PUBLIC UTILITIES COMMISSION

Michael C. Creamer, ISB No. 4030  
Michael P. Lawrence, ISB No. 7288  
GIVENS PURSLEY LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, Idaho 83701-2720  
Telephone: 208-388-1200  
Facsimile: 208-388-1300  
10495-2\_1136490\_2  
Attorneys for Petitioner/Appellant The Building  
Contractors Association of Southwestern Idaho, Inc.

SUP-E-10-01

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

IN THE MATTER OF THE APPLICATION  
OF IDAHO POWER COMPANY TO  
MODIFY ITS RULE H LINE EXTENSION  
TARIFF RELATED TO NEW SERVICE  
ATTACHMENTS AND DISTRIBUTION  
LINE INSTALLATIONS.

AUGMENTING THE BRIEFS OF THE  
BUILDING CONTRACTORS  
ASSOCIATION

THE BUILDING CONTRACTORS  
ASSOCIATION OF SOUTHWESTERN  
IDAHO,

Supreme Court Docket No. 37293-2010

Petitioner-Appellant,

vs.

IDAHO PUBLIC UTILITIES COMMISSION,  
and IDAHO POWER COMPANY,

Respondents on Appeal.

Pursuant to Idaho Appellate Rule 34(f)(1), Petitioner-Appellant The Building Contractors Association of Southwestern Idaho, Inc. ("BCA"), by and through its counsel of record, Givens Pursley LLP, hereby augments its briefs on appeal by adding the citation of Idaho Public Utility Commission ("IPUC") orders as indicated below:

1. BCA's May 24, 2010 Appellant's Brief section IV.E.2 ("The Commission abused its discretion in finding that BCA failed to raise "issues of concern to 'the general body of users or consumers.'"") at pages 39-40 and BCA's August 6, 2010 Appellant's Reply Brief section II.D.3 ("BCA has raised issues of concern to the general body of ratepayers.") at 22-24 should be augmented by adding the following citation:
  - a. IPUC Order No. 24941 at 7-8, *In the matter of the Application of Idaho Power Company for Approval for a Commercial Lighting Energy Efficiency Program* (Case no. IPC-E-93-5; Jun. 15, 1993).
  
2. Building Contractor's May 24, 2010 Appellant's Brief section IV.E.3 ("The Commission abused its discretion in denying BCA's requests for intervenor funding for BCA's efforts made prior to the Original Order.") at pages 40-41 and BCA's August 6, 2010 Appellant's Reply Brief section II.D.1 ("BCA's initially untimely request for intervenor funding was cured by the Commission's continuance of the proceedings.") at 18-19 should be augmented by adding the following citations:
  - a. IPUC Order No. 21513 at 2-3, *In the matter of the Application of General Telephone Company of the Northwest, Inc. for Authority to Increase its Rates and Charges* (Case no. U-1002-67; Oct. 16, 1987); and
  - b. IPUC Order No. 27267 at 5-6, *In the matter of Idaho Power's Application for Authority to Implement a Public Purposes Charge to Fund the Company's Participation in the Northwest Energy Efficiency Alliance* (Case no. IPC-E-96-26; Dec. 19, 1997).

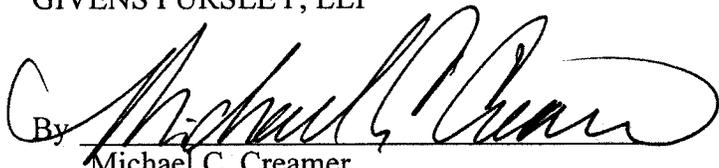
The above-listed additional authorities' placement into BCA's briefing is summarized in the following table:

Idaho Public Utilities Commission ("IPUC") Order	Sections of BCA's <u>Appellant's Brief</u> to Augment	Sections of BCA's <u>Appellant's Reply Brief</u> to Augment
IPUC Order No. 24941 at 7-8, <i>In the matter of the Application of Idaho Power Company for Approval for a Commercial Lighting Energy Efficiency Program</i> (Case no. IPC-E-93-5; Jun. 15, 1993)	Section IV.E.2 at pages 39-40	Section II.D.3 at 22-24
<p>IPUC Order No. 21513 at 2-3, <i>In the matter of the Application of General Telephone Company of the Northwest, Inc. for Authority to Increase its Rates and Charges</i> (Case no. U-1002-67; Oct. 16, 1987)</p> <p>IPUC Order No. 27267 at 5-6, <i>In the matter of Idaho Power's Application for Authority to Implement a Public Purposes Charge to Fund the Company's Participation in the Northwest Energy Efficiency Alliance</i> (Case no. IPC-E-96-26; Dec. 19, 1997)</p>	Section IV.E.3 at pages 40-41	Section II.D.1 at 18-19

Copies of the additional authorities obtained from the Commission are attached hereto for the Court's convenience.

DATED THIS 12th day of April, 2011.

