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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 RATES )  
AND CHARGES FOR ELECTRIC SERVICE )  
TO ELECTRIC CUSTOMERS IN THE STATE )  
OF IDAHO )

CASE NO. IPC-E-03-13

ADDITIONAL, IF THE COMMISSION )  
SUSPENDS THE EFFECTIVE DATE OF )  
RATES AND CHARGES, THE COMPANY )  
REQUESTS )

AN INTERIM UNIFORM PERCENTAGE )  
INCREASE OF 4.16% IN RATES AND )  
CHARGES TO RECOVER INCREASED )  
COSTS TO THE COMPANY AS A RESULT )  
OF THE COMPLETION OF THE DANSKIN )  
POWER PLANT, HYDRO RELICENSING, )  
INCREASED DEPRECIATION EXPENSE, )  
AND THE REALLOCATION OF )  
JURISDICTIONAL NET POWER SUPPLY )  
OF IDAHO POWER COMPANY'S NEW )  
RATES AND CHARGES IN )  
CASE NO. IPC-E-03-13. )  
\_\_\_\_\_ )

CASE NO. IPC-E-03-13-A

BRIEF

OF

THE INDUSTRIAL CUSTOMERS

OF

IDAHO POWER

**COMES NOW**, the Industrial Customers of Idaho Power (“ICIP”) and pursuant to that Notice of Application issued by the Secretary of the Idaho Public Utilities Commission (“Commission”) on October 28, 2003, and hereby lodges its memorandum on the legal standard the Commission should use in considering the request by the Idaho Power Company (“Company”) for interim rate relief.

It is the position of the ICIP that Idaho Power has not met any of the various legal standards for granting interim rate relief. Furthermore, the ICIP opposes the Company’s request to create a new standard for such relief based on “good management performance.”

I  
**Legal Standard**

This Commission has allowed “interim” rate increases for Idaho Power Company in the past as noted by the Company in Mr. Gale’s testimony at page 2 (IPC-E-03-13-A). Although noting that the Commission has authorized such increases in the past, the Company cites no legal authority supporting the Commission’s ability to authorize such interim increases. The source of the Commission’s authority to change rates is found in the Idaho Code at Section 61-501:

Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, . . . are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force and shall fix the same by order as hereinafter provided . . .

Clearly the Idaho Code contemplates that, as a precondition to changing rates, the Commission must first hold a hearing and make findings as to whether the rates are “unjust, unreasonable, discriminatory or preferential.” Here Idaho Power is asking the Commission to make those

findings without hearing and without the benefit of conducting even a cursory investigation into the Company's assertion that its rates are, indeed, unjust and unreasonable. The Commission is specifically vested with the authority to conduct such investigations:

The commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, . . . or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, . . . of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications. . .

Idaho Code § 61-503.

The Commission is restricted by code to only changing rates after conducting a hearing and an investigation.

In practice, however the Commission has allowed interim rate relief and the Idaho Supreme Court has acknowledged such actions in several opinions. For example, in Grindstone Butte v. Idaho Power 102 Idaho 175, 627 P. 2d 804 (1981), the Supreme Court recited the following:

The Commission issued Order No. 13158, dated May 16, 1977, granting Idaho Power interim rate relief in the form of a 7.09% uniform increase to all rates and charges. However, this interim order expressly provided that as for the pending permanent rate increase application, all issues remained at controversy . . . On November 28, 1977, the IPUC issued Order No. 13568, again an interim order, which generally increased the uniform increase in billing to 10.3%.

Id. at 177.

The Commission has explained that interim rate relief is appropriate in emergency situations where the utility is facing economic hardship. Indeed, the Idaho Supreme Court quoted from the Commission's Order in a Utah Power & Light setting the standard and rationale for granting interim rate relief:

We take this opportunity to note that this Commission is not insensitive to the economic hardship confronting the utilities subject to our jurisdiction in these inflationary times. We have, when the occasion warranted it, granted interim relief to companies facing emergency situations. *See Application of Idaho Power Co., Case No. U-1006-117*, IPUC Order No. 13158; *Application of Utah Power & Light Co., Case No. U-1009-73*, IPUC Order No. 12275.

