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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for the Industrial Customer of Idaho Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	CASE NO. IPC-E-03-13
OF IDAHO POWER COMPANY FOR)	
AUTHORITY TO INCREASE ITS RATES)	POST HEARING BRIEF
AND CHARGES FOR ELECTRIC SERVICE)	OF THE INDUSTRIAL
TO ELECTRIC CUSTOMERS IN THE STATE)	CUSTOMERS OF IDAHO
OF IDAHO)	POWER
_____)	

COMES NOW the Industrial Customers of Idaho Power (“ICIP”) by and through its attorney of record and submits its Post Hearing Brief in this matter. As per Commissioner Smith’s admonishment from the bench at the close of hearings in this matter, this post hearing brief is limited to matters of a legal nature. It is not intended to constitute a summary of the positions taken by the ICIP’s witnesses nor is it intended to serve as an argument on those issues. Therefore silence on those additional non-legal issues should not be construed as acquiescence by the ICIP.

SUMMARY

The ICIP argued that the Danskin plant should not be included in ratebase because it became apparent that it would be an imprudent investment prior to its completion. Idaho Power should have ceased construction on the plant and mitigated for any losses by selling items that

are fungible in the marketplace such as boilers and generator sets. This Commission is empowered to authorize Idaho Power to recover prudently incurred costs – but is prohibited from including in ratebase plant that is not used and useful. Idaho Power’s attorney on cross examination of Dr. Reading left the impression that this Commission is legally prohibited from allowing recovery of (as opposed to recovery on) the Company’s investment in the Danskin plant up to the summer of 2001.

**THE COMMISSION IS ON SOUND LEGAL FOOTING
TO DENY RATEBASE TREATMENT FOR DANSKIN**

This case is remarkably similar to the situation faced by the Commission when Idaho Power sought ratemaking treatment for its Valmy II plant in Northern Nevada. One difference is that the Commission Staff was in the lead in opposing full ratebase treatment for that plant. Staff witness Stephanie Miller’s testimony was summarized by the Commission in its order thusly:

While she believed that the Company was reasonable in its decision to begin construction, she argued that sometime between issuance of the certificate and the completion of the plant the Company should have known that the plant would be unnecessary and should have taken appropriate steps to protect its and its ratepayers’ interests.

Order No. 20610¹

This is the same argument that Dr. Reading makes in his testimony at Tr. 1335 – 1336. On cross-examination by Company attorney, Mr. Kline, it was inferred that the Commission would violate Idaho law if it ordered the Company to disallow ratebase treatment for Danskin. At Tr. 1356 Mr. Kline asked the following questions of Dr. Reading:

Q. All right, I know you’ve been around this business a long time, Dr. Reading, so I’m going to ask you this question not seeking your legal opinion, but are you aware of the statute in

¹ Order No. 20610 was issued in June 1986 in Case No. 1006-265. The pagination is not available on the Commission’s web site. The table of contents indicates this passage appears in the hard copy between the pages of 92 and 103 of the Order.

the State of Idaho in which a company's construction work in progress - - construction work in progress for electric utilities, that the Commission is not permitted to allow a utility construction work in progress, are you familiar with that statute?

A. Generally.

Q. And isn't it true that under that statute that facilities that are not currently used and useful aren't going to be permitted into rates, do you recall that?

A. Yeah.

The statute Mr. Kline was referring to is Idaho Code Section 61-502A which provides:

[T]he commission is hereby prohibited . . . from setting rates for any utility that grants a return on construction work in progress . . . or property held for future use and which is not currently used and useful in providing utility service.

While successful at poisoning the well, Mr. Kline's question was not helpful to clarify for the Commission exactly what its legal authority is with regard to abandoned plant. As noted above, Danskin may have been a reasonable concept at the time the Commission issued its certificate of convenience and necessity, however, over the course of the spring of 2001 and into the early summer, its lack of usefulness had become apparent.

Nothing in the Idaho Code prohibits exactly the treatment Dr. Reading advocated. The "used and useful" provisions of §502A prohibit allowing a return on investment that is not used and useful. It does not prohibit allowing the utility to obtain a return of its investment while disallowing a return on that investment. This apportionment of risk between shareholders and ratepayers is exactly what this Commission did in the Valmy case cited earlier. In fact, this Commission's language in that case is very instructive:

Our statutory charge to establish "just and reasonable" rates, I.C. §61-622, directs us to balance the legitimate competing interest of both shareholders and ratepayers. See *Intermountain Gas Company v. Idaho Public Utilities Commission*, 97 Idaho 113, 127, 540 P.2d 275, 289 (1975). When faced with similar considerations in cases involving abandoned plants, we have consistently found it "fair, just, and reasonable to assign part of the costs of

such plants to both shareholders and ratepayers." Investigation of the Washington Water Power Company's Participation in WPPSS-3, Order No. 20208 (February 3, 1986), Case No. U-1008-204, at p. 14. The rationale supporting those decisions is applicable to this case where the plant in question will not be economically useful in providing service to ratepayers for a number of years:

Certainly shareholders must bear some portion of such costs; any other view would remove all incentive for efficient management and destroy the *raison d'être* of investor-owned, as opposed to publicly- owned, utilities.

On the other hand, it must be recognized that investor-owned utilities do not function in a normal competitive market, and their plant investment decisions are not entirely unilateral. In every state, governmental authorities regulate and supervise the rates, service obligations, and construction and financing plans of investor-owned utilities. This public supervision and public decision making necessarily implies a measure of public responsibility for the consequences.

Id., at p. 15. We can add little to this statement, except to note that its converse is also true: If either shareholders or ratepayers are immunized from the financial consequences of utility plant decisions, the result would be an open invitation and potent incentive to irresponsible conduct by the protected party at the time plant decisions are made.

Order No. 20610.²

The Commission's wise and even handed treatment of the Valmy investment should be replicated here. Indeed, such treatment of abandoned plant is routine and widely accepted throughout the regulated community. See Rodney Wilson, *Ratemaking Treatment of Abandoned Generating Plant Losses*, 8 William Mitchell Law Review 343 (1982).

It was not prudent for Idaho Power to proceed with the construction of Danskin. In forecasting the need for Danskin, Idaho Power ignored the fundamental principle of elasticity of demand. Indeed, Mr. Wilson in the above cited law review article observed that many abandoned plants result from a lack of appreciation of elasticity of demand: "The elasticity of demand for electricity is greater than some utility forecasters believed. For a period of time,

forecasters continued to extrapolate the old linear growth rates of past demand on into the future.” *Id.* at 344. That is exactly what Idaho Power did when it forecast future electricity prices. It simply extrapolated the old and assumed it would be the norm. Dr. Reading properly observed such a mistake may have been understandable in the early spring, but by the time Idaho Power started construction on the plant it was no longer a reasonable assumption.

The ICIP urges this Commission to, once again, strike a reasonable balance between ratepayers and shareholders by disallowing from ratebase all of the Danskin plant costs.

ERRATA

Mr. Henderson provided rebuttal testimony in this matter reflecting his belief that time of use rates would cause Lamb Weston’s facilities operating in Idaho to pay more that they would have paid without time of use rates. After additional consultations with Idaho Power it became apparent that, in fact, the Lamb Weston plants in Idaho would actually pay less under Idaho Power’s proposed time of use rates than they would pay without time of use rates. Mr. Henderson’s understanding of the impact of the proposed time of use rates was based on an erroneous assumption in his calculations. The ICIP apologizes for the error. However, the fact that the error occurred at all reflects very poorly on the level of communication Idaho Power engaged in prior to rolling out its proposed time of use rate proposal.

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² Approximately at page 103.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2004, I caused a true and correct copy of the foregoing **Post Hearing Brief** to be served by the method indicated below, and addressed to the following:

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