

**SNAKE RIVER
ALLIANCE**
IDAHO'S NUCLEAR WATCHDOG
& CLEAN ENERGY ADVOCATE

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2010 AUG 27 PM 3:59
IDAHO PUBLIC
UTILITIES COMMISSION

August 27, 2010

TO: Jean Jewell
Idaho Public Utilities Commission Secretary
472 West Washington
Boise, ID 83702

RUL-2-10-01

FROM: Ken Miller
Snake River Alliance
Ph: (208) 344-9161

Dear Ms. Jewell:

Please accept the attached letters to Commissioners Redford, Kempton and Smith regarding a rule-making issue of interest to me and my employer, the Snake River Alliance.

Kindest regards,

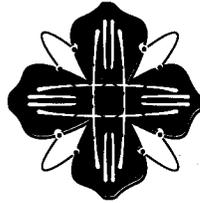
Ken Miller
Clean Energy Program Director
Snake River Alliance
Box 1731
Boise, ID 83701
(208) 344-9161
kmiller@snakeriveralliance.org
www.snakeriveralliance.org

www.snakeriveralliance.org
Toll Free: 1.866.891.0178

Boise
PO Box 1731
Boise, Idaho 83701
208.344.9161 voice
208.331.0885 fax

Ketchum
PO Box 4090
Ketchum, Idaho 83340
208.726.7081 voice

Pocatello
PO Box 425
Pocatello, Idaho 83204
208.235.7212 voice



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IDAHO PUBLIC UTILITIES COMMISSION

August 27, 2010

TO: Idaho Public Utilities Commission
Commissioner Mack Redford
Commissioner Jim Kempton
Commissioner Marsha Smith
Don Howell, Director, Legal Division
472 West Washington
Boise, ID 83702

RUL-u-10-01

FROM: Ken Miller
Snake River Alliance

RE: Proposed Changes to IPUC Rule 43

Dear Commissioners Redford, Kempton, and Smith and Mr. Howell:

On behalf of the Snake River Alliance, I am writing to express my concern about a proposed rule regarding standards for participation in certain matters before the Idaho Public Utilities Commission.

In particular, we are concerned about the proposed change in Rule 43 (Representation of Parties) as it pertains to restrictions in participation in administrative or quasi-judicial proceedings before the Commission. More precisely, we are concerned about the likely impacts, intended or otherwise, of the following proposed language:

04c: A municipal corporation; a state, federal, tribal, or local government agency; an unincorporated association; a non-profit organization or other entity shall be represented by a licensed attorney.

The Alliance understands the genesis of the proposed rule and the Commission's attempt to comply with recent Supreme Court opinions. However, we believe the proposed change to Rule 43 goes beyond the court's intent inasmuch as it can disqualify vast segments of Idaho's population from participating in administrative or quasi-judicial matters that affect them most intimately and that they take very seriously: The price they pay for utility costs that can present odious obligations and budget decisions.

www.snakeriveralliance.org
Toll Free: 1.866.891.0178

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The Alliance does not question the intent of the Commission's proposed rule. Rather, we urge the Commission to rethink the language of this particular rule and the ramifications it will have on the ability of non-profit and public interest organizations such as the Snake River Alliance, which under this proposed rule would be excluded from participation in critical stages of cases before the Commission.

The Alliance represents many Idahoans who for obvious reasons are taking a greater interest in matters before the Commission. Many of them are frustrated by what they believe is an opaque system in which critical decisions are made out of public view. This is amply evident in at least two recent general rate cases involving Idaho Power and Avista Utilities that in the eyes of many were settled without benefit of adequate public participation. As the Commission knows, the Snake River Alliance participated in both of those cases.

In the pending Avista general rate case (AVU-E-10-01, 2) we were granted intervenor status and because of that we were able to participate in negotiations and we were able to submit comments, like all parties, on the proposed settlement stipulation. In the Idaho Power case (IPC-E-09-30) – which did not originate as a general rate case but which settled as such – the Alliance again was a participant *but only because the Alliance was invited to participate by the utility by virtue of intervening in the prior general rate case.*

Even in that case, the Alliance's participation was acknowledged in a Commission news release:

One of the participants, the Snake River Alliance, said "the revenue sharing, PCA sharing, and rate case moratorium components of the settlement in this case serve the company and its customers as well as possible in our current economic times."