Utah Power & Light v. Idaho Pub. Util. Comm'n 105 Idaho 822, 833, 673 P.2d 422 (1983). The twin concepts of economic hardship and emergency situations are not the only standards that must be met before interim rate relief can be granted. It seems clear that the reasonableness of the interim rate relief must, at a minimum, be reasonably certain. The California Supreme Court has ruled that interim rate relief is appropriate when required, "by a financial emergency, or that the reasonableness of the pertinent costs was undisputed." Toward Util. Rate Norm. v. Pub. Util. Com., 44 Cal.3d 870, 875, 751 P.2d 787, 245 Cal. Rptr. 8 (1988).

In addition to (1) economic hardship; (2) emergency situations; and, (3) certainty of reasonableness, the only other situation in which interim rate relief may be granted is when a utility is confronted with a major addition to ratebase. The California Court articulated the following test for permitting interim rate relief when a utility is confronted with major additions to ratebase:

Those decisions allowed interim rate increases. . . subject to refund, upon commencement of commercial operation of a major new generating plant, where at least the following factors are present: the new plant represented a substantial part of the company's total capital investment, the new plant's operation would result in fuel or energy savings, and a considerable period of time was expected to elapse before final determination of the prudence of the utility's investment in the new plant.

Id. at 876.

The California Court's articulation of the standard for interim relief for major new plant is simply a tool to cure for what the Idaho Commission describes as "regulatory lag." As noted by the Commission, and quoted by the Idaho Supreme Court, there are adequate tools available to utilities to prevent regulatory lag and obviate the need for interim rate relief:

In addition, the Idaho Legislature, by its amendment of Idaho Code § 61-622, set an outside limit of nine months for Commission deliberation on requests for rate relief, thereby manifesting its concern for the prompt disposition of rate cases. This statutory protection, combined with the right to petition for interim rate relief, provides a Company with adequate safeguards against the problem of regulatory lag.

Within this framework we encourage timely filing by a Company when rate relief is necessary.

Utah Power & Light v Idaho Pub. Util Com'n *supra* at 833.

In summary, the legal standards for interim rate relief require the following:

- Economic hardship caused by an emergency situation
- Reasonableness of the rate increase must be certain
- New plant must be a substantial part of the utility's overall investment
- A considerable period of time will lapse before a final prudence determination can be made
- The utility must make a timely request for interim relief

As will be shown below, Idaho Power's request for interim relief fails to meet any of the above criteria.

## II

### **Idaho Power's Request for Interim Relief Should be Denied**

Idaho Power seeks interim relief for (1) the construction and operation of the Danskin Power Plant ("Danskin"); (2) the costs associated with re-licensing the Company's Middle-Snake hydro facilities; (3) the agreed-upon impact of the change in depreciation expenses; and (4) the reallocation of jurisdictional net power supply costs. The total revenue impact of including all four of these expenses in rates would be a 4.16 percent increase in overall rates.

#### 1. Lack of Emergency or Economic Hardship

Idaho Power has not alleged that it is faced with an emergency. It is currently earning well above its dividend payout. Although Idaho Power did recently reduce its dividend, its current earnings are well above the Company's older, higher, dividend. In addition, the rationale Mr. Keen provides for the dividend reduction was to give the Company the ability to fund new capital investments, which, once in place, will actually afford the Company an opportunity to increase its ratebase and its earnings. Mr. Keen stated at page 28 of his testimony:

Idaho Power's Board of Directors recently made one of the most difficult decisions a board can make by significantly reducing the common dividend. This decision demonstrates the importance the Company's Board places on providing the necessary capital to fund needed investments and maintain financial flexibility.

(Emphasis provided).

Clearly, funding future investments and enhancing financial flexibility do not rise to the level of either an emergency or financial hardship.

The Company's earnings have recovered in 2002 over the admittedly poor earnings reported for 2001. The rationale Mr. Keen relies on for interim relief actually makes the case for denial of the Company's request. Mr. Keen states at page 26 of his direct testimony that:

Despite the decrease [dividend], however, the Company will still have to rely heavily on the capital markets to fund its capital expenditure program going forward. The public interest is served through interim rate relief in this instance in order to compensate the Company for investments it has already made on customers' behalf and to provide additional cash for additional investments that must be made on their behalf.

Prepaying for future capital programs cannot be the basis for interim rate relief. In addition, recovery of costs associated with plant not yet constructed is prohibited by Idaho's construction work in progress statute. Idaho Code § 61-502A.

2. Reasonableness of Rate Increase is Not Certain

A second criterion for interim rate relief is that the reasonableness of the rate increase must be certain. Specific expense items may be reasonable. For instance, the parties in a separate docket have agreed to the increase in depreciation expenses. However, whether Idaho Power is entitled to an overall increase once all expense and income items have been thoroughly evaluated is not certain. Reduction in costs or higher projected revenues may well offset the increase in depreciation expenses – as well as all of the other expense items for which the Company is seeking interim relief.

3. The New Plant is an Insignificant Part of the Company's Overall Investment

The investment in Danskin and the hydro re-licensing is equal to less than 2% of the Company's total investment in electric plant. The other expense items are unrelated to

investment in utility plant in that they are ongoing expense items. This is not a case where the utility is bringing on a major single investment such as a coal plant. None of the expenses for which interim relief is sought are of such magnitude that denial of interim relief would be a significant financial event for Idaho Power Company.

#### 4. Timing/Regulatory Lag

Idaho Power is uniquely in control of the timing of its rate case applications. It litigated the depreciation case to closure earlier this year. The Danskin plant has been on line since 1991. The timing of the hydro re-licensing costs will be addressed below. The increase in jurisdictional allocation costs was brought about by the expiration of contracts Idaho Power had with other utilities. Idaho Power was aware of the timing of their termination years ago. It should have anticipated, and planned for, the economic effects of the termination of those agreements. As this Commission noted in Order No. 14348 at page 20 (Case No. U-1009-96), “Whatever problem of “regulatory lag” may be said to exist is largely of the Company’s own making.” Idaho Power’s failure to seek prompt rate relief for these expenses is largely, indeed solely, “of the Company’s own making.”

#### 5. Hydro Re-Licensing Costs are Not Ripe for Inclusion in Rates

Mr. Gale observes at page 7 of his direct testimony that the licenses for the Mid-Snake Projects have not yet been issued by FERC. Re-licensing costs should be treated the same as any other construction work in progress – only after the license is issued by FERC should Idaho Power be properly allowed to recover those costs from its ratepayers. Idaho Code § 61-502A prohibits the Commission from granting a return on construction work in progress. Today’s



ratepayers should not be forced to pay a return on investments (FERC licensees) for the benefit of future ratepayers.

#### 6. Recognition for Good Management

Mr. Gale testified at page 13, that because of the Company's "good management performance" the Commission should grant the requested interim relief. The Company cites several areas of "good management performance," implying that it should be rewarded for efforts above and beyond the call of duty. Examples of "good management performance" include, (1) a new business model to better serve customers; (2) focus on demand side management programs; (3) cost effective debt refinancing; (4) providing reliable service at a fair price; (5) green power program; and, (6) the implementation of a risk management program.

The ICIP appreciates Idaho Power's management and their efforts to cut costs and to provide reliable service at a fair price. However, all businesses today are faced with increasing costs and must engage in activities similar to Idaho Power's efforts to be more efficient. The reward most businesses reap from such efforts is the opportunity to stay in business and be competitive. Sometime those efforts fail. Several of the ICIP's members have had to close plants and/or reduce operations due to the difficult economic climate in which we live – caused in part by Idaho Power's unprecedented rate increases over the past two years. Unlike Idaho Power, our members do not have a safety net such as a captive customer base and a regulatory commission that guarantees them an opportunity to earn a fair rate of return. It would be unwise to expand the legal standards noted above for granting interim rate relief by adding a vague standard such as "good management performance" to the list.

For all of the above and foregoing reasons, this Commission should deny Idaho Power's request for interim rate relief.

Respectfully submitted this 12<sup>th</sup> day of November 2003.

A handwritten signature in cursive script, reading "Peter J. Richardson", written over a horizontal line.

Peter J. Richardson  
RICHARDSON & O'LEARY  
Attorneys for the Industrial Customers of Idaho Power

## CERTIFICATE OF SERVICE

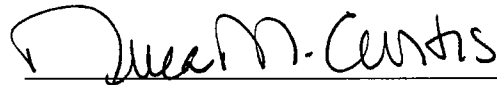
I HEREBY CERTIFY that on the 12th day of November, 2003, a true and correct copy of the within and foregoing BRIEF OF THE CUSTOMERS OF IDAHO POWER, Case No. IPC-E-03-13 and IPC-E-03-13A, was hand delivered to each of the following:

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