GIVENS PURSLEY, LLP

By 

Michael C. Creamer  
Attorneys for The Building Contractors  
Association Of Southwestern Idaho

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of April, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Weldon Stutzman  
Kristine A. Sasser  
Deputy Attorneys General  
Idaho Public Utilities Commission  
472 W. Washington  
PO Box 83720  
Boise, ID 83720-0074  
[Weldon.Stutzman@puc.idaho.gov](mailto:Weldon.Stutzman@puc.idaho.gov)  
[kris.sasser@puc.idaho.gov](mailto:kris.sasser@puc.idaho.gov)

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Facsimile
- Electronic Mail

Lawrence G. Wasden  
Attorney General  
Statehouse  
PO Box 83720  
Boise, ID 83702-0010

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Facsimile
- Electronic Mail

Lisa D. Nordstrom  
Barton L. Kline  
Idaho Power Company  
1221 W. Idaho St.  
PO Box 70  
Boise, ID 83707-0070  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)  
[bkline@idahopower.com](mailto:bkline@idahopower.com)

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Facsimile
- Electronic Mail

Jean D. Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
P.O. Box 83720  
Boise, Idaho 83720-0074

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Facsimile
- Electronic Mail

Merlyn W. Clark  
D. John Ashby  
Hawley Troxell Ennis & Hawley LLP  
877 Main Street, Ste. 1000  
PO Box 1617  
Boise, ID 83701-1617  
[mclark@hawleytroxell.com](mailto:mclark@hawleytroxell.com)  
[jashby@hawleytroxell.com](mailto:jashby@hawleytroxell.com)  
*Attorneys for Appellant Ada County Highway District*

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Facsimile
- Electronic Mail



Michael C. Creamer

OCT 16 1987

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )  
OF GENERAL TELEPHONE COMPANY OF )  
THE NORTHWEST, INC. FOR AUTHORITY )  
TO INCREASE ITS RATES AND CHARGES )**

**CASE NO. U-1002-67**

**ORDER NO. 21513**

On September 18, 1987, the Idaho Public Utilities Commission received an application from the Committee for Fair Rates for intervenor funding. The Committee was granted intervention in General Telephone Company of the Northwest's (GTNW or the Company) rate Case No. U-1002-67. The Committee's intervenor funding request totalled \$15,975.74. On September 29, 1987, the Commission received a Motion from GTNW opposing the Committee's application for intervenor funding. For reasons outlined below, the Commission grants the Committee \$1,445.74 in intervenor funding at this time.

**THE APPLICATION**

The Committee's application for intervenor funding was postmarked September 14, 1987 and received at the Commission September 18, 1987. The Committee requested remuneration for its expert witness fee of \$6,480, legal fees of \$8,050, and expenses (principally travel, lodging and per diem) of \$1,445.74. The Committee's application also included proposed findings and recommendations. As indicated in its direct testimony, the Committee suggested that the Commission deny \$1.2 million in additional revenues to GTNW because the Company abandoned the toll settlement agreement. The Committee further recommended that the price of basic exchange service "should be tied to a combination of stand-alone cost analysis, value of service considerations, and universal service objectives." Finally, the Committee suggested that the Commission place GTNW on notice that rate basing of future capital investment should be subject to the degree of regulatory controls over that capital investment.

### GTNW'S MOTION

The Company objected to intervenor funding for three reasons. The Company argued that intervenor funding should be denied because (1) the request for intervenor funding was untimely; (2) the Committee's participation in this case did not materially contribute to the Commission's decision; and (3) the Committee did not demonstrate that it has suffered a significant financial hardship necessitating intervenor funding. These issues are discussed below.

*A. Timeliness.* The Company argued that the Committee's request for funding is untimely. *Idaho Code* §61-617A authorizes the Commission to adopt rules and regulations implementing the intervenor funding statute. Rule 16.2 of the Commission's Practice and Procedure Rules states that an intervenor must request such funding "no later than the last evidentiary hearing in a proceeding or the deadline for submitting briefs, proposed orders, or statements of position, whichever is last."

At the conclusion of the Post Falls hearings, the Commission authorized the parties to file a summary of the evidence presented and additional comments by July 24, 1987. Tr. at 957-58. The Commission issued its Final Order (No. 21443) in this case on September 11, 1987. The Committee did not mail its funding request until September 14, 1987. Thus, the Company maintained, it is "incongruous to file proposed findings or recommendations after the Order has already been issued." GTNW Motion at 3.

As the Company correctly points out in its Motion, the Commission's Rule 16.2 does not specifically address intervenor funding in a bifurcated case. For purposes of intervenor funding we find: This two-phase case should be treated as a single proceeding. It was the Commission that ordered this case divided into two phases. Our finding is also consistent with actions of the previous Commission. In the two-phase Idaho Power case (No. U-1006-265), the Commission did not consider the case concluded at the completion

of the first phase. The Commission observed that a second phase remained to address revenue allocation and rate design issues. The Commission deferred ruling on intervenor funding until the end of the second phase. Therefore, we find: The Committee's current request is timely because the deadline for requesting intervenor funding is at the conclusion of phase 2.

**B. Material Contribution.** GTNW also argued that the Committee did not materially contribute to the Commission's decision, specifically, that part of the Order addressing future GTNW capital investment. GTNW acknowledged that the Commission did expand phase 2 of this case "to include formulation of policy on the modernization of the telecommunications network, [but] the very fact that it did so demonstrates that the intervenor's testimony was insufficient to guide the Commission's policy on modernization." GTNW Motion at 5.