Examples of other dockets in which the Alliance was accorded an opportunity to participate as a party include the CPCN for the Langley Gulch Power Plant (IPC-E-09-03) and the Idaho Power SO2 Allowances Revenue Allocation (IPC-E-07-18). Prior to joining the Alliance, I participated in dockets as the Idaho Energy Advocate for the NW Energy Coalition, which I currently chair.

The Alliance is actively working to help its members and others better understand the workings of the Commission and to make them more comfortable in participating before the Commission in various forms.

The Commission is aware that, while the Alliance is an active participant in electric cases, our requests to intervene in electric cases before the Commission are infrequent and the Commission has been generous in allowing such participation. Should the Commission preclude that participation in the future, the consequences may include:

- The Alliance will no longer be entitled to participate in the heart of what has become a typical general rate case in Idaho. Such rate cases are increasingly being

“pancaked” on an annual or nearly annual basis, and parties rightly pursue settlements whenever possible to avoid a prolonged contested proceeding.

- It is becoming clear that critical issues in these rate cases are discussed and often resolved in negotiation sessions that are closed to the public.
- While the public is accorded an opportunity to comment in public meetings and in written comments to the Commission, the second opportunity often comes after key parties have reached a settlement stipulation.

Inasmuch as Idaho does not employ a public counsel or consumer advocate to represent the interests of the vast majority of utility customers (and we strongly believe it should), those interests are often represented by public interest organizations such as the Alliance. We are aware that some Commission staff consider staff to fulfill this critical role, but we are unconvinced that representation of the general customers is always staff’s highest priority. In states that do employ public counsel or a consumer advocate, such representation as an independent third party proves invaluable. We believe it is asking too much of staff to serve multiple functions.

Mindful of the Commission’s need to comply with the Supreme Court’s ruling on these matters, the Alliance is interested in finding a solution to the above issues. One possibility the Commission might consider is modifying its proposed rule by allowing the Commission to grant intervention status in the rare quasi-judicial proceedings such as those where the Alliance has requested it, but precluding the Alliance or other “non-profit organizations” from offering direct testimony or cross-examining witnesses. As the Commission knows, we are not attorneys and we rarely have a need to perform these functions.

Our involvement is generally geared toward representing the interests of our members and other individual utility customers through encouraging such things as reforms in rate design, encouraging greater funding for low-income assistance and weatherization programs, evaluating cost-effectiveness of demand-side management programs, and the like. These are issues that are almost universally addressed or negotiated during settlement discussions and negotiations – not after a stipulation is reached and then through public comments.

Entities such as the Alliance that lack the resources to secure legal counsel could and should have the opportunity to engage as a party in dockets such as a general rate case and in settlement discussions when they occur.

In the overwhelming number of electric and gas cases before the Commission, the Alliance believes that participating in public workshops or submitting written comments to the Commission sufficiently represents our position. We want to avoid prolonged contested rate cases and other matters as much as any party that appears before the Commission, but we also believe that locking groups such as ours out of some of the most sensitive discussions in some of the most important cases before the Commission simply for our lack of ability to engage an attorney disadvantages our organization and those we represent.

For the above-stated reasons, the Alliance urges the Commission to reconsider the proposed language revisions contained in Rule 43. Should Commissioners determine a meeting to further discuss this matter would be helpful, we would be pleased to do so.

Thank you for your consideration of what, for my organization and the hundreds of Idahoans we represent, is a very serious matter.

Kindest regards,

A handwritten signature in black ink that reads "Ken Miller". The signature is written in a cursive style with a large initial "K" and "M".

Ken Miller
Clean Energy Program Director
Snake River Alliance
Box 1731
Boise, ID 83701
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