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## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
IDAHO POWER COMPANY FOR AUTHORITY ) CASE NO. IPC-E-03-13  
TO INCREASE ITS INTERIM AND BASE )  
RATES AND CHARGES FOR ELECTRIC ) STAFF'S ANSWER TO IDAHO  
SERVICE. ) POWER'S PETITION FOR  
\_\_\_\_\_ ) RECONSIDERATION

COMES NOW the Staff of the Idaho Public Utilities Commission by and through its attorneys of record and respectfully submits this Answer to Idaho Power Company's Petition for Reconsideration of issues decided in Order No. 29505 dated May 25, 2004. IDAPA 31.01.01.331.05.

*Idaho Code* § 61-626 establishes the right of a public utility to petition for reconsideration of a Commission final order within 21 days from the date of the order. The purpose for granting reconsideration is to bring to the Commission's attention mistakes made in the final order and allow the Commission an opportunity to correct any errors. *Washington Water Power Co. v. Kootenai Env'tl. Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). Idaho Power has identified computational errors made in Order No. 29505, and those errors are appropriate for correction in an order on reconsideration. The Company also requests clarification of the Commission's intent regarding a Demand Side Management proposal for Schedule 19

STAFF'S ANSWER TO IDAHO  
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RECONSIDERATION

customers, and the Commission appropriately may provide clarification in a limited order on reconsideration. Idaho Power mostly in its Petition, however, renews the same arguments it made unsuccessfully in its case and post-hearing brief. The Commission should grant the Company's Petition for Reconsideration only to correct the computational errors and clarify its intent regarding a Schedule 19 customer DSM program.

**THE COMMISSION ACTED WELL WITHIN ITS  
RATEMAKING AUTHORITY IN ESTABLISHING A  
REALISTIC TAX COST TO BE INCLUDED IN RATES**

The first part of Idaho Power's Petition for Reconsideration is devoted to re-arguing the Company's position on the Commission's determination of a fair and realistic tax cost to be included in customer rates. In large part, the Company merely misstates or mischaracterizes the Commission's approach and renews its argument made in its rebuttal testimony and post-hearing brief. For example, the Company argues "the Commission's acceptance of Staff's use of a five-year average to calculate test year income tax expense is premised on an intent to recognize the one-time tax refund the Company received in the year 2002 based on a change in federal tax methodology which was permitted by the IRS in the Company's tax return for the year 2001." Petition p. 7. Idaho Power then argues that the Commission "used a past event that will not re-occur to determine the income tax rate to be used in computing Idaho Power's future income tax expense and resulting revenue requirement." This is wrong, according to the Company, because "this Commission ha[s] repeatedly refused to base future rates on past events. The Commission cannot reduce future rates to offset a perceived financial benefit that occurred in the past." The Company argues "such an attempt is clearly retroactive ratemaking." Petition pp. 7-8.

First, the Company argues too broadly that future rates cannot be based on past events. Ratemaking is based on a *historical* test year, which is nothing but past events. Individual events in the test year are scrutinized for their likely impact on future company costs, and even events outside the test year are reviewed and brought into the test year if they provide a reasonable indication of expenses going forward. If the Commission could not consider what the Company actually paid in taxes and instead was forced to use the published tax rates, as Idaho Power argues, ratepayers would provide millions of dollars in revenues for taxes never paid by the Company. The Commission's adoption of a five-year average of actual tax expense was a reasonable method of predicting future tax expenses for Idaho Power.

Second, Idaho Power incorrectly argues that the Commission, “to support its findings and conclusions that the Company’s customers did not enjoy the benefits of the tax refund . . . had to determine that the method change, whether in 2001 or 2002, resulted in excessive earnings for the Company.” Petition p. 10. The Company characterizes this as “a retroactive determination of the Company’s current earnings based on a past event.” *Id.* Like the previous argument, this is nothing more than a mischaracterization of the Commission’s intent and purpose in using a five-year average to assess future tax costs. The goal is to include in customer rates the appropriate amount, absent a perfect predictor of future events, to collect sufficient revenue to pay actual tax expenses. In this case, adoption of a five-year historical average is a reasonable method, and one that falls well within the Commission’s authority in determining fair and just rates, to include a tax expense component in customer rates.

