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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )**  
**OF IDAHO POWER COMPANY FOR )** **CASE NO. IPC-E-03-13**  
**AUTHORITY TO INCREASE ITS INTERIM )**  
**AND BASE RATES AND CHARGES FOR )** **STAFF'S BRIEF ON IDAHO**  
**ELECTRIC SERVICE. )** **POWER'S INTERIM RATE**  
**)** **REQUEST**  
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The Commission Staff by its legal counsel Lisa Nordstrom and Weldon B. Stutzman, Deputy Attorneys General, files this memorandum regarding Idaho Power's request for interim rate relief. In its Notice of Application filed October 28, 2003, the Commission provided an opportunity for parties and intervenors to file a legal memorandum no later than November 12, 2003. The Commission specifically asked the parties to address the Commission's legal standard when considering a request for interim rate relief and explain why the immediate rate increase requested by Idaho Power should or should not be granted. Because the Company has not alleged in its Application or prefiled testimony that the conditions exist to meet the Commission's legal standard for approving a temporary rate increase, the Commission should deny Idaho Power's request.

## **IMMEDIATE RATE RELIEF REQUIRES A SHOWING OF FINANCIAL EMERGENCY**

The Commission stated its standard for considering interim rate relief in the last Idaho Power rate case, Case No. IPC-E-94-5. In that case, Idaho Power sought interim rate increases based on its investment in two hydroelectric facilities, known as the Milner and Swan Falls projects. The Commission previously had approved the projects and issued Orders indicating the Company could expect to earn a return on its reasonable investment in the projects. Because both plants were operating at the time Idaho Power filed its rate case, the Company alleged it was not in the public interest for its recovery of the costs of the facilities to be delayed until completion of the rate case. In denying Idaho Power's request, the Commission clarified the standard for consideration of an interim rate request in Order No. 25683 issued in August 1994.

First, it is clear that approving a temporary rate increase falls within the discretion of the Commission. The Commission in Order No. 25683 reiterated its discretionary authority to consider temporary rates, stating "the granting of interim rate relief is a discretionary matter for the Commission's consideration." Order No. 25683 *quoting* Order No. 21209 issued in Case No. U-1002-67. The Idaho Supreme Court has affirmed the authority of the Commission to consider interim rates, stating in *Grindstone Butte Mutual Canal Co. v. Idaho Power Company*, 98 Idaho 860, 574 P.2d 902 (1978), although "no statute gives explicit authority to the Commission to enter 'interim' or 'temporary' orders," that nonetheless "implied in the directive of ongoing investigation is the power to make orders effecting rates that are temporary in nature." *Grindstone*, 98 Idaho at 864, 574 P.2d at 906.

The Commission also reiterated in Order No. 25683, however, that the standard for approving an interim rate request is high, given the extraordinary relief entailed in such a request. The Commission stated that although "the question of interim rate relief is at the discretion of the Commission, [it] is most often granted where a utility is faced with a financial emergency or is buffeted by circumstances beyond its control." Order No. 25683, p. 3. The Commission quoted an earlier Order stating that "interim rate relief is an extraordinary remedy to be granted only in an emergency or where there is danger that the utility will not be able to render adequate service if relief is withheld." *Id.*

The Commission in Order No. 25683 explained why the circumstances of Idaho Power's request for an immediate rate increase justified a showing of dire financial need. First, the Commission noted that the timing for filing a rate case is entirely in Idaho Power's control. The Commission stated "that it is possible to plan the completion of a facility and a rate case to coincide and thus minimize a regulatory lag." Thus, the Commission concluded that Idaho Power "could have filed its rate case to obtain recovery closer to the completion date of the [Milner and Swan Falls] facilities." Order No. 25683, p. 3.

The second circumstance was the earlier approval by the Commission of the Power Cost Adjustment (PCA) to enable the Company to annually adjust rates to account for fluctuations in power costs. The Commission noted that the PCA insulates the Company from the full effects of changes in power costs, and that the PCA had increased the Company's rates by approximately 2.5% that year. Because the Commission had approved the PCA to help insulate the Company from certain risks, the Commission determined that further relief in the form of interim rates was not necessary.

The third circumstance identified by the Commission relates to the nature of a rate case. Although the Commission had previously indicated the Company could expect to include its investment in the Milner and Swan Falls projects in revenue requirement, the Commission had not guaranteed that including the projects would result in increased rates. The Commission noted that a rate case examines complex issues involving innumerable factors in determining revenue requirements, the result of which cannot be known until the issues have been thoroughly presented and examined. If interim rates are approved, there is a risk that the rates ultimately approved by the Commission at completion of the rate case could be lower than the interim rates, entitling ratepayers to refunds, which is a cumbersome and expensive process. The Commission concluded that, "under these circumstances, we find interim rates would be inappropriate in the absence of a financial emergency." Order No. 25683, p. 4.

The same circumstances that existed in Case No. IPC-E-94-5, which caused the Commission to deny the Company's request for temporary rates without showing a dire financial emergency, exist in this case. As before, the timing for the filing of a rate case is completely within the Company's control. Second, the PCA continues in effect to insulate Idaho Power from fluctuations in its power costs. Finally, it is only through completion of the rate case, in which all parties have an opportunity to question and test the Company's evidence, that the

Commission will ultimately approve rates. In the absence of an emergency, it is inappropriate to approve a temporary rate increase for Idaho Power when permanent rates will be approved by the Commission at the conclusion of the rate case in approximately six months.