As stated in the intervenor funding statute, the determination of intervenor funding shall be based upon "a finding that the participation of the intervenor has materially contributed to the decision rendered by the Commission." *Idaho Code* §61-617A(2)(a). Dr. Power argued on behalf of the Committee that the Company's ratepayers were being asked to pay for network modernization which promises enhanced services and lower future costs. He testified that "[i]f the investments are made to provide services that are to be unregulated, . . . [GTNW] should carry these investments until the revenues generated from the new services and cost reductions justify the investment." Order No. 21443 at 39, *quoting* Tr. at 693.

As a preliminary matter, we find: That the testimony of Dr. Power did materially contribute to our decision to expand the second phase of this case and possibly to our eventual decision regarding the modernization of the telecommunications network. The concerns expressed by the Committee and the Staff prompted us to seek additional comments from the parties. Our Order solicits testimony on whether the Commission

needs to form a policy on the modernization of the telecommunications network and the regulatory treatment of major plant investments which may not be subject to future regulatory control. Order No. 21443 at 40-41.

*C. Financial Hardship.* Finally, the Company asserted that the Committee has not met the required showing of a significant financial hardship. The Company stated that the Committee did not indicate the size of its membership nor disclose whether the Committee has access to funding sources from grants or other public interest contributions. The Company also questioned whether the Committee's counsel, Scott Reed, has "donated", as opposed to "contracting", his services to the Committee.

For the purposes of this Order, we find: That the Committee's has adequately demonstrated financial hardship and we award, at this time, intervenor funding in the amount of \$1,445.74. This figure represents actual travel, lodging, per diem and reproduction expenses. We will defer the remainder of the Committee's request and all others requests for intervenor funding until the end of phase 2. Deferring the remainder of the Committee's request will allow it to address GTNW's comments in greater detail and will allow us to apportion the remaining intervenor funding.

In summary, we award \$1,445.74 at the time in intervenor funding to the Committee for Fair Rates. The Committee and all other intervenors intending to request funding must submit their applications at the conclusion of the second phase of this case. The remaining amount of intervenor funding for this two-phase case is \$18,554.26 (\$20,000-1,445.74).

#### O R D E R

IT IS THEREFORE ORDERED that the Committee for Fair Rate's application for intervenor funding is granted in part and denied in part. The Committee is awarded

\$1,445.74 in intervenor funding. The remainder of the Committee's funding request is deferred until the end of phase 2 (Case No. U-1002-67A).

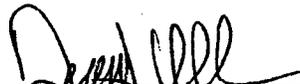
IT IS FURTHER ORDERED that GTNW's Motion in Opposition to Intervenor Funding is hereby denied.

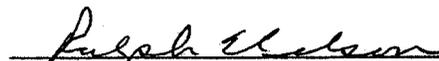
IT IS FURTHER ORDERED that GTNW must pay the Committee for Fair Rates \$1,445.74 within 28 days of the service date of this Order. This expense will be treated as an allowable business expense and shall be chargeable to the Company's residential ratepayers in the Final Order following phase 2.

IT IS FURTHER ORDERED that the Committee and all others intervenors intending to request intervenor funding shall submit such applications at the conclusion of the second phase of this case.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 16<sup>th</sup> day of October, 1987.

  
PERRY SWISHER, PRESIDENT

  
DEAN J. MILLER, COMMISSIONER

  
RALPH NELSON, COMMISSIONER

ATTEST:

  
MYRNA J. WALTERS, SECRETARY

dh/cb624L

JUN 15 1993

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR AP- )  
PROVAL OF A COMMERCIAL LIGHTING )  
ENERGY EFFICIENCY PROGRAM. )  
 )  
 )**

**CASE NO. IPC-E-93-5**

**ORDER NO. 24941**

**BACKGROUND**

On February 7, 1993, the Idaho Power Company (Idaho Power; Company) filed an Application for Commission approval of a Conservation Lighting Program. On April 6, 1993, the Commercial Utility Customers of Idaho Power (CUC) filed a Petition to Intervene and Application for Intervenor Funding in this case. CUC simultaneously filed extensive comments in response to Idaho Power's Application. On May 26, 1993, the Commission issued Order No. 24913 approving Idaho Power's Conservation Lighting Program. The only issue remaining for resolution in this case is the matter of CUC's Application for intervenor funding.

CUC alleges that the following expenses were incurred in this proceeding:

Legal Fees:		
Ronald L. Williams		
35 hrs. at \$110/hr.		\$3,850
Expert Witness Fees:		
W. David Eberle		
33 hrs. at \$70/hr.		2,310
Total		\$6,160

In addition, CUC states that if the Commission accepts its recommendation that Idaho Power presented a more detailed description of the proposed program to CUC for review and comment, prior to implementation, then the CUC would request an additional \$3,000 in intervenor funding to cover the legal and expert analysis fees CUC projects would be incurred in conducting such a further and final review. CUC later alleged that it incurred an additional \$660 in legal fees as a result of Idaho Power's motion in objection to intervenor funding, discussed below.