Idaho Power also asserts the Company presented evidence establishing that the customers did in fact receive a benefit from the huge tax refund in 2002. Because “the tax deduction coming from the one-time event allowed the Company to defer the rate case for one year,” Idaho Power concludes “the Company’s Idaho retail customers (ratepayers) *did* enjoy the benefits and share in the refund.” Petition p. 11. This is a remarkable assessment of the Company’s unique ability to time its rate case and select the test year to its advantage. From the customers’ perspective, it looks more like the Company calculated the benefit it would reap from the tax refund was greater than a one year gain from increased rates, and concluded it was financially beneficial to delay the rate case in an effort to prevent the refund (and lower test year tax expense) from affecting rates. That is fair enough, if the only objective is financial benefit to the Company. But it is disingenuous to argue ratepayers materially benefited because the Company delayed rate increases one year in order to avoid sharing a significant financial gain with ratepayers.

These arguments included in Idaho Power’s Petition for Reconsideration are not new, and do not demonstrate the Commission made errors in Order No. 29505 that need correction on reconsideration. The Company’s request that the Commission grant reconsideration and simply issue an order reversing its decisions based on the Company’s assertions should be denied.

The Company also attempts to present new evidence with its Petition, and also offers to present additional evidence during a hearing on reconsideration. The new evidence the

Company filed with its Petition is parts of an Internal Revenue Service Private Letter Ruling 8525156, set forth at pages 12-13 of the Petition, and four letters from accounting firms. Staff objects to the new evidence the Company filed with its Petition for Reconsideration.

The Commission's Rule of Procedure 331 requires a petition for reconsideration to include "a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted." IDAPA 31.01.01.331.01. The rule provides for a *statement* or description of the proposed evidence, rather than inclusion of the evidence itself, in order to prevent improper admission of evidence into the record. Idaho Power disregarded the rule and attached its new evidence to its Petition, which tactic if successful would deny all other parties an opportunity to evaluate and respond to the evidence. Absent its proper admission into the record, Idaho Power's new evidence may not be considered by the Commission, and Staff thus objects to the IRS Private Letter Ruling 8525156 and the four accountant letters attached to its Petition.

Finally, the new evidence attached to the Company's Petition is duplicative of evidence it already offered in its rebuttal case. Presumably, it could have been presented to the Commission, and been available to the other parties, at that time. For these reasons, Staff objects to the new evidence Idaho Power included in its Petition for Reconsideration.

Idaho Power did also provide a statement of additional new evidence it is prepared to present at a hearing if the Commission grants reconsideration on the tax expense issue. At page 16 of its Petition, the Company states it can offer evidence on four issues relating to the Commission's assessment of a fair tax cost component. If the Commission determines to grant reconsideration to receive additional evidence on the treatment of the Company's actual tax expenses, Staff agrees a hearing would be appropriate and is prepared to offer additional relevant evidence, including on the effect normalization of the significant tax refund would have had on customer rates.

**THREE-YEAR RECOVERY PERIOD FOR ADDITIONAL  
TAX ASSESSMENT, DISALLOWANCE OF LEGAL EXPENSES,  
REMOVAL OF CAPITALIZED INCENTIVE PAY**

Idaho Power raises an argument for reconsideration on three discrete accounting issues, but does not ask for a hearing, nor does the Company propose new evidence on the issues. Idaho Power merely asks the Commission to change its Order. The first issue relates to the

Commission's decision to amortize over a three-year period recovery of a \$2.9 million tax payment resulting from the Company's 1998-2000 tax audit cycle. The Commission cogently explained the reasons it adopted a three-year recovery period at page 30 of Order No. 29505: First, "ratepayers should pay the amount of the tax deficiencies once, not the entire three-year deficiency every single year." Second, "because the Company's three-year audit cycle allows for the possibility of tax deficiencies every third year, the Commission finds it reasonable to average the additional tax deficiencies over a three-year period. This symmetry between tax expense and collection in rates will allow the Company to recover its legitimate tax costs while minimizing the potential for over-collection." Order No. 29505 p. 30.

