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Attorney for Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE NEGOTIATED)
RULEMAKING TO EXAMINE DRAFT)
CHANGES TO THE COMMISSION'S)
RULES OF PROCEDURE, IDAPA)
31.01.01.000)
)
) IDAPA DOCKET NO. 31-0101-1001
) IPUC CASE NO. RUL-U-10-01
)
) COMMENTS OF THE
) COMMISSION STAFF

COMES NOW the Staff of the Idaho Public Utilities Commission by and through its attorney of record, Donald L. Howell, II, and hereby submits these comments in support of the Commission's proposed changes to its Procedural Rules. On March 11, 2010, the Commission initiated a negotiated rulemaking process to examine various amendments to its Rules of Procedure, IDAPA 31.01.01. On April 7, 2010, the Commission also caused to be published in the Idaho Administrative Bulletin a Notice of Negotiated Rulemaking. Both Notices stated that the Commission would hold an informal public workshop for the purpose of reviewing and discussing the proposed changes to its Rules of Procedure.

THE PUBLIC WORKSHOP

On April 21, 2010, interested persons met in the Commission Hearing Room or participated by telephone in the negotiated rulemaking workshop. As set out in the Notices, the reasons for the proposed changes include: (1) conforming the Commission's testimony and transcript rules (Rules 231 and 286) to changes in the Idaho Supreme Court's Appellate Rules; (2) changing Rule 43 (Representation of Parties) to conform to Supreme Court Opinions

COMMENTS OF THE
COMMISSION STAFF

regarding the representation of partnerships, corporations and other entities; (3) adding Rule 20 to make it easier to determine when telephone companies are no longer conducting business in Idaho; and (4) making other changes to improve clarity (Rules 5, 16, 125, 301) and correcting citations (Rules 0, 19, 21). Notice at p. 1, Administrative Bulletin, Vol. 10-4, at p. 25. Representatives from Idaho Power Company, Commission Staff, Qwest Corporation, PacifiCorp dba Rocky Mountain Power and United Water attended and participated in the workshop.

STAFF COMMENTS

Except as noted below, the workshop participants agreed or did not object to most of the rule changes proposed by the Commission. More specifically, the participants had no objections to the changes to Rules 16, 19, 125, 231, 286, and 301.

Based upon the comments and suggestions of the workshop participants, Staff recommends that the Commission review and approve several changes to the proposed rules. To facilitate the Commission's review of the proposed changes, the reasons for the changes are discussed before each rule in numeric order below.

Rule 0: Although the participants generally agreed with the proposed changes to Rule 0 (Legal Authority), Qwest commented that several references to Title 62 statutes appear to be inadvertently omitted. The Staff agrees and recommends that the Commission adopt the proposed changes shown in bold italics below.

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code; Chapters 9, 8 through 10, and 13, 15 through 17, Title 61, Idaho Code; Chapters 3 and 4, Title 62, Idaho Code; the Telecommunications Act of 1988, as amended, Chapter 6, Title 62; and Chapters 12, Title 62, Idaho Code, Chapter and 13, Title 62, Idaho Code; and the particular authority of Sections 56-904, 61-304 through 61-309, 61-501, ~~61-502, 61-503~~ through 61-505, 61-507, 61-516, 61-538, 61-541, 61-601 through 61-607, 61-610 through 61-619, 61-6201 through 61-626, 61-803 through 61-806, 61-902 through 61-905, 61-909, 61-1003 through 61-1005, 61-1007, 61-1305, 61-1306, 61-1603 through 61-1607, 61-1703 through 61-1709, 62-304, 62-305, 62-424, ~~62-6024, 62-605, 62-608~~ through ~~62-612, 62-610A through 62-610F, 62-614 through~~ 62-616A, 62-619, 62-622, 62-622A, 62-1201 through 62-1207, 62-1303, and 62-1304, 63-3029I, and 67-6528, Idaho Code. (4-5-00)()

Rule 5: Qwest noted a typo in the proposed text. The correct citation to the definitions in Title 62 is Section 62-603. Staff agrees and recommends that the Commission adopt the change reflected below.

005. DEFINITIONS (RULE 5).

Terms of art used throughout these rules are defined within the rules themselves. The term “utility” used in these rules includes every common carrier, pipeline corporation, gas corporation, electric corporation, telephone corporation, and water corporation as defined in Chapter 1, Title 61, Idaho Code, and Section 62-6023, Idaho Code. (7-1-93)()

Rule 20: Qwest and Verizon suggested that the new Rule 20 set out below be clarified to indicate that the rule applies to the discontinuance of basic local exchange service or message telecommunications service (i.e., long-distance calling). Staff concurs and recommends that the Commission adopt the changes reflected below.