In support of its application, CUC states that, in preparing and finalizing comments in this case, it investigated a variety of conservation issues, researched various conservation-related programs that Idaho Power has either proposed or participated in for other customer classes and reviewed Idaho Power's least cost planning documents and resource management reports. CUC members have met several times with Idaho Power personnel during the course of the last several years and have specifically discussed with Idaho Power conservation options and programs that would benefit the Company's commercial customers. CUC has also interviewed various members of its affiliated associations in preparing comments in this case.

CUC contends that its participation in this case has been of material benefit to the general body of ratepayers of Idaho Power; the acquisition of demand-side resources from commercial lighting customers postpones the eventual acquisition of an equivalent amount of new generating capacity by Idaho Power thus helping to keep all customer class rates lower than might otherwise occur.

#### Idaho Power

On April 21, 1993, Idaho Power filed a motion in objection to CUC's Application for Intervenor Funding pursuant to Rule 16 of the Commission's Rules of Practice and Procedure. Idaho Power states that it does not normally object to applications for intervenor funding, relying instead upon the Commission's discretion and judgment in ruling upon such applications. The Company states, however, that "additional scrutiny is warranted when a matter under consideration is being processed under modified procedure and the application for intervenor funding has been filed by the intervenor group that will be the primary beneficiary of the program."

Idaho Power argues that such scrutiny cannot be accomplished because CUC's application for intervenor funding is deficient. Idaho Power argues that simply stating a lump sum amount attributable to attorneys' fees and another lump sum attributable to expert witness fees is insufficient. The Company also argues that CUC is attempting to recover costs attributable to work performed long before the application in this proceeding was filed. The application was filed on February 17, 1993 and, Idaho Power argues, CUC is requesting funding to cover fees and costs incurred through May 1, 1992.

The Company states: "Idaho Power has no objection if the CUC's request for intervenor funding is denied without prejudice to the CUC refiling its application or that the CUC be given leave to file additional information to support its request for intervenor funding." Motion in Objection at p. 2.

On April 29, 1993, CUC filed an Answer to Idaho Power's Motion in Objection to Intervenor Funding. CUC argues that its application is not deficient, as Idaho Power contends, in the matter in which it alleged its attorney and expert witness fees. CUC contends that it adequately identified the hours and hourly rates of its attorney and expert as required by Commission Order No. 24415 issued in Case No. IPC-E-92-10.

In response to Idaho Power's contention that CUC was attempting to recover costs incurred before the filing of Idaho Power's application, CUC notes that its application for intervenor funding contained a typographical error. The year "1992" listed on p. 2 of CUC's application should have been "1993." The "May 1" date was referenced in the application because legal and expert witness fees are billed as of month end.

CUC argues, therefore, that none of the costs included in its application for funding were incurred prior to May 1, 1992. CUC admits, however, that a portion of the costs for which funding is requested were incurred by CUC prior to the filing of Idaho Power's application in this case. CUC began recording costs in this case in response to Idaho Power's publication and dissemination of its "Draft Resource Portfolio for the 1993 Integrated Resource Plan" beginning in November 1992. This plan discussed the "Commercial Lighting Program" which is the subject of this case.

In response to the publication of this plan, CUC asserts that it submitted comments to Idaho Power on November 8, 1992 critiquing Idaho Power's proposed Commercial Lighting Program.

CUC alleges that legal fees incurred by it prior to the date of Idaho Power's application in this case total only \$572. All other fees, CUC contends, were incurred after Idaho Power's application was filed. Expert witness fees incurred prior to the filing of the Company's application total \$525. CUC contends that while \$1,097 of its legal and expert witness fees were incurred prior to the filing of Idaho Power's application, all the work conducted during this time period was germane to the issues addressed by CUC in this case.

CUC argues that the Commission does not need to draw a "bright line" in this case that costs incurred by an intervenor which qualify for intervenor funding can only be incurred after the date of the utility filing. CUC notes that a utility may have worked for several months in preparing to make a filing and such work, in many instances, involves communication with and responses from customer groups or intervenors. These same intervenors, CUC contends, should not be denied the opportunity to recover germane costs incurred prior to an arbitrary date of filing. CUC believes that such a rule would be discriminatory in that all the utility's costs incurred prior to the date of filing are considered reasonable expenses which would be fully recovered in the context of a general rate case.

CUC argues that there is no basis for Idaho Power's objection to awarding funding in this case simply because it was handled under modified procedure. CUC notes that *Idaho Code* § 61-617A(2) grants the Commission authority to award intervenor funding "in any proceeding before the Commission." CUC believes that it would be a violation of the statute to refuse to grant funding simply because this case is being handled under modified procedure.

CUC believes that Idaho Power is attempting to require that intervenors move to a higher level of reporting in preparing their applications for intervenor funding. CUC argues that the only level of reporting left to disclose is the actual hourly time sheets recorded by attorneys and expert witnesses. This, CUC contends, would involve a disclosure of confidential communications between attorney and client. CUC argues that in addition to violating the attorney-client privilege, requiring a "time sheet" level of reporting would eventually lead to arguments as to whether a particular attorney or expert's hourly billing rate is too high, that a particular task should not have taken as long as it did, or that a certain cost incurred or task performed was unnecessary. CUC concludes that the appropriate method for analyzing applications for intervenor funding is that currently used by the Commission which is simply to review the cumulative total for attorney and expert time, hourly rates, and total out-of-pocket costs. Based on this information, CUC contends, the Commission then has the ability to judge whether the overall requested funding is reasonable in amount.

