

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL

DATE: MARCH 11, 2008

SUBJECT: STIPULATION TO ADOPT COMMITMENTS IN IDAHO POWER'S
CODE OF CONDUCT CASE, CASE NO. IPC-E-01-08

On February 19, 2008, the remaining parties in Idaho Power's Code of Conduct case filed a Motion for the Commission to approve the parties' recent settlement. The parties (Idaho Power, Staff, and the Industrial Customer of Idaho Power (ICIP)) have agreed on a set of 21 "commitments" which will govern the conduct among Idaho Power, its parent corporation (IDACORP), and other affiliates.

BACKGROUND

In January 2001, Idaho Power filed an Application seeking approval of a proposed Statement of Policy and Code of Conduct covering transactions between Idaho Power Company, other subsidiaries of IDACORP, and IDACORP Energy Solutions (IES).¹ The Commission subsequently bifurcated the proceeding. In Case No. IPC-E-01-2, the Commission intended to consider the conduct between Idaho Power and IES. In Case No. IPC-E-01-08, the Commission intended to consider the conduct between Idaho Power (the regulated entity) and other IDACORP affiliates engaged in non-power transactions with Idaho Power. In July 2004, the Commission dismissed the IPC-E-01-2 case because IDACORP decided to withdraw from the wholesale power business and began closing the trading subsidiary in the summer of 2002. Application at ¶ 3 *citing* Order No. 29549. The present case remained open "to address any affiliate transaction issues that remain with other Idaho Power affiliates." *Id.*

¹ At the time, IES (and subsequently IDACORP Energy (IE)) was IDACORP's wholly owned subsidiary engaged in the marketing of electricity and natural gas on the wholesale level. IES also made sales to retail customers in states where retail access was permitted.

TERMS OF THE SETTLEMENT STIPULATION

The parties have mutually agreed to a Code of Conduct regarding transactions between Idaho Power and other affiliates. The list of “commitments” contained in Attachment A to the Stipulation are designed to prescribe the conduct between Idaho Power and an affiliate, avoid issues of self-dealing, and provide a framework to determine if cost recovery for affiliate transactions should be included in rates. *Id.* at ¶ 6 *citing* Order No. 29549 at 3. More specifically, Idaho Power and IDACORP agree to several safeguards including:

- IDACORP and Idaho Power will provide the Commission reasonable access to all books of accounts as well as all documents, data, and records of their affiliated interests, which affect the business of Idaho Power Company. Commitment No. 2.
- IDACORP, Idaho Power, and all affiliates will make their employees, officers, directors, and agents available to testify before the Commission. Commitment No. 3.
- IDACORP and Idaho Power agree that at least one director on each Board of Directors will have prior experience with respect to the operation, financial analysis, or regulation of a regulated gas or electric utility. Commitment No. 4.
- IDACORP and Idaho Power will provide the Commission reasonable access to corporate minutes and all committee minutes. Commitment No. 14.

The complete list of the agreed upon commitments appears as Attachment A to the Settlement Stipulation.

The parties also note that Power Development Associates and Astaris were previously granted intervention in this matter. Astaris no longer exists and counsel for Power Development indicated that it does not wish to participate in the proceeding. Counsel for both Astaris and Power Development were served copies of this Stipulation. ¶ 4.

The parties assert that the Stipulation represents a fair, just and reasonable resolution of the issues raised in the proceeding. Motion at ¶ 2. The parties further maintain that the Stipulation is in the public interest. The parties request that the Commission approve the Stipulation and accompanying Code of Conduct agreed to by the parties pursuant to Rule 274, IDAPA 31.01.01.274. The parties stand ready to support the Stipulation in any manner deemed necessary by the Commission.

PARTIES RECOMMENDATION

Pursuant to Commission Rule 274, the parties request that the Commission summarily accept the Settlement Stipulation submitted in this matter and approve the Code of Conduct applicable to Idaho Power, its parent, and its affiliates.

COMMISSION DECISION

Does the Commission accept the parties' Settlement Stipulation and the accompanying Code of Conduct applicable to Idaho Power, its parent, and its affiliates?



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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE) Case No. IPC-E-01-08
APPLICATION OF IDAHO POWER)
COMPANY FOR APPROVAL OF A) SETTLEMENT STIPULATION
PROPOSED STATEMENT OF POLICY)
AND CODE OF CONDUCT COVERING)
TRANSACTIONS BETWEEN IDAHO)
POWER AND SUBSIDIARIES OF)
IDACORP, INC.)

1. This Settlement Stipulation (“Stipulation”) is entered into by and among the Staff of the Idaho Public Utilities Commission (“Staff”), Idaho Power Company (“Idaho Power” or “the Company”), and the Industrial Customers of Idaho Power (“ICIP”). These entities are collectively referred to herein as the “Parties.”

INTRODUCTION

2. The terms and conditions of this Stipulation are set forth herein. The Parties agree this Stipulation represents a fair, just and reasonable settlement of the issues raised in this proceeding and that this Stipulation is in the public interest. The Parties believe this Stipulation, and its acceptance by the Idaho Public Utilities Commission (“IPUC” or the “Commission”), represents a reasonable resolution of the issues identified in this matter. The Parties, therefore, recommend that the Commission, in accordance with Rule of Procedure (RP) 274, approve this Stipulation and all of its terms and conditions without material change or condition.

BACKGROUND

3. On January 18, 2001, Idaho Power filed an Application seeking approval of a proposed Statement of Policy and Code of Conduct covering transactions between Idaho Power Company, IDACORP Energy Solutions, LP (IES), and other subsidiaries of IDACORP, Inc. On March 5, 2001, the Commission bifurcated the proceedings into Case No. IPC-E-01-02 to consider the Statement of Policy and Code of Conduct between Idaho Power and IES, and Case No. IPC-E-01-08 to consider the Statement of Policy and Code of Conduct applicable to other IDACORP affiliates engaged in non-utility, non-power transactions with Idaho Power. Order No. 28649. On July 29, 2004, the Commission dismissed as moot Case No. IPC-E-01-02 regarding the Code of Conduct between Idaho Power and IES/IDACORP Energy (IE) as IE had ceased to operate as a going concern. Order No. 29549. This docket, Case No. IPC-E-01-08, remained open “to address any affiliate transaction issues that remain with other Idaho Power affiliates.” Order No. 29549 at 3.

4. In April 2001, ICIP, Power Development Associates, LLC (PDA), and Astaris LLC were granted intervention in this matter by separate Commission Orders. Order Nos. 28704, 28705, and 28709. Counsel for PDA has indicated that PDA no longer wishes to participate in this proceeding. Astaris LLC no longer exists. Counsel for both PDA and Astaris have been served copies of this Stipulation as well as the Motion for Approval of the Stipulation. ICIP, Commission Staff, and Idaho Power are signatories to this Stipulation.

5. This Stipulation sets forth the basic principles of a settlement agreement between the Parties to this matter.

TERMS OF THE STIPULATION

6. The Parties have agreed to a mutually acceptable Code of Conduct for Idaho Power as set forth in paragraphs #1 through #21 of Attachment A, Code of Conduct, incorporated herein by this reference. The Parties agree that the incorporated Code of Conduct addresses affiliate transactions identified by the Commission in Order No. 29549 as “necessary to: (1) direct corporate conduct and avoid issues of self-dealing, and (2) provide a framework to determine if cost recovery for affiliate transactions should prudently be included in rates.” Order No. 29549 at 3.

7. The Parties agree that this Stipulation represents the agreement of the Parties in this case. As provided in RP 272, other than any testimony filed in support of the approval of

this Stipulation, and except to the extent necessary for a Party to explain before the Commission its own statements and positions with respect to this Stipulation, all statements made and positions taken in negotiations relating to this Stipulation shall be confidential and will not be admissible in evidence in this or any other proceeding.

8. The Parties submit this Stipulation to the Commission and recommend approval in its entirety pursuant to RP 274. The Parties shall support this Stipulation before the Commission and no Party shall appeal a Commission Order approving this Stipulation or an issue resolved by this Stipulation. If this Stipulation is challenged by any person not a party to this Stipulation, the Parties to this Stipulation reserve the right to file testimony, cross-examine witnesses and put on such case as they deem appropriate to respond fully to the issues presented, including the right to raise issues that are incorporated in the settlements embodied in this Stipulation. Notwithstanding this reservation of rights, the Parties to this Stipulation agree that they will continue to support the Commission's adoption of the terms of this Stipulation.

9. If the Commission rejects any part or all of this Stipulation, or imposes any additional material conditions on approval of this Stipulation, each Party reserves the right, upon written notice to the Commission and the other Parties to this proceeding, within 7 days of the date of such action by the Commission, to withdraw from this Stipulation, and each Party shall be entitled to seek reconsideration of the Commission's Order, file testimony as it chooses, cross-examine witnesses, and do all other things necessary to put on such case as it deems appropriate. In such case, the Parties immediately will request the prompt convening of a prehearing conference for purposes of establishing a procedural schedule for the completion of the case. The Parties agree to cooperate in development of a schedule that concludes the proceeding on the earliest possible date, taking into account the needs of the Parties in participating in hearings and preparing briefs.

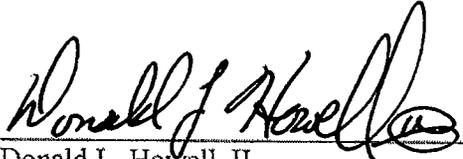
10. The Parties agree that this Stipulation is in the public interest and that all of its terms and conditions are fair, just and reasonable.

11. The obligations of the Parties under this Stipulation are subject to the Commission's approval of this Stipulation in accordance with its terms and conditions.

12. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

Respectfully submitted this 19 day of February 2008.

COMMISSION STAFF



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IDAHO POWER COMPANY



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INDUSTRIAL CUSTOMERS OF IDAHO POWER



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CODE OF CONDUCT
IDAHO POWER COMPANY
IDACORP
COMMISSION STAFF

Idaho Power Company will Comply with the following Code of Conduct:

- 1.) Idaho Power Company will maintain its own books and records, separate from IDACORP's books and records. Idaho Power Company's financial books and records and state and federal utility regulatory filings and documents will continue to be available to the Commission, upon request.
- 2.) Subject to appropriate confidentiality agreements IDACORP and Idaho Power Company will provide the Commission reasonable access to all books of account as well as all documents, data, and records of their affiliated interests, which pertain to transactions between Idaho Power Company and its affiliated interests or transactions which could have an adverse affect on the business of Idaho Power Company.
- 3.) IDACORP, Idaho Power Company and all affiliates will make their employees, officers, directors and agents available to testify before the Commission to provide information relevant to matters within the jurisdiction of the Commission.
- 4.) IDACORP and Idaho Power Company agree that one of its independent directors on each Board of Directors will have had prior experience with respect to the operation, financial analysis or regulation of the regulated gas or electric utility industry.
- 5.) Upon request, Idaho Power Company will provide the Commission with a copy of any affiliated interest report filed in other jurisdictions.
- 6.) IDACORP and Idaho Power Company will comply with all applicable statutes and any regulations promulgated pursuant to the statutes regarding affiliated interest transactions, including timely filing of applications and reports.
- 7.) Idaho Power Company will not subsidize any affiliated interest and shall comply with the Commission's applicable orders and rules with respect to such matters.
- 8.) Any proposed cost allocation methodology for the allocation of corporate and affiliate investments, expenses, and overheads, required by law, rule or order to be submitted to the Commission for approval, will comply with the following principles:

- a. For services rendered to Idaho Power Company or each cost category subject to allocation to Idaho Power Company by IDACORP or any of Idaho Power's affiliates, Idaho Power must be able to demonstrate that such service or cost category is necessary to Idaho Power Company for the performance of its regulated operations, is not duplicative of services already being performed within Idaho Power Company, and is reasonable and prudent. [Affiliates and IDACORP do not charge to Idaho Power]
- b. Cost allocations to Idaho Power Company from IDACORP will be based on generally accepted accounting standards; that is, in general, direct costs will be charged to specific subsidiaries whenever possible and shared or indirect costs will be allocated based upon the primary cost-driving factors. [See above note]
- c. IDACORP and its subsidiaries will have in place accounting systems adequate to support the allocation and assignment of costs of IDACORP executives and other relevant personnel to Idaho Power Company. [See above note]
- d. An audit trail will be maintained such that all costs subject to allocation can be specifically identified, particularly with respect to their origin. In addition, the audit trail must be adequately supported. Failure to adequately support any allocated cost may result in denial of its recovery in rates.
- e. Costs which would have been denied recovery in rates had they been directly incurred by Idaho Power Company regulated operations will likewise be denied recovery whether they are allocated directly or indirectly through subsidiaries in the IDACORP group to Idaho Power Company. [see above note]
- f. For services provided by Idaho Power to IDACORP or any affiliated interest, Idaho Power's current Service Level Agreements (SLA's) provide a reasonable method of allocating costs for rate-setting. Any changes to the SLA methodology will be submitted to the Commission upon request.
- g. IDACORP and Idaho Power Company commit to use asymmetrical pricing (i.e., lower of cost or market for transactions to Idaho Power Company and higher of cost or market for transactions from Idaho Power Company) for affiliate charges or costs not covered by the provisions of any cost sharing agreement or Service Level Agreements (SLA), if a readily identifiable market for the goods, services or assets exists, and if the transaction involves a cost of more than \$100,000. [See above note]

- 9.) Idaho Power Company will maintain separate debt and, if outstanding, preferred stock ratings. Idaho Power Company will maintain its own corporate credit rating, as well as ratings for each long-term debt and preferred stock (if any) issuance.
- 10.) Neither Idaho Power Company nor its subsidiaries will, on a prospective basis, without prior notification to the Commission, make loans or transfer funds (other than dividends and payments for inter-company services provided as part of the normal course of business) to IDACORP or its affiliates, or assume any obligation or liability as guarantor, endorser, surety or otherwise for IDACORP or its affiliates; provided that this condition will not prevent Idaho Power Company from assuming any obligation or liability on behalf of a subsidiary of Idaho Power Company. Any changes to current arrangements will require Commission approval. IDACORP will not pledge any of the assets of the business of Idaho Power Company as backing for any securities which IDACORP or its affiliates (but excluding Idaho Power Company and its subsidiaries) may issue.
- 11.) Nothing in these commitments shall be interpreted as a waiver of Idaho Power Company' or IDACORP's rights to request confidential treatment for information that is the subject of any commitments.
- 12.) Idaho Power Company commits that it will not make any dividends to IDACORP that will reduce Idaho Power Company' common equity capital below 35% of its Total Adjusted Capital without Commission approval. This percentage will be adjusted, as necessary, to account for any changes to Generally Accepted Accounting Principles (GAAP) after approval of this transaction. For purposes of calculating the numerator of the percentage, common equity will include equity-like securities a.k.a. hybrid securities but will not include any portion of Idaho Power Company preferred stock issued and outstanding. Idaho Power Company' Total Adjusted Capital is defined as common equity, equity-like securities, preferred equity, capitalized lease obligations and long-term debt.
- 13.) Upon request Idaho Power Company will provide to the Commission a report covering the preceding calendar year, in which it describes its compliance with the provision of item 12, concerning the equity levels and payment of dividends.
- 14.) Upon request, and subject to appropriate confidentiality agreements, IDACORP and Idaho Power Company will provide the Commission reasonable access to corporate minutes including Board of Director's minutes and all committee minutes, along with any related source documents that are relevant to the business and risk analysis of Idaho Power Company. Idaho Power Company and the Commission Staff currently have established a

reasonable and mutually acceptable procedure to review these confidential documents.

- 15.) Upon request, and subject to appropriate confidentiality agreements, IDACORP and Idaho Power Company will provide the Commission reasonable access to operational, internal and risk audit reports and documentation. Idaho Power Company and the Commission Staff currently have established a reasonable and mutually acceptable procedure to review these confidential documents.
- 16.) Idaho Power Company will provide the Commission and Staff with notification of all publicly announced proposals for divestiture, spin-off, or sale of any integral Idaho Power Company function. Idaho Power Company will also file for Commission approval of divestiture, spin-off, or sale of any integral Idaho Power Company function, which is subject to IPUC jurisdiction. This condition does not limit any jurisdiction the Commission may have.
- 17.) Subject to appropriate confidentiality agreements, Idaho Power Company will notify the Commission prior to implementation of plans by Idaho Power Company or IDACORP: (1) to form an affiliate for the purpose of transacting business with Idaho Power Company's regulated operations; (2) to commence new business transactions between an existing affiliate and Idaho Power Company; or (3) to dissolve an affiliate which has transacted substantial business with Idaho Power Company.
- 18.) Idaho Power Company will notify the Commission as soon as practicable following any public announcement of: (1) any acquisition of a regulated or unregulated business representing 5 percent or more of the capitalization of IDACORP; or (2) the change in effective control or acquisition of any material part or all of Idaho Power Company by any other firm, whether by merger, combination, transfer of stock or assets.
- 19.) Idaho Power Company will provide to the Commission, upon request, on an informational basis, credit rating agency news releases and final reports regarding Idaho Power Company when such reports are known to Idaho Power Company and are available to the public.
- 20.) Idaho Power Company commits that in the event that Idaho Power Company obtains a loan from its parent company or any affiliated company, Idaho Power Company will, in any subsequent rate proceeding demonstrate that the debt obligation interest, terms, and conditions are comparable to or less than what Idaho Power Company could have obtained in the market at the time the debt was obtained by Idaho Power Company, that the loan is on reasonable terms and without markup to the holding company's cost of funds, and that

the debt procurement will not interfere with any mechanisms that secure the utility.

- 21.) IDACORP and Idaho Power Company commit that no amendments, revisions or modifications will be made to the agreements and commitments set out in their settlement stipulation without prior Commission approval.