020. (RESERVED). DISCONTINUANCE OF TELECOMMUNICATIONS SERVICE (RULE 20).

A telephone corporation that intends to discontinue service in Idaho shall file a notice with the Commission at least ninety (90) days in advance of the date that it intends to cease operations. The telephone corporation proposing to discontinue *basic local exchange or message telecommunications* services shall also publish a notice of such discontinuance in a legal newspaper circulated in its service area pursuant to Section 62-612, Idaho Code. If the telephone corporation held any customer deposits or advance payments, the telephone corporation shall indicate in the notice how the deposits are to be returned to customers. See also IDAPA 31.41.01.312 ()

Rule 43: This rule attracted the most discussion among the participants. Most of the discussion centered on the distinction between the types of “administrative proceedings” and “quasi-judicial proceedings” set out below. In particular, the participants questioned whether rulemaking proceedings under Commission Rule 401 (IDAPA 31.01.401) would require representation by attorneys. After discussing this matter with the Idaho State Bar Counsel, Staff believes that rulemaking is more legislative than judicial. Accordingly, Staff recommends that “rulemaking” be added to the list of administrative proceedings under Subsection 01 below.

The participants also discussed whether in-house counsel for utilities might be exempt from the Pro Hac Vice requirements in Rule 43.03 below. Staff believes that Idaho law

requires that utilities be represented by Idaho licensed attorneys in quasi-judicial proceedings. As the Idaho Supreme Court recently noted in *Indian Springs v. Indian Springs Land Investment*, 147 Idaho 737, 744-45, 215 P.3d 457, 464-65 (2009): “the law in Idaho is that a business entity, such as a corporation, limited liability company, or partnership must be represented by a licensed attorney before an administrative body or a judicial body.” Staff believes that the current Pro Hac Vice rule in effect since 2004 strikes the appropriate balance by requiring out-of-state licensed attorneys to request limited admission at least one (1) time per calendar year. See Rule 43.03 below.

043. REPRESENTATION OF PARTIES ~~AT PROCEEDINGS~~ (RULE 43).

~~Recognizing that p~~Proceedings before the Commission are sometimes administrative in nature or quasi-judicial in nature, ~~appearances and~~.
(3-16-04)()

01. Administrative Proceedings. Administrative proceedings before the Commission include matters such as the filing of tariff schedules, tariff advices, price lists, certificates to provide local exchange service, interconnection agreements, *rulemaking*, written comments in modified procedure, or written comments provided at a customer hearing. These filings may be made by a natural person pro se, a partner in a partnership, an employee or officer of a corporation, or a licensed attorney. ()

02. Quasi-Judicial Proceedings. The representation of parties at quasi-judicial proceedings for the purpose of adjudicating the legal rights or duties of a party is restricted as set out below. Quasi-judicial proceedings before the Commission include matters such as formal complaints, petitions, motions, applications for modified procedure or technical/evidentiary hearings. Representation of parties at these types of proceedings shall be as follows:()

01a. ~~Natural Person.~~ A natural person ~~must~~ may represent himself or herself or be represented by a ~~duly authorized employee, or an licensed~~ attorney. (3-16-04)()

02b. ~~Partnership.~~ ~~A partnership or corporation must~~ shall be represented by a ~~partner, duly authorized employee, or an licensed~~ attorney. (7-1-93)()

03. ~~Corporation.~~ ~~A corporation must be represented by an officer, duly authorized employee, or an attorney.~~ (7-1-93)

04c. ~~Other Entity.~~ A municipal corporation,; a state, federal, tribal, or local government agency,; ~~or entity,~~ an unincorporated association,; or a non-profit

organization, or other entity must shall be represented by ~~an officer, a duly authorized employee or an~~ licensed attorney. (7-1-93)()

053. Attorney Representation. Only an active member of the Idaho State Bar may represent a party as an attorney except as provided by Idaho Bar Commission Rule 2227 (Limited Admission/Pro Hac Vice). The Commission adopts by incorporation Bar Rule 2227 as modified below. (3-16-04)