On May 5, 1993, Idaho Power filed a reply to CUC's response. Idaho Power argues that because *Idaho Code* § 61-617A contains a reference to "witness fees," intervenor funding should not be granted to recover expert fees in cases handled under modified procedure where the expert does not testify.

Idaho Power further asserts that there should be no recovery for expert fees incurred prior to the filing of the Company's application.

Finally, Idaho Power argues that requiring CUC to provide greater detail of its expenses to determine whether they were incurred prior to the filing of the Company's application does not violate the attorney-client privilege.

### STATUTORY STANDARDS

*Idaho Code* § 61-617A and Rule 16 of the Commission's Rules of Practice and Procedure provide the framework for awards of intervenor funding. Section 61-617A provides that the Commission shall rely upon the following considerations in awarding funding to a given intervenor: [1] whether the intervenor materially contributed to the decision rendered by the Commission; [2] whether the alleged costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor to incur; [3] whether the recommendation made by the intervenor differed materially from the testimony and exhibits of the Commission Staff; and [4] whether the testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

Subsection 5 of this statute provides that intervenors who are in direct competition with the public utility involved in proceedings before the Commission shall not be granted funding.

Finally, the statute provides that the total award for all intervening parties combined shall not exceed \$25,000.00 in any proceeding.

Rule 16.1 of the Commission's Rules of Practice and Procedure provides the procedural requirements with which an application for intervenor funding must comply. The application 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.

Finally, Rule 16.3 provides that the Commission must find that the Intervenor's presentation materially contributed to the Commission's decision.

### FINDINGS

We have not, to date, granted CUC's Petition to Intervene. We find that CUC, as representative of a significant number of small commercial customers, has a direct and substantial interest in the implementation of Idaho Power's Program which is, in fact, geared primarily toward small commercial customers. We further note that Idaho Power did not object to the intervention of CUC; only to its requested funding. Pursuant to Rule 5 of the Commission's Rules of Practice and Procedure, therefore, we hereby grant CUC's Petition to Intervene.

We believe that Idaho Power's motion in objection to intervenor funding raises the following issues:

[1] Has CUC adequately identified and specified its expenses?

[2] Should CUC's application be denied because this case is being handled under modified procedure?

[3] Should CUC's application be denied because CUC is the primary beneficiary of the program?

[4] Should that portion of CUC's expenses incurred prior to the filing of Idaho Power's application be denied?

#### **Has CUC adequately identified and specified its alleged expenses?**

We find that CUC's application satisfies the procedural requirements of *Idaho Code* § 61-617A and Rule 16 of the Commission's Rules of Practice and Procedure as well as Order No. 24415, issued in Case No. IPC-E-92-10. CUC has provided the hourly rates of its expert and attorney as well as the number of hours worked. CUC did not allege any costs in its application. No further detail is typically required by this Commission. While we do not feel legally

constrained from seeking greater detail from an intervenor when circumstances justify our doing so, we find that additional detail is not needed in this case.

**Should CUC's application be denied because this case is being handled under modified procedure?**

We reject Idaho Power's argument that funding should not be granted in cases handled under modified procedure. Such a limitation would have a chilling effect on involvement by outside parties. Furthermore, we note that *Idaho Code* § 61-617A states that it is "the policy of this state to encourage participation at all stages of all proceedings before the Commission so that all affected customers receive full and fair representation in those proceedings" (emphasis added). Furthermore, the statute allows the award of intervenor funding "in any proceeding before the Commission."

We believe that it would be inconsistent with the spirit, intent, and specific letter of the statute to exclude cases handled under modified procedure from qualification for intervenor funding. The Commission has exclusive control over whether to handle a case under modified procedure. When we choose modified procedure, it is on the basis that the case presents issues that can be resolved through written comment without the need to incur the time and expense of a hearing. It is not necessarily because the case is uncomplicated or does not require the use of an expert. We find, therefore, that CUC's application should not be summarily denied simply because this case has been handled under modified procedure. The fact of whether a case is handled under modified procedure is relevant to the reasonableness of the requested amount of funding. Certainly, participating in a hearing requires an additional expenditure of legal and expert fees as well as costs. We took this into account when we assessed the overall reasonableness of CUC's requested funding as discussed below.

**Should CUC's application be denied because CUC is the primary beneficiary of the program?**

We reject Idaho Power's suggestion that CUC should be denied intervenor funding because it is small commercial customers who will primarily benefit from a conservation lighting program. If this were established as a criterion then, to be consistent, we would have to disqualify every intervenor from obtaining funding in any case where the intervenor somehow benefitted

by the Company's filing. The purpose of granting intervention is to allow any party, who has a direct and substantial interest in any proceeding, the opportunity to advocate its own best interests. Whether a utility's filing benefits a given intervenor is irrelevant to that intervenor's right to intervene and to receive funding.