### **IDAHO POWER DOES NOT CLAIM A FINANCIAL EMERGENCY EXISTS**

Four components of revenue requirement claimed by Idaho Power comprise its request for immediate rate relief. First, Idaho Power seeks recovery for its investment in the construction and operation of a new plant called the Danskin Power Plant, and claims a revenue requirement of \$7,727,782 for recovery in interim rates. Second, Idaho Power claims a revenue requirement of \$1,573,440 related to three relicensing applications for hydropower facilities the Company filed in 1995, 1997 and 1998. Third, the Company includes for interim rates a \$3,816,971 revenue requirement resulting from revisions to its depreciation rates for electric plant in service, based on 2001 plant levels. Fourth, Idaho Power proposes to reallocate the Idaho jurisdictional share of total system energy as the result of the expiration of firm energy sales contracts the Company had with other utility companies. The contracts were entered into when Idaho Power had surplus generating capacity and were timed to expire as the Company's retail customer load increased. Accordingly, a number of Idaho Power's energy supply contracts have expired since 1994. The Company proposes a revenue requirement of \$7,024,145 for interim rates associated with the jurisdictional reallocation.

To support its claim for immediate rate increases, Idaho Power alleges "It is not in the public interest for Applicant to continue to absorb the additional costs attributable to the completion of the Danskin Power Plant, the relicensing of Applicant's Mid-Snake hydroelectric projects, the revision of the Applicant's depreciation rates for electric plant in service, and the jurisdictional impacts on net power supply costs while the Commission completes the rather lengthy process of considering Applicant's Application for general rate relief." Idaho Power Application, p. 9. This allegation falls far short of a claim of financial emergency. In fact, in its prefiled testimony supporting its interim rate request, Idaho Power's witness responds to the question "Why is Idaho Power Company (Idaho Power or the Company) requesting interim rate relief?" with "We did this because Idaho Power needs to invest significantly in its utility operations to meet the impacts of growth." Gale Direct, 13-A, p. 1-2. In short, Idaho Power

does not claim financial emergency or immediate need justifies its request for interim rate increases pending conclusion of the general rate case.

The soundness of the Commission's reasoning to require a showing of financial emergency is demonstrated by Idaho Power's request in this case. The Commission noted in Order No. 25683 that the timing of a rate case is in the Company's control and, although the inevitable lag between the time a case is filed and rate relief is obtained is a legitimate concern, the Company can time its case to minimize the effect of the regulatory lag. In this case, none of the components of Idaho Power's request for immediate rate relief were recent or unplanned. According to the Company's Application, the Danskin Plant was completed in 2001. The three relicensing applications were filed with the Federal Energy Regulatory Commission in 1995, 1997 and 1998. The revised depreciation rates are based on 2001 plant levels. Finally, the terminated energy contracts behind the anticipated jurisdictional reallocation began expiring in 1994 or 1995. If any of these pieces threatened the financial viability of the Company, it could have filed for rate relief much sooner than its Application in this case. At the least, Idaho Power could have filed its Application six or more months earlier than it did, and permanent rates could have been in place on or before the date the Commission could now approve interim rates.

The PCA also continues to protect the Company from higher energy costs. In its prefiled testimony to support an interim rate increase, Idaho Power's witness states that "the Company's PCA application in 2001 was the largest amount ever requested." Keen Direct, 13-A, p. 9. Although the Commission approved most of the 2001 PCA request, "[t]he following year the Company's PCA filing was even greater." *Id.* According to the Company, the significant increases in the PCA were largely the reason the Company delayed its general rate case, since "the sheer magnitude of the power supply expenses in recent years placed their ratemaking treatment at a higher regulatory priority than the pursuit of general rate relief." Keen Direct, 13-A, p. 11. Thus, "the Company chose to postpone filing for general rate relief." *Id.* As the Commission previously noted, the success of the PCA to protect Idaho Power from increased power costs is a sound reason that additional relief by interim rates is not justified, at least in the absence of a financial emergency.

Finally, each of the components claimed by Idaho Power for interim rates must be examined and tested by the parties involved in the rate case. It may be that each piece will be included in the Company's revenue requirement, but the amount of each, the propriety of the

incurred expenses, the complexity of other issues in the case, the uncertainty of the final result of the case, all justify denial of immediate rate relief. If the Commission determines to hear evidence on Idaho Power's interim rate request in December, the limited resources of Staff and intervenors will be diverted to that concentrated effort and away from necessary work on the general case. On the other hand, the relief for the Company would be fairly insignificant even were the Commission to approve interim rates. Following a December hearing, the earliest the temporary rate increases could be implemented would be January 2004. With permanent rates expected by June or July 2004, the revenue from six or seven months of a 4% rate increase would not significantly affect the Company's revenue.

### CONCLUSION

Idaho Power simply has not alleged a legitimate need for a temporary rate increase pending the results of its general rate case. The Commission considered a similar request by the Company in its last rate case, and reiterated then the exceptional nature of interim rate relief. The Commission will only consider approving interim rates for Idaho Power when it is faced with a financial emergency, because the Company is protected by its ability to control the filing of a rate case, the annual relief the Company obtains through the PCA, and the permanent rates the Commission approves after hearing all the evidence in the case. In these circumstances, it is incumbent on the Company to show a dire need exists—a financial emergency—before the Commission will consider a temporary rate increase. Idaho Power has not alleged a financial emergency exists, and thus the Commission should issue an order denying the Company's request for interim rates pending the conclusion of the rate case.

Respectfully submitted this 12th day of November 2003.



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Weldon B. Stutzman  
Deputy Attorney General

Lisa Nordstrom  
Deputy Attorney General

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 12TH DAY OF NOVEMBER 2003, SERVED THE FOREGOING **STAFF'S BRIEF ON IDAHO POWER'S INTERIM RATE REQUEST**, IN CASE NO. IPC-E-03-13, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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