~~a. Given the administrative nature of many proceedings, limited admission by out-of-state attorneys will not be necessary in conjunction with administrative filings such as tariff schedules, tariff advices, price lists, certificates to provide local exchange service, and interconnection agreements. Out-of-state attorneys representing the same party in one (1) or more quasi-judicial cases proceedings (such as formal complaints, motions, petitions, and applications that request modified procedure or an evidentiary hearing), must request limited admission at least one (1) time per calendar year.~~ (3-16-04)()

b. An attorney applying for limited admission to appear before the Commission in a representative capacity shall file a written motion with the Commission Secretary and serve a copy on all parties. The motion shall be substantially in the form set out in Bar Rule 2227(1) with references to the Commission instead of the court. (3-16-04)()

c. A copy of the written motion shall be submitted to the Idaho State Bar accompanied by the fee prescribed by in Bar Rule 2227(j). (3-16-04)()

Rule 121: Qwest proposed that the scope of this rule be clarified. Staff and the other participants agreed. Accordingly, Staff is recommending that the Commission adopt the change to Rule 121.01 noted below.

121. FORM AND CONTENTS OF APPLICATION TO CHANGE RATES (RULE 121).

01. Utility Applications to Change Rates. Applications by any public utility subject to Title 61, Idaho Code, to increase, decrease or change any rate, fare, toll, rental or charge or any classification, contract, practice, rule or regulation resulting in any such increase, decrease or change must include the following data: (4-5-00)()

a. An exhibit showing in full each proposed change in rates, tolls, rentals, charges, rules or regulation by striking over proposed deletions to existing tariffs and underlining proposed additions or amendments to existing tariffs, except applications to increase or decrease all or almost all rates and charges by a uniform percentage or by a uniform amount may be made by filing a tariff listing the proposed change and all unchanged rates and charges or rates

and charges not changed by a uniform percentage or a uniform amount, or by use of another designation previously approved by the Commission that clearly calls attention to all proposed changes in numbers or wording. (7-1-93)

b. If the application is subject to Rule 122, a complete justification of the proposed increase in the form of testimony and exhibits or a narrative exposition. (7-1-93)

c. If the application is subject to Rule 122, ~~when a general change in recurring rates is proposed,~~ a statement showing how the application has been brought to the attention of affected customers ~~under IDAPA 31.21.02.102 or 31.41.02.102~~ and a copy of the press release and customer notice required by Rule 125. (7-1-93)()

d. A statement that the applicant stands ready for immediate consideration of the application. (7-1-93)

e. If the application is subject to Rule 122, testimony and exhibits showing financial statements, cost of capital and appropriate cost of service studies. (7-1-93)

f. Workpapers or documentation showing how test year data were adjusted. (7-1-93)

g. If the applicant provides utility service in states other than Idaho or utility service subject to federal regulation, a jurisdictional separation of all investments, revenues and expenses allocated or assigned in whole or in part to Idaho intrastate utility business regulated by this Commission showing allocations or assignments to Idaho. (7-1-93)

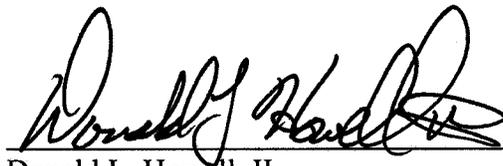
02. Proposals Based upon Computer Modeling. In addition, in any application in which a computer model is used to represent or simulate processes from which the revenue requirement is derived or upon which allocations of the revenue requirement to different customer classes are based, complete documentation of all those computer models must be supplied to the Staff, upon request, and be available in the utility's office or other depository. The Staff may request that the computer model itself be provided. A computer model includes the representation or simulation of a process, but does not mean or include the compilation of actual data. The application must state that the documentation of the models already on file in the applicant's office or other depository fully describes the models or that necessary updates or additions to previous documentation that will fully describe the models is on file and will be supplied on request. (4-5-00)

03. Grounds for Returning or Dismissing Application. Failure to comply with Rule 121.01 and 121.02 of this rule is grounds to return or dismiss an application under Rule 65. (7-1-93)

STAFF RECOMMENDATION

In summary, Staff recommends that the Commission adopt the proposed changes set out above and the initially proposed changes to Rules 16, 19, 125, 231, 286, and 301. Staff further recommends that the Commission formally propose these changes and issue a Notice of Proposed Rulemaking in IDAPA Docket No. 31-0101-1001.

RESPECTFULLY submitted this 26th day of April 2010.



Donald L. Howell, II
Deputy Attorney General

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