(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|  |  |  |
| --- | --- | --- |
| IN THE MATTER OF THE COMMISSION’S OWN INVESTIGATION INTO THE COSTS OF PROVIDING ELECTRIC SERVICE OF UTAH POWER & LIGHT COMPANY. | )  )  )  )  ) | CASE NO.  UPL-E-98-1  ORDER NO. 27730 |

On August 6, 1998, the Commercial Utility Customers of Utah Power (CUC) filed a Petition for Intervenor Funding in this case pursuant to Rules 161-165 of the Commission’s Rules of Procedure, IDAPA 31.01.01.

In its Petition, the CUC claimed the following costs and fees:

|  |  |
| --- | --- |
| Legal Fees (Ronald L. Williams—23 hours @ $125/hr.)  Expert Fees (Dr. David Eberle—48.5 hours @ $90/hr)  Mailing and reproduction costs  Total | $2,875.00  4,365.00     263.46  $7,503.46 |

The CUC filed similar petitions for intervenor funding in the other two electric unbundling cases involving Idaho Power Company and The Washington Water Power Company; Case Nos. IPC-E-98-2 and WWP-E-98-1, respectively.  According to its attorney, Mr. Williams, the CUC states that its total legal fees were split equally among the three unbundling cases.  The CUC’s expert witness, David Eberle, however, allocated his hours worked to specific cases.  The mailing and reproduction costs were also split equally among the three cases.

In its Petition, the CUC notes that it made a number of recommendations that were not made by the Commission Staff in the direct testimonies filed in the three cases.  Specifically, the CUC recommended that the Commission more closely examine the three utilities’ labor allocation methodologies.  The CUC also recommended that the Commission require the three utilities to identify more public purpose costs than contained in the unbundling reports submitted to the Commission.  The CUC recommended that the Commission study and better understand the potential for cross-subsidies between existing class rates.  The CUC also recommended that a new unbundled cost account for non-generation, universal service support be created.  Finally, the CUC notes that it needs additional information to enable it to compare unbundled costs to existing rates.

The CUC’s Petition asserts that the time spent by its attorney and expert witness in preparing the CUC’s case is reasonable considering the complexity of utility cost unbundling.  The CUC further contends that the hourly rates of its attorney and expert are at or below market rates.

The CUC alleges that the costs incurred by it in participating in the three unbundling cases constitute a significant financial hardship for its organization.  The CUC’s members have purportedly been able to raise only limited funds from the four associations comprising the CUC in order to participate in cases before the Commission.  According to the CUC, all four associations are limited in their ability to collect voluntary dues or special assessments from member companies.  The CUC states that because of its limited budget, it was unable to participate in Idaho Power’s recent DSM case (Case No. IPC-E-97-12).

Finally, the CUC contends that the position taken by it in these three unbundling cases address issues of concern to the general body of ratepayers.

On August 24, 1998, PacifiCorp filed a response to the CUC’s Petition.  PacifiCorp simply refers to several facts regarding the nature of the CUC’s participation in this case and the fees for which the CUC seeks funding without posing an outright objection to the Petition.

FINDINGS

First, we find that the CUC’s Petition in this case was timely filed and satisfies all of the other “procedural” requirements set forth in Rules 161-165 of the Commission’s Rules of Procedure.  Second, Rule 165 of the Commission’s Rules of Procedure contains the following “substantive” requirements: (a) the CUC’s involvement in this case must have materially contributed to the Commission’s final decision, (b) the costs of intervention awarded are reasonable in amount, (c) the costs of intervention are a significant hardship for the CUC, (d) the recommendations of the CUC differed materially from the testimony and exhibits of Commission Staff, and; (e) the CUC addressed issues of concern to the general body of ratepayers.

We find that the CUC’s involvement in this proceeding satisfies all of the  substantive requirements contained in Rule 165 of the Rules of Procedure and, consequently, the CUC is entitled to an award of intervenor funding.  The fact that the testimony filed by the CUC in the three unbundling cases is identical does not somehow negate the value of that testimony.  The statutory criterion we are concerned with is whether the amount requested in each case is reasonable, which we hereby find that it is.  See, Idaho Code § 61-617A.

We note that Commissioner Smith has filed a dissenting opinion in this case.  While we find that the CUC satisfied all of the procedural and substantive requirements necessary for an entitlement to an award of intervenor funding, we share, in a general context, Commissioner Smith’s concerns regarding the lack of detail typically provided in the Petitions for Intervenor Funding.  This concern is exacerbated in this case by the fact that the CUC’s attorney simply split his hours equally among the three unbundling cases.  We acknowledge the unique character of the three unbundling cases and accept the fees of the CUC’s attorney in this and the other cases as being reasonable.  Should a similar scenario arise in the future, however, we would prefer to see a specific itemization among the cases.

We hereby award the CUC the sum of $7,503.46 in this case.

O R D E R

IT IS HEREBY ORDERED that the CUC is awarded intervenor funding pursuant to the terms and conditions set forth above.

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. UPL-E-98-1  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. UPL-E-98-1 .  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                  day of September 1998.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

See Attached Dissenting Opinion

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

O:UPL-E-98-1.bp6

DISSENT OF

COMMISSIONER MARSHA H. SMITH

Case No. UPL-E-98-1

I hereby respectfully dissent from the majority opinion issued in this case and the related cases for Idaho Power and Water Power.  My dissent is based solely on the lack of detail provided in the CUC’s Petition and what, I believe, is the excessive amount of the fees claimed.  The purpose of my dissent is not to call into question the integrity of the CUC’s attorney or expert witness or the value of the CUC’s participation in this case.  The CUC has established a good standing with this Commission and a reputation for providing valuable input.  I believe it is unacceptable, however, that CUC’s attorney simply divided his hours equally among the three cases, regardless of the commonality of issues that may have existed.  Given the fact that a technical hearing was never performed in this case and that the CUC filed essentially the same testimony in all three cases, the amount of hours claimed both by the CUC’s attorney and its expert witness appear unreasonably high.  In its Petition, the CUC states that “[c]osts incurred by Mr. Williams and Mr. Eberle were minimal because both are Boise residents and neither had to travel to attend hearings or to work together and prepare testimony and exhibits.”  It is for this very reason that I believe the requested funding to be excessive.

Given the majority’s decision to award the entire amount requested by the CUC, it is unnecessary for me to state a specific amount of funding that I believe would be reasonable.  Suffice it to say, that I believe that the amount requested and being awarded by the Commission in this case is unreasonable.

MARSHA H. SMITH, COMMISSIONER

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

September 11, 1998