**Should that portion of CUC's expenses incurred prior to the filing of Idaho Power's application be denied?**

We reject Idaho Power's recommendation that intervenor expenses incurred prior to the filing of a utility's application be excluded from funding. Utility filings are often the product of a cooperative effort between the utility and one or more intervenor groups. This constructive process may require an intervenor to incur significant expenses prior to the utility's filing. To disallow those expenses from inclusion under intervenor funding would degrade the value of the work performed and unduly inhibit an intervenor's willingness to coordinate and compromise with the utility prior to filing. This, in turn, would tend to make utility filings more contentious. As a result, it would become necessary to litigate issues that might otherwise have been settled through negotiation thereby increasing the time and expense incurred by the utility, intervenors, and the Commission. This is not sound policy. We find, therefore, that expenses incurred by CUC should not be summarily denied merely because they were incurred prior to the filing of Idaho Power's application.

We note that the purpose of intervenor funding is to assist in the recovery of expenses incurred in any "proceeding" before the Commission; not to fund the day-to-day operations of an intervenor. Therefore, to the extent that expenses incurred by an intervenor do not directly relate to and are not made necessary by a utility's filing, they are not eligible for recovery through intervenor funding.

We believe that activities such as consulting or meeting with a utility about matters of concern to an intervenor, which are not related to a specific filing, will generally be considered day-to-day operations, the costs of which are not eligible for recovery through intervenor funding.

We now turn to the reasonableness of CUC's requested funding. Initially, we find that CUC contributed materially to the decision rendered by this Commission in Order No. 24913. CUC clearly invested a great deal of time and effort in coordinating with Idaho Power in the design of this program and in

analyzing the Company's application. CUC's comments contributed significantly to our understanding of Idaho Power's Program and raised several legitimate issues relating to the Program.

We further find that, aside from the issue of reasonableness, CUC's application for funding complies with all of the other requirements of *Idaho Code* § 61-617A and Rule 16 of the Commission's Rules of Practice and Procedure.

Regarding reasonableness, we believe CUC's requested funding to be excessive. We find that a portion of CUC's expenses appear to reflect day-to-day operations as discussed above. We find, therefore, that the sum of \$4,000 fairly and reasonably compensates CUC for its involvement in this proceeding. Idaho Power is ordered to pay this amount to CUC within 28 days of the service date of this Order and to defer this expense for collection from ratepayers until the next general rate proceeding.

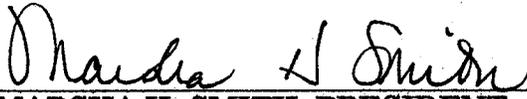
#### ORDER

IT IS THEREFORE ORDERED that the application of CUC for intervenor funding is hereby granted. CUC is awarded the sum of \$4,000. Idaho Power is directed to pay this amount within 28 days of the service date of this Order and to defer this expense for collection until the next general rate proceeding.

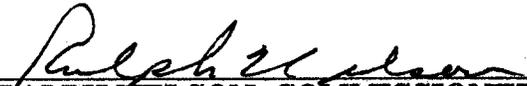
THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in Case No. IPC-E-93-5 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in Case No. IPC-E-93-5. 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 15<sup>th</sup> day of June 1993.

  
MARSHA H. SMITH, PRESIDENT

  
DEAN J. MILLER, COMMISSIONER

  
RALPH NELSON, COMMISSIONER

ATTEST:

  
MYRNA J. WALTERS  
COMMISSION SECRETARY

BP:VLD/O-2140

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE IDAHO POWER'S )  
APPLICATION FOR AUTHORITY TO ) CASE NO. IPC-E-96-26  
IMPLEMENT A PUBLIC PURPOSES CHARGE )  
TO FUND THE COMPANY'S PARTICIPATION )  
IN THE NORTHWEST ENERGY EFFICIENCY ) ORDER NO. 27267  
ALLIANCE. )  
\_\_\_\_\_ )**

**BACKGROUND**

On May 8, 1997, the Rate Fairness Group (RFG) filed an Application for intervenor funding for its participation in this proceeding. At the time of the RFG's Application, however, the case was still pending. Consequently, on August 14, 1997, the RFG filed a supplement to its Application for intervenor funding with adjustments to the amount of fees and costs claimed by the RFG. We hereby grant the RFG's Petition for Intervenor Funding and award the amount of \$5,400 as explained below.

**RFG's Application**

In its initial Application, the RFG set forth a summary of its proposed findings or recommendations made during the course of this proceeding which are as follows:

1. That Idaho Power's Application is a request for general rate relief;
2. That Idaho Power's Application is not within any exception to the settlement approved in Order No. 26216 (IPC-E-95-11);
3. That Modified Procedure is not appropriate and is inadequate in this case;
4. That formal hearings be held on Idaho Power Company's Application;
5. That Idaho Power's Application is for the recovery of costs that are the subject matter of a general rate case and that the Company has failed to file an Application for a general rate increase in compliance with the filing requirements of the *Idaho Code* and Rule 31.01.01 of the Commission's Rules of Procedure, and;
6. That Idaho Power's Application violates the rate moratorium and Order No. 26216 of the Commission in Case No. IPC-E-95-11 and should be dismissed.

The RFG goes on to contend that its costs are reasonable and that they constitute a significant hardship for the RFG which is a voluntary, unincorporated group consisting of 13 individual customers of Idaho Power Company, most of whom are retired or of limited means and generally on a fixed income.