In its Petition for Reconsideration, Idaho Power simply states that "a two-year amortization period is a more reasonable period" than the Commission approved three-year recovery period. This assertion alone does not justify granting reconsideration to change the Commission decision on recovery of the \$2.9 million tax payment from the 1998-2000 audit cycle.

The second accounting issue relates to the Commission's decision to disallow recovery of legal costs Idaho Power incurred by participating in two different refund cases filed at the Federal Energy Regulatory Commission (FERC). The Company asserts it "is exposed to a continuing stream of litigation in both the courts and before various regulatory agencies each year," and that the \$352,544 legal costs for the refund cases occurred in the test year and is representative of its annual legal expenses. By disallowing recovery of the refund case expenses, the Company implied the Commission is not permitting it to recover usual legal expenses it is anticipated will occur each year. The Company also argues, noting that the Commission approved recovery of consultant fees over a five-year period, that the Commission should allow recovery of the refund litigation expenses over a similar period.

The Company's argument on this issue is little more than a statement of its disagreement with the Commission's decision, and does not justify granting reconsideration on the issue. It is clear in Order No. 29505 that, although the Commission did not allow recovery in rates of the refund litigation costs, "the majority of legal costs incurred in 2003 remain in the test year expenses for recovery." Order No. 29505 p. 28. Thus, the Commission allowed as recoverable costs usual and normal legal expenses the Company incurs each year. In contrast,

the refund litigation expenses were unusual and extraordinary, partly due to their “relationship with trading activities.” *Id.* The FERC cases came about because of the trading practices of wholesale energy brokers, including IDACORP Energy, a sister subsidiary of IDACORP. Idaho Power was put in the unusual position of having to defend its interests against the interests of an affiliated corporate entity. Because Idaho Power’s involvement in the cases arose solely because of the activities of IDACORP Energy and IDACORP, it is untenable to ask ratepayers to pay unusual legal expenses Idaho Power incurred in the resulting litigation. There is no reason in law or fact to grant reconsideration on the refund cases litigation expense issue.

The third accounting issue relates to the Commission’s decision to eliminate from the test year all pro forma adjustments the Company made for incentive pay. Idaho Power does not ask for reconsideration of the decision to eliminate the operating expense portion of the incentive pay, thus limiting its request for reconsideration to the removal of the capitalized portion. The Company’s test year rate base included \$7,741,747 for incentive pay expenses incurred prior to the test year, and Idaho Power notes the Commission’s decision would require it to immediately record a reduction in earnings in that rate base amount. The Company asks for approval to create a regulatory asset in the amount of \$7,741,747 to be amortized, without interest, over a 20-year period. The Company also assumes this treatment, if allowed, would permit it to add \$387,088 to annual expenses.

Idaho Power does not ask for reconsideration of the *merits* of the Commission’s decision on incentive pay, but only points out that a consequence of the decision has a significant one-time effect on its earnings. In other words, the Company is asking for additional relief from a decision of the Commission, but does not argue the decision is legally incorrect. Because the purpose for reconsideration is to provide an opportunity for the Commission to correct errors in its final order, the Company’s request for additional relief from the Commission’s Order is not proper for review on reconsideration. Idaho Power does not direct attention to factual or legal errors regarding removal of the incentive pay from the test year, and the Company’s request for relief on reconsideration should be denied.

## **COMPUTATIONAL ERRORS**

Idaho Power in its Petition for Reconsideration identifies several computational errors in Order No. 29505, which the Company previously identified in a “Notice of Computational Errors in Establishing the Company’s Revenue Requirement.” Because correcting errors in a final order is appropriate for reconsideration, Staff supports approving the Company’s Petition for that purpose. Staff is reviewing the computational errors the Company has identified, and may ultimately agree with some or all of the changes proposed by the Company. Staