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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR)
AUTHORITY TO INCREASE ITS INTERIM)
AND BASE RATES AND CHARGES FOR)
ELECTRIC SERVICE.)
_____)

CASE NO. IPC-E-03-13

IDAHO POWER COMPANY
DIRECT REBUTTAL TESTIMONY
OF
LARRY D. RIPLEY

1 Q. Please state your name and business address.

2 A. My name is Larry D. Ripley and my business
3 address is 1221 West Idaho Street, Boise, Idaho 83702.

4 Q. What is your educational background?

5 A. I received a B.S. in business from the
6 University of Idaho in 1960 and my LL.B. in 1962. I have
7 attended numerous conferences and seminars throughout the
8 years concerning public utility regulatory matters.

9 Q. Please outline your business experience.

10 A. I was admitted to the Idaho State Bar in
11 1962, and after a short time in the Army Reserve, I was
12 employed by the Idaho Attorney General's office in mid-1963
13 as legal counsel for the Idaho Public Utilities Commission
14 and Idaho State Tax Commission. In 1965 I transferred to
15 the Idaho Public Utilities Commission as a salaried employee
16 with the title of Assistant Attorney General assigned to the
17 Idaho Public Utilities Commission. In late 1971, I left the
18 Idaho Public Utilities Commission and joined a law firm. I
19 represented Idaho Power Company as a private attorney for a
20 number of years and became a salaried Idaho Power Company
21 employee-attorney in March of 1992. I retired from Idaho
22 Power Company in May of 2003 but agreed to continue to
23 handle certain matters which I had been engaged in prior to
24 my retirement. Since 1963 to date my practice has been
25 primarily involved in public utility regulatory law before

1 the Idaho Public Utilities Commission and other regulatory
2 agencies, and in court litigation involving public utility
3 regulatory law.

4 Q. Did Idaho Power Company request that you
5 review the Staff's proposed income tax methodology as set
6 forth in Mr. Holm's prepared testimony, pp. 25 through 33,
7 in this proceeding?

8 A. Yes.

9 Q. What is your understanding as to the income
10 tax methodology that Staff is proposing for this proceeding?

11 A. Staff is proposing that Idaho Power's income
12 tax expense that is used to determine the Company's revenue
13 requirement be based upon what Staff terms the "average
14 effective tax rate over the last five years including 2003,"
15 which in reality is simply the ratio that is obtained when
16 Staff compares income taxes to regulatory income for those
17 years. Staff proposed that this ratio be used as the tax
18 gross-up rate on the revenue deficiency as well.

19 Q. In your opinion, should Staff's proposal be
20 accepted by the Commission?

21 A. No. Staff's proposal is a violation of the
22 test year methodology that the Commission must utilize in
23 determining Idaho Power's revenue requirement.

24 Q. Why do you contend that Staff's proposal
25 would be a violation of the test year methodology?

1 A. The Commission utilizes a test year adjusted
2 for known and measurable changes to arrive at a revenue
3 requirement that is used to determine the rates Idaho Power
4 should charge for the future. Neither revenue nor expense
5 items based on past events, which are extraordinary and will
6 not occur in the future, can be used to determine a
7 utility's revenue requirement; in this case Idaho Power's
8 revenue requirement. I will not burden this record with a
9 number of legal citations that state this fundamental
10 proposition. It is sufficient to refer to the Idaho Supreme
11 Court case, *Utah Power & Light v. Idaho Public Utilities*
12 *Commission*, 685 P.2d 276, 107 Idaho 47 (1984). In that
13 proceeding the Idaho Commission had ruled that there was a
14 general prohibition against setting rates based on previous
15 periods of unreasonably high or unreasonably low rates. The
16 Idaho Supreme Court affirmed this concept by stating that to
17 take into account previous extraordinary revenues or
18 expenses, which will not reoccur, would be retroactive
19 ratemaking. In the instant proceeding Staff has obviously
20 been influenced by a large income tax deduction Idaho Power
21 included in its 2001 income tax return, resulting in a
22 refund which was paid in 2002.

23 Q. In your opinion, can Staff take into account
24 the one-time out-of-period income tax deduction?

25 A. No. Since this proceeding does not involve

1 either 2001 or 2002, the deduction must be considered a one-
2 time out-of-period event. The position advanced by the
3 Staff is a violation of years of revenue requirement
4 determinations by this Commission. This Commission has
5 observed that it will not take into account prior
6 extraordinary events which have increased the utility's
7 expenses unless appropriate orders have been obtained to
8 amortize these expenses over a period of time. The
9 Commission's pronouncements have been clear that any
10 attempts to obtain this authorization after the fact will
11 not be permitted. The same is equally true of extraordinary
12 revenue items. The Commission has observed that it cannot
13 capture extraordinary revenues that are non-reoccurring
14 outside of a test year. A test year, adjusted for known and
15 measurable changes which will occur in the future, is the
16 proper procedure by which a utility's revenue requirement,
17 and thus its rates, are determined. Staff's proposal to
18 reach back in time and capture a past reduction in income
19 tax expense which will not reoccur in the future is a clear
20 violation of the Commission's and the Supreme Court's
21 pronouncements that the establishment of Idaho Power's
22 revenue requirement will be determined utilizing a test year
23 adjusted for known and measurable changes that will occur in
24 the future.

25 Q. Do you agree that Staff's proposal to change

1 the tax gross-up factor on the revenue deficiency is
2 reasonable and appropriate?

3 A. No, I do not. The Staff proposal to change
4 the tax gross-up factor is not reasonable for the same
5 reasons I have just discussed. The Commission is setting
6 rates for the future, and if the revenue requirement upon
7 which those rates are based is artificially low, clearly
8 confiscation will occur. If the Commission adopts Staff's
9 proposal to use a tax gross-up rate which is lower than the
10 actual rate upon which Idaho Power's income will be taxed,
11 the Company will not have an opportunity to attain the
12 revenue requirement which the Commission will have
13 determined Idaho Power is entitled. A built-in discount by
14 using a past income tax deduction, which will not occur in
15 the future, to determine Idaho Power's revenue deficiency is
16 unreasonable and in my opinion unlawful.

17 Q. During the period that you represented Idaho
18 Power Company before this Commission, have there been
19 occasions when the Commission has reviewed Idaho Power
20 Company's revenue requirement based on a change in the
21 income tax rates?

22 A. Yes. The Commission has ruled in the past
23 that an adjustment to Idaho Power Company's rates or revenue
24 requirement is appropriate taking into account a change in
25 newly enacted income tax rates. Such adjustments were

1 prospective, not retroactive.

2 Q. Could you briefly describe those proceedings.

3 A. Case No. IPC-E-93-24 involved an increase in
4 Idaho Power Company's revenue requirement as the result of
5 the federal income tax rate being increased from 34 percent
6 to 35 percent. The Commission stated that it can process a
7 single-issue rate case based on a change in Idaho Power
8 Company's actual income tax rates. A copy of Commission
9 Order No. 25339 that was issued in that proceeding is
10 attached as Exhibit 72. In Case No. U-1500-164 the
11 Commission determined that it could investigate Idaho Power
12 Company's revenue requirement based on a reduction in the
13 federal income tax rate from 46 percent to 34 percent. The
14 final order in that case was Order No. 21364, a copy of
15 which is attached as Exhibit 73.

16 Q. Did the Commission in either of these
17 proceedings use an average ratio of income tax expense over
18 a period of years?

19 A. No. The Commission based its consideration
20 upon the actual income tax rates that would be in effect
21 during the year under investigation. The Commission
22 determined that this was the appropriate method to determine
23 Idaho Power Company's revenue requirement for the future due
24 to a change in income tax rates. Staff's proposed
25 methodology is contrary to the Commission's determinations

1 in those proceedings.

2 Q. Did the Commission in these proceedings
3 allude to retroactive ratemaking?

4 A. Yes. The Commission observed that it could
5 not use prior years income tax rates, whether more or less,
6 to determine Idaho Power Company's revenue requirement.

7 Q. Has the Commission ever used anything other
8 than currently enacted income tax rates to determine Idaho
9 Power's revenue requirement?

10 A. The Commission has always used currently
11 enacted income tax rates that reflect actual or known
12 changes to determine Idaho Power's revenue requirement.

13 Q. Has Staff recommended amortization of the tax
14 deficiency payment included in Idaho Power Company's revenue
15 requirement over a three-year period?

16 A. Yes.

17 Q. Do you believe this is consistent with
18 previous Commission orders?

19 A. No. In Order No. 17499 issued in Case No. U-
20 1006-185 (1982), the Commission specifically opined that it
21 would not recognize tax contingencies for ratemaking
22 purposes and rejected them. The Commission did state that
23 it would include income tax deficiencies that had been paid
24 in the test year in the test year revenue requirement.
25 Since the Commission's ruling on that issue is very short

1 and succinct, I will quote from the pertinent part of that
2 Order:

3 We find that recognizing these
4 contingencies for ratemaking purposes is not
5 reasonable and reject them. We will allow the
6 Company to recover as a tax expense any
7 contingency actually paid in the year that it
8 is paid. But, in the meantime, we find that it
9 is not just and reasonable to charge ratepayers
10 for these contingencies until they are paid.
11 Order No. 17499, p. 24.
12

13 Q. Mr. MacMahon has stated that the Staff income
14 tax proposals cause a violation of the Internal Revenue Code
15 normalization provisions. Has the Commission ever had
16 occasion to rule upon the action it will take if it is
17 determined that Idaho Power Company's income taxes for
18 revenue requirement purposes have been calculated based upon
19 an unauthorized flow-through of tax benefits prohibited by
20 the Internal Revenue Code?

21 A. Yes. Although not pleased with the result,
22 the Commission observed in Order No. 21651 that it would not
23 require a flow-through treatment of an income tax adjustment
24 where the flow-through would be a violation of the Internal
25 Revenue Code. A copy of Order No. 21651 is attached as
26 Exhibit 74. The reason for the Commission's action
27 described in Order No. 21651 is equally apparent. If the
28 Company is required to flow through a tax benefit which is
29 required to be normalized under the federal tax code, the
30 utility, in this case Idaho Power Company, loses the tax

1 benefit and thus the Commission's calculation utilizing
2 flow-through is erroneous and would result in an increase in
3 revenue requirement.

4 Q. What income tax rates should the Commission
5 use to compute Idaho Power Company's income tax expense for
6 purposes of determining Idaho Power Company's revenue
7 requirement?

8 A. The Commission should use the currently
9 enacted federal and state statutory rates which are the
10 rates that Idaho Power Company used to compute its income
11 tax expense for purposes of determining its revenue
12 requirement in this proceeding. The Commission should also
13 use the gross-up rate of 1.642 that results when the
14 existing composite statutory rates are used.

15 Q. Does this conclude your direct rebuttal
16 testimony in this case?

17 A. Yes, it does.

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-03-13

IDAHO POWER COMPANY

EXHIBIT NO. 72

L. RIPLEY

Order No. 25339

JAN 10 1994

BEFORE THE IDAHO PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER FOR AUTHORITY TO)
OFFSET THE GAIN FROM THE SALE OF)
THE HAILEY TURBINE AGAINST THE)
REVENUE REQUIREMENT INCREASE)
CAUSED BY CHANGES IN FEDERAL)
TAX RATES.)

CASE NO. IPC-E-93-24

ORDER NO. 25339

SUMMARY

On January 27, 1993, this Commission issued Order No. 24676, Case No. IPC-E-92-9, approving Idaho Power Company's (Idaho Power, Company) request to sell its Hailey Combustion Turbine to an out of state purchaser. At the time of the Commission's Order, it was known that there would be a net gain to ratepayers from the sale although the precise amount of the gain was not known due to as of yet incurred costs of the sale (e.g., site restoration). The Order directed Idaho Power to file for a determination of the accounting and ratemaking treatment to be given the sale no later than September 30, 1993.

On September 30, 1993, Idaho Power made two separate filings. The Company filed for a determination of accounting and ratemaking treatment in the 92-9 case. It also filed a petition in the present case for authority to offset the net gain from the sale of the turbine against the recent increase in Idaho Power's income tax rates. In a Notice of Modified Procedure, the Commission incorporated the 92-9 case into the present one. By this Order we grant in part and reject in part Idaho Power's Petitions.

IDAHO POWER

On August 6, 1993, the United States Congress passed the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) retroactively increasing the marginal corporate income tax rate effective January 1, 1993.

The Company estimates an increase in its Idaho jurisdictional revenue requirement in the amount of \$2,270,673 resulting from OBRA 93. The Idaho jurisdictional share of the net gain from the sale of the Hailey Turbine is \$3,645,108. The Company proposes that it be permitted to offset this gain against the projected increase in its Idaho jurisdictional revenue requirement, due to the tax increase, for the years 1993 and 1994 in the amount of \$4,541,286 or \$2,270,643 for each year. Thus, Idaho Power's shareholders will, essentially, absorb a total of \$896,178 in increased taxes over two years. For years commencing after January 1, 1995, if the Commission has not yet completed a review of the Company's revenue requirement, Idaho Power would absorb the increase in revenue requirement due to the increase in the income tax rates.

Idaho Power argues that the Commission has previously ruled that changes in the Company's revenue requirement caused by changes in its income tax rate will be reflected in its revenue requirement following an investigation by the Commission. The Company contends that it would promote rate stability and, therefore, the public interest to offset the gain from the Hailey Turbine against the increased income taxes.

COMMISSION STAFF

Staff is the only party that filed comments. Staff notes that the conventional accounting treatment at the time of the retirement of depreciable electric utility plant, based on the Uniform System of Accounts, would be to remove the original cost of the asset from the asset account. Account 108, Accumulated Provision for Depreciation, would be charged with the book cost of the property retired and the cost of removal and credited with the salvage value and any other amounts recovered. The gain associated with the transaction would be reflected as an increase in the accumulated provision for depreciation, the reserve account, and would, in future years, benefit ratepayers by reducing the rate base on which they must pay a return.

Staff notes that ordinarily this treatment is reasonable when the specific assets involved will be replaced and the replacement assets will be used in the continued operation of the utility. Where the assets involved are removed from

regulatory operations, such as being sold to a third party, however, it is Staff's opinion that extraordinary treatment is required to preserve the integrity of the rate base. Staff also believes that extraordinary treatment is required when the assets represent a major portion of the total account balances. Both of these exceptions apply, Staff contends, to the sale of the Hailey Turbine.

Staff notes that an alternative to permanently decreasing the rate base is to place the gain in a regulatory account with amortization over a period of years. The annual amortization of the gain would be included as a reduction of the revenue requirement. This would pass the gain onto ratepayers. The unamortized gain can be used as a reduction to rate base but this would lower shareholders' return over the life of the deferral. Staff believes that the unamortized portion of the gain should not be used as a reduction to rate base. This will maintain the shareholders' return while passing the gain onto ratepayers.

Staff argues that the Company is, in effect, asking to recover retroactively the amount of the increase in taxes accruing for 1993 as well as prospectively recovering amounts that will accrue in 1994. Although as explained later, Staff does not take exception to the Company's proposal to offset future increases in its accrued tax expense associated with OBRA 93 against the gain from the sale of the Hailey Turbine, it does oppose the retroactive offsetting of incremental OBRA 93 related tax expense for 1993 with proceeds from the Hailey Turbine sale. Although it appears the United States Congress has the authority to raise rates retroactively, Staff believes that the Commission does not.

Staff contends that the Commission did not, at any time, put Idaho Power's customers on notice that the Company's rates might not be just and reasonable in 1993 and were, therefore, subject to retroactive adjustment, nor were there past practices such as a traditional deferral and tracking through of changes in tax expenses that would imply that rates were subject to retroactive adjustment due to a change in tax rates.

Although the Commission did order Idaho Power and other utilities in Idaho to adjust rates to reflect the Tax Reform Act of 1986 (TRA 86), Staff notes, all changes were on a prospective basis even though not all Orders were issued before

the actual change in rates occurred. In fact, the Commission took great pains to ensure that changes in rates would occur on a prospective basis by issuing its Order initiating generic Case No. U-1500-164 in January of 1987, well before the effective date of the tax change on July 1, 1987. Even so, when final Order No. 21364 addressing all issues related to Idaho Power was not issued until July 29, 1987, no attempt was made to somehow recapture tax savings realized by Idaho Power between the effective date of the TRA 86 and the effective date of the Order.

Staff states that it is generally opposed to single item rate cases when a recent determination of the Company's revenue requirement has not been made. Additionally, with Idaho Power, there have been numerous deferrals and single item cases since 1986 that should be evaluated when determining the Company's normalized earned rate of return and revenue requirement. An offset of the increased tax expense from OBRA 93 with the gain on the sale of the Hailey Turbine generates questions regarding the actual normalized earnings of Idaho Power and whether the offset is needed, Staff asserts.

The Commission has, however, previously handled changes in tax rates as a single issue rate case. A review of earnings was determined not to be necessary when the reduction in tax expense from the TRA 86 was offset in 1987 against the revenue requirement for Idaho Power associated with accumulated cogeneration and small power production deferrals.

Staff suggests that actual, normalized earned return levels do not need to be explored in this case. Earnings will be reviewed when the deferral for Financial Accounting Standard No. 106 (FAS-106), Accounting for Post-Retirement Benefits other than Pensions, is included in rates or when the Company files its next general rate case. Order No. 24831 issued in Case No. IPC-E-92-28 approving the deferral of the post-retirement benefit expenses included a requirement for an earnings test. If earnings are above the authorized rate of return, the full amount of deferred FAS-106 costs will not be included in rates. This earnings test provides a safeguard that an offset of the increased tax expense from OBRA 93 against the gain from the sale of the Hailey Turbine will not provide excessive returns for Idaho Power.

Staff recommends, therefore, that Idaho Power be allowed to offset its normalized incremental tax expense associated with OBRA 93 on a prospective basis from the date of the Commission's final Order entered in this case with the gain from the sale of the Hailey Turbine. Using this method and the calculations provided by Idaho Power in its filing, Staff would anticipate that if the Company's general rate case is filed when expected, with new rates in effect by year end 1994, approximately \$1,200,000 of the Hailey Turbine gain will remain for disposition in the general rate case.

IDAHO POWER RESPONSE

Idaho Power argues that its proposal to offset 1993 related taxes is not retroactive ratemaking. According to the Company, ratemaking is retroactive only if rates are changed to recover or refund a past increase or decrease in expenses or revenues. The Company concludes that until the event which gives rise to the increase or decrease in expenses or revenues occurs, there is no retroactive application.

Idaho Power states that the increased income taxes related to OBRA 93 are not considered to be payable until the last two installments for the 1993 calendar year, September 15, 1993 and December 15, 1993. More importantly, the Company notes, Congress, in fixing the time of the actual payment of the expense, provided that penalties for the underpayment of estimated taxes are waived for underpayment of 1993 taxes attributable to the change in tax rates resulting from OBRA 93. Thus, the Company has until March of 1994 to pay the increased tax without incurring any penalty. The Company states that "it is well established in tax law that the additional tax is a future liability and collection of the tax (i.e., the incurring of the expense) will not be retroactive.

FINDINGS

As Idaho Power notes, this Commission has historically allowed the Company to capture, for purposes of ratemaking, increases in its income tax rates occurring between rate cases (Case No. U-1500-164). We find no justification for deviating from this practice in this case.

In our minds, the issue before us is not whether a utility may include an expense in rates that is retroactive. It is a fundamental tenet of utility law that rates must be set prospectively and expenses incurred by a utility in a previous period may not later be recovered through rates unless prior notice of deferred recovery has been given or can reasonably be construed from past practices of the Commission. *Idaho Code* § 61-502 provides:

Whenever the Commission . . . shall find that the rates . . . are unjust, unreasonable, discriminatory or preferential, . . . or that such rates . . . are insufficient, the Commission shall determine the just, reasonable or sufficient rates . . . to be thereafter observed

The question we must answer is whether allowing the Company the offset it seeks for OBRA 93 is, in itself, retroactive. While OBRA 93 was given an effective date of January 1, 1993, it was not passed until August 6, 1993. Thus, the earliest that Idaho Power could have approached this Commission seeking rate recovery related to the tax increase was sometime after August 6. As stated, Idaho Power made its filing on September 30, 1993. Thus, we find that the Company pursued rate relief with reasonable diligence. We also find that this is not a typical retroactive situation in which, for example, a utility seeks in a general rate case to include an expense incurred during a period that has since expired. In this case, the tax increase was for the entire year of 1993 and forward. Idaho Power filed its Petition during 1993. The period in question, therefore, had not yet expired.

Our analysis does not end here. We are concerned about the length of time since Idaho Power filed its last general rate case. Idaho Power has increasingly relied upon the habit of filing single item rate cases, often offsetting credit items against debits. The advantage of this practice is that it promotes rate stability. The more time that expires since the Company's earnings were last analyzed, however, the greater the concern that its rates are no longer valid. In Case No. IPC-E-93-25, Order No. 24806, we rejected Idaho Power's request to pass 100% of net power supply costs on to ratepayers in lieu of a 60-40% sharing until Idaho Power filed a general rate case at which time the percentage would increase to 90-10. It is still not known when the Company intends to file a general rate case. We find, therefore, that Idaho

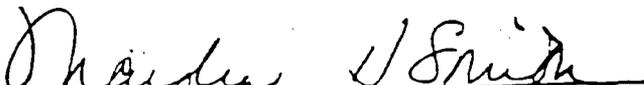
Power may offset OBRA 93 related taxes for 1993 against the gain from the sale of the Hailey Turbine. We make no decision, at this time, as to a similar offset for 1994 OBRA related expense.

ORDER

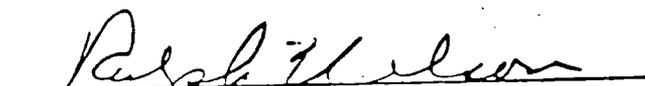
IT IS HEREBY ORDERED that Idaho Power may offset OBRA 93 related tax increases against the gain from the sale of the Hailey Turbine for the entire year of 1993. The decision as to an offset for the 1994 increased tax expense will be made in the future, if presented to the Commission.

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-93-24 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-93-24. 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 7th day of January 1994.


MARSHA H. SMITH, PRESIDENT

Commissioner Miller dissents without opinion
DEAN J. MILLER, COMMISSIONER


RALPH NELSON, COMMISSIONER

ATTEST:


Myrna J. Walters
Commission Secretary

VLD/O-IPC-E-93-24.bp

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-03-13

IDAHO POWER COMPANY

EXHIBIT NO. 73

L. RIPLEY

Order No. 21364

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION OF THE EFFECTS OF REVISIONS OF THE FEDERAL INCOME TAX CODE UPON THE COST OF SERVICE OF REGULATED UTILITIES.

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CASE NO. U-1500-164

ORDER NO. 21364

This final order completes our investigation of the effects of revisions of the federal and state income tax codes upon the revenue requirement of Idaho Power Company. For the reasons stated in this Order, we estimate the reduction in Idaho Power's revenue requirement resulting from changes in federal and state income tax laws as \$5,600,728 to offset exactly the increase in revenue requirement recognized by Order No. 21363, issued today in Case No. U-1006-288. This estimate is not a calculated number, but is a settlement of questions left open by our previous orders.

We will not repeat the history of our investigation into the effect of the federal and state income tax law changes upon the revenue requirement of regulated utilities. It appears in Orders previously issued in this generic proceeding, which has been underway since January. Instead, our starting point for discussion is Order No. 21340, issued July 20, 1987. In that Order we rejected Idaho Power's argument that we should consider in this proceeding the effect of poor streamflow conditions, resulting in reduced hydroelectric generation and increased fuel and purchased power expenses, upon the Company's financial health. We said:

We are compelled to reject Idaho Power Company's legal argument that it is entitled to present evidence at a hearing of poor financial performance as a reason for not reducing its rates in light of TRA-86. We may appropriately limit the issues to be considered in this case to the single issue of changes in rates required by the Tax Reform Act.

However, when we initiated this proceeding, we provided that our tax investigation would allow those utilities whose rates are set under normalized conditions to provide normalized rather than actual changes in revenue requirement associated with 1986 operations. But, it is difficult to quantify normalizing adjustments in the absence of a general rate case or protracted hearings. This difficulty leads to uncertainty that justifies our acceptance of the Company's offer, which we find to be a reasonable approximation of changed revenue requirement.

Order No. 21340 directed the Company and the Staff to report to us whether they could agree on a reduction in revenue requirement resulting from TRA-86. They were unable to do so.

The Staff reported three figures to us:

- (1) A reduction in revenue requirement of \$10,510,630 based upon 1986 weather normalized sales and normalized power supply costs based upon all of the power supply inputs used in Order No. 20924, the final order following rehearing establishing the Company's revenue requirement in Case No. U-1006-265.
- (2) A reduction in revenue requirement of \$6,905,651 based upon the same assumptions as in ¶(1), except that off-system sales prices were reduced to reflect lower prices recommended by the Company at rehearing in Case No. U-1006-265.
- (3) A reduction in revenue requirement of \$6,876,078 based upon the same assumptions as ¶(2), except that the maximum selling price for off-system hydro sales was lowered to 5.9 mills/kwh and separate transmission constraints for sales to the northwest and to the southeast were imposed, both as proposed by the Company in Case No. U-1006-265.

Idaho Power reported to us by letter that it would consider its request for an increase in its revenue requirement in Case No. U-1006-288 (a "tracker" seeking to recover additional expenses of purchase of cogeneration and small power production) to be exactly offset by the revenue reduction resulting from the Commission's investigation in this proceeding. Further, the Company proposed there be no refund of its rates from

July 1, 1987, resulting from this proceeding, and no decrease in its rates on January 1, 1988, associated with the tracker. The unrelated issue of proper normalization of deferred income taxes associated with Valmy II described in Order No. in Case No. U-1009-265 would be independent of the agreement in this proceeding.

We accept the Company's offer of settlement. Since the inception of this proceeding, we have recognized that proper normalization of actual 1986 results of operations is a fair and reasonable method of conducting our investigation when utility's rates are set upon weather-normalized and streamflow-normalized data rather than actual data. The precise results of the normalization can fairly be at issue in such a proceeding. The Staff's report shows a wide range of results associated with various assumptions underlying streamflow normalization. Furthermore, the Staff's report does not detail additional results, with lower reductions to revenue requirement, that would be associated with change in transmission access for sales to California.

Were this proceeding to be fully litigated, it seems likely the Company would attempt to prove a structural change in off-system markets for secondary sales associated with power supply modeling and streamflow normalization, putting even more dollars at issue than are shown by the Staff's three calculations. The advantages of certainty and swiftness counsels in favor of accepting a reasonable settlement offer by the Company. We do so because of the likelihood that the Company could put on a prima facie case of structural changes in secondary markets showing deterioration in those markets, possible reduced transmission access, and displacement of opportunity sales to the California markets by natural gas, California cogeneration and small power production, and intrusion of Desert Southwest sales. We express no opinion whether we would find for the Company's prima facie case or whether others could put on convincing cases to the contrary, but we are convinced of the benefits of avoiding extended litigation in the area and accepting the Company's compromise offer.

We emphasize what we are not accepting. To the extent that drought has affected the Company's financial performance, that is not an appropriate factor to consider in this decision. Drought is not a structural change in power supply modeling and subsequent normalization. During the Company's banner water years of 1982-1984, when its stock appreciated from 70-80% of book to 150-160% of book and split two-for-one, we did not call the Company into our hearing room and attempt to moderate its earnings. The Company's earnings increase in high water years with its rates set upon normalized data. Conversely, the Company's earnings decline in low water years in the absence of its application for a surcharge and proof of extraordinary conditions that would justify a surcharge. It has not attempted to prove the case for a surcharge this year. Accordingly, the decline in earnings associated with poor streamflow conditions is not before the Commission in this proceeding.

FINDINGS OF FACT

I

There is a legitimate dispute regarding the calculation of the Company's reduction in revenue requirement because of uncertainties over weather-normalized sales and power supply costs, which yield uncertainties in associated tax efforts.

II

The amount of \$5,600,728 proposed by the Company is within the range of figures that would represent a reasonable quantification of the reduction in revenue requirement.

III

Acceptance of this settlement is in the public interest because we will avoid protracted litigation aimed at quantifying an amount that is incapable of precise

quantification and it will allow us to preserve rate stability by implementing this Order in conjunction with our Orders in -265A and -288.

ORDER

IT IS THEREFORE ORDERED that the reduction in the Idaho Power Company's revenue requirement associated with changes in federal and state income tax laws, based upon normalized data for the test year 1986, be estimated at \$5,600,728, exactly offsetting the increase in revenue requirement contained in Order No. 21363 in Case No. U-1006-288 also issued today.

THIS IS A FINAL ORDER on all issues addressing Idaho Power Company. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory orders previously issued in this Case No. U-1500-164 with regard to issues addressing Idaho Power Company's rates may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to matters addressing Idaho Power Company's rates decided in this Order or in interlocutory orders previously issued in this Case No. U-1500-164. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration in response to issues raised in the petition for reconsideration. See *Idaho Code* §61-626.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho,
this ^{29th} day of July, 1987.


PERRY SWISHER, PRESIDENT


DEAN J. MILLER, COMMISSIONER


RALPH NELSON, COMMISSIONER

ATTEST:


MYRNA J. WALTERS, SECRETARY

MG:cc/528L

ORDER NO. 21364

-6-

Exhibit No. 73
Case No. IPC-E-03-13
L. Ripley, IPCo
Page 6 of 6

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-03-13

IDAHO POWER COMPANY

EXHIBIT NO. 74

L. RIPLEY

Order No. 21651

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR)
AUTHORITY TO INCREASE ITS RATES)
AND CHARGES FOR ELECTRIC SERVICE)
IN THE STATE OF IDAHO.)

CASE NO. U-1006-265

ORDER NO. 21651

On November 6, 1987, Idaho Power petitioned this Commission to reopen its general rate Case No. U-1006-265 to address an issue reserved by the Commission in Order No. 20988, issued January 9, 1987: What ratemaking treatment of deferred taxes and accelerated depreciation associated with the Valmy II plant will comply with the normalization requirements of the Internal Revenue Code of the United States?

To answer that question Idaho Power, in consultation with the Staff of this Commission, requested a private letter ruling from the Internal Revenue Service. We described what happened as follows in Order No. 21594:

The Internal Revenue Service, in a private letter ruling that can only be characterized as a breach of faith with those citizens of this state who are both taxpayers of the federal government and ratepayers of Idaho Power Company, simply avoided addressing the issues identified in the Staff's memorandum accompanying Idaho Power's request for private letter ruling. ...

Be that as it may, Idaho Power's petition is now before us and has been served upon the parties to this proceeding. Idaho Power's petition proposes a method by which the normalization requirements of the Internal Revenue Service may be met and further proposes a method of calculation of its rates that it characterizes as consistent with the requirements of the Internal Revenue Code that results in an [annual] increase in rates of \$682,744.

We propose to give the parties and all interested persons until Monday, December 14, 1987, to comment upon Idaho Power's proposal, to state whether hearings are necessary in considering this proposal, and to present in writing alternative proposals if the parties have one.

The parties, presumably recognizing the futility of relitigating an IRS private ruling that ignored the basic ratemaking concerns of this Commission, filed no comments whatsoever. We, like the parties, bow to the inevitable, although not without restating our displeasure with the Internal Revenue Service's failure to address the critical issues placed before it. Furthermore, there is no contention by any party that Idaho Power's calculation of an annual revenue requirement of \$682,744 associated with ratemaking treatment of accumulated deferred income taxes and accelerated depreciation for Valmy II is in error.

Accordingly, we find that this increase in annual rates, amounting to approximately 0.22% of existing rates, has accounted for the ratemaking treatment of deferred taxes and accelerated depreciation associated with Valmy II according to the private letter ruling of the Internal Revenue Service. We further find it is fair, just and reasonable, given this constraint in the interpretation of federal law (with which we disagree), to allow that increase to go into effect on December 16, 1987.

ORDER

IT IS THEREFORE ORDERED that the petition of Idaho Power Company to increase its rates and charges by 0.22% effective December 16, 1987, be granted.

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. U-1006-265 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. U-1006-265. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* §61-626.

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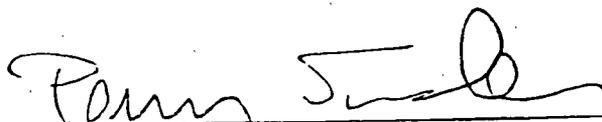
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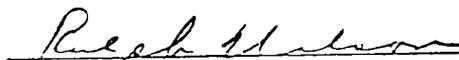
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho,
this 15th day of December, 1987.



PERRY SWISHER, PRESIDENT



DEAN J. MILLER, COMMISSIONER



RALPH NELSON, COMMISSIONER

ATTEST:



MYRNA J. WALTERS, SECRETARY

MG:vs/726L