The RFG further contends that its recommendations differ from those proposed by the Commission Staff in this proceeding considering that Staff did not object to the use of modified procedure; Staff did not contend that the Company's Application constitutes a general rate case; Staff did not contend that the Application violates the rate moratorium; Staff did not oppose the recovery of Idaho Power's public purposes costs from its ratepayers, and; Staff did not request a formal hearing in this case.

The RFG contends that its involvement in this proceeding raised issues of concern to Idaho Power's general body of ratepayers considering that all ratepayers are beneficiaries of the rate moratorium imposed by the Commission in Order No. 26216.

Finally, the RFG states that all 13 of its members are residential customers of Idaho Power and that two members are also commercial customers and one member is also an irrigation customer. The RFG requests intervenor funding in the following amount:

Legal Fees: (52.2 hrs. @ \$150/hr.)	\$7,830.00
Legal Expenses:	
Reproduction costs:	17.00
Mailing costs:	4.40
Secretarial Expenses: (12 hrs. @ \$20/hr.)	<u>240.00</u>
Total	\$8,091.40

#### **Idaho Power's Response**

On August 26, 1997, the Idaho Power Company (Company) filed a Motion in Opposition to the RFG's Application for intervenor funding. First, Idaho Power contends that the RFG's initial Application for intervenor funding was premature and that its supplement was filed too late. Idaho Power notes that the RFG did not file its supplement until August 14, 1997. (The Commission issued its initial final Order No. 27045 on July 16, 1997). Rule 164 of the Commission's Rules of Procedure, the Company argues, clearly provides that an intervenor requesting funding must apply no later than 14 days after the last deadline for submitting briefs, proposed Orders or statements of

position, whichever is last. Idaho Power fails to specify, however, what it believes to be the date of that 14 day deadline.

Second, Idaho Power objects to the RFG's Application because it fails to provide a "breakdown" or "itemization" of the work performed by the RFG's attorney. Consequently, Idaho Power argues, the Commission cannot make a determination that the costs the intervenor proposes to recover are reasonable in amount as required by Rule 162(c) of the Commission's Rules of Procedure.

Third, Idaho Power notes that none of the six findings or recommendations identified by the RFG in its Application were actually accepted by the Commission. Idaho Power argues that the RFG essentially advanced legal arguments which were also advanced by other parties to the proceeding and which were rejected by the Commission.

Fourth, Idaho Power contends that the RFG did not intend that its 13 individual members would be the rate group the RFG contends should be responsible for reimbursement for the intervenor funding award. Pursuant to Rule 165.03 of the Commission's Rules of Procedure, "awards of intervenor funding shall be chargeable to the class of customers represented by the intervenors." Consequently, Idaho Power argues that the request for intervenor funding should be denied on the grounds that the Application does not provide the information required for the Commission to rule, i.e., which customer class should be responsible for reimbursement of the intervenor funding award.

Finally, Idaho Power notes that the award of intervenor funding is a matter of discretion for the Commission. The Company proposes that if the Commission does award intervenor funding in this case, the cost of the payment of the award should be deferred until Idaho Power reports its 1997 earnings for purposes of meeting the earnings test. If Idaho Power has earned in excess of 11.75%, then the Company would recommend that it be permitted to recover this award with appropriate interest by deducting this amount from any refund due the Company's customers. If, on the other hand, the Company's earnings are less than 11.75%, then Idaho Power proposes to continue deferring this amount until some monies were collected from a public purposes charge, or if not, in the next general rate proceeding.

## FINDINGS

Rule 162 of the Commission's Rules of Procedure (IDAPA 31.01.01), provides:

An Application for intervenor funding must contain the following:

01. Itemized List of Expenses. An itemized list of expenses that the intervenor requests to recover broken down into categories such as legal fees, witness fees, or reproduction fees.
02. Statement of Proposed Findings. A statement of the intervenor's proposed finding or recommendation that the intervenor wishes the Commission to adopt.
03. Statement Showing Costs. A statement showing that the costs that the intervenor proposes to recover are reasonable in amount.
04. Explanation of Cost Statement. A statement explaining why the costs described in subsection 162.03 constitute a significant financial hardship for the intervenor.
05. Statement of Difference. A statement showing how the intervenor's proposed finding or recommendation described in subparagraph b differs materially from the testimony and exhibits of the Commission Staff.
06. Statement of Recommendation. A statement showing how the intervenor's recommendation or position addressed issues of concern to the general body of utility users or consumers.
07. Statement Showing Class of Customer. A statement showing the class of customer on whose behalf the intervenor appeared.

Regarding the time in which an Application must be filed, Rule 164 of the Commission's

Rules of Procedure states:

Unless otherwise provided by order, an intervenor requesting intervenor funding must apply no later than fourteen (14) days after the last evidentiary hearing in a proceeding or the deadline for submitting briefs, proposed orders, or statements of position, whichever is last. Motions in opposition to intervenor funding must be filed within fourteen (14) days after the request for intervenor funding is filed.

Finally, the Commission's decision whether to award intervenor funding and in what amount is controlled by Rule 165 of the Commission's Rules of Procedure which provides:

01. Order Awarding Intervenor Funding. The Commission may by order award intervenor funding pursuant to section 61-617A, Idaho Code. The total award for all intervening parties combined shall not exceed twenty-five thousand dollars (\$25,000) in any proceeding. The Commission must find that:

- a. the intervenor's presentation materially contributed to the Commission's decision,
- b. the costs of intervention awarded are reasonable in amount,
- c. the costs of intervention were a significant hardship for the intervenors,
- d. the recommendations of the intervenor differed materially from the testimony and exhibits of the Commission Staff, and
- e. the intervenor addressed issues of concern to the general body of users or consumers.

02. Payment of Awards. Awards of intervenor funding must be paid within twenty-eight (28) days of the order of the Commission awarding intervenor funding, unless the order of the Commission is stayed.

03. Recovery of Awards of Intervenor Funding. Awards of intervenor funding paid by electric, gas, water or telephone utilities will be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility's next rate case. Awards of intervenor funding shall be chargeable to the class of customers represented by the intervenors.

First, we find that the RFG's Application was timely pursuant to our rules. Rule 164 of the Commission's Rules of Procedure states that an intervenor requesting funding must apply "no later" than 14 days after the last evidentiary hearing or the deadline for submitting briefs. Consequently, the RFG's initial application filed May 8, 1997 (more than two months before the final Order was issued), albeit filed rather early, was timely. Because this case was handled pursuant to modified procedure and because it was heard on reconsideration, it was never entirely clear at what point it had been finally submitted to the Commission for review. Nonetheless, the RFG's initial application was timely filed. Moreover, when the Commission granted the ICIP's Petition for Reconsideration in Order No.27124, it established a filing schedule for the parties. The last deadline for filing comments in that schedule was October 1, 1997. The RFG's supplement to its initial application was filed on August 14, 1997.

Second, contrary to Idaho Power's suggestion, the Commission's Rules of Procedure contain no requirement that the legal costs of an intervenor be specifically itemized according to specific attorney tasks. This, in fact, has never been required by the Commission.

Third, the Commission's Rules of Procedure do not require that the Commission specifically adopt the position of an intervenor in order for that intervenor to qualify for funding as Idaho Power suggests. The Rules simply states that the intervenor's participation in the case must have materially contributed to the Commission's decision.

Fourth, Idaho Power's contention that the RFG is not entitled to intervenor funding simply because, according to Idaho Power, the 13 individual members of the RFG did not intend to reimburse the Company for a funding award is entirely without merit. Historically, the Commission has often awarded funding to intervenor groups that did not represent an entire class. Rule 71 of the Commission's Rules of Procedure states that anyone who claims "a direct and substantial interest in the proceeding" may petition for intervention. Rule 72 states that Petition for Intervention must "set forth the name and address of the petitioner and clearly and concisely state the direct and substantial interest of the petitioner in the proceeding." Nothing in the Commission's Rules requires that an intervenor must represent a specific customer class or a particular portion of a class. The Commission found that the RFG qualified as an "intervenor" when it issued Order No.26951 on May 29, 1997 granting the RFG's intervention.

Finally, we find that the RFG contributed materially to our decision in this case. While we did not ultimately agree with all of the proposals made by the RFG in this case, that is not a prerequisite to an award of intervenor funding, as noted above. Moreover, it does not mean that the RFG's participation did not contribute materially to our decision in this case. It is the policy of this Commission to offer reasonable opportunity for a variety of interests to present their positions before the Commission. In this case, the RFG represents primarily retired residential customers. That is a group who rarely, if ever, receives direct representation in proceedings before this Commission. Consequently, the RFG offered a perspective unique from all others presented in this proceeding and, to that extent, contributed materially to our final decision.

Based upon the foregoing, we hereby award intervenor funding to the RFG. We find, however, that the amount requested by the RFG is excessive. Based upon the nature of this proceeding and the RFG's participation, we find that an award of \$5,400 is reasonable.

Finally, we believe that this funding award should be recovered from all customer classes. We will grant Idaho Power's request to recover the award through a reduction to any refund its customers may receive if the Company's 1997 earnings are above 11.75%. This amount may be deferred until it can be collected from any public purposes charged this Commission ultimately approves or in the Company's next general rate proceeding.

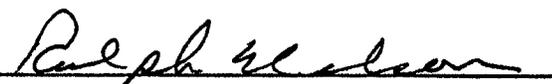
### ORDER

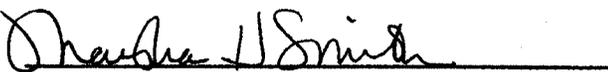
IT IS HEREBY ORDERED that the RFG is awarded intervenor funding in the amount of \$5400. Idaho Power is directed to pay this amount within twenty-eight (28) days pursuant to Rule 165.02 of the Commission's Rules of Procedure, IDAPA 31.01.01.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-96-26 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. IPC-E-96-26. 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 18<sup>th</sup>  
day of December 1997.

  
DENNIS S. HANSEN, PRESIDENT

  
RALPH NELSON, COMMISSIONER

  
MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
Myrna J. Walters  
Commission Secretary

cm\O:ipce9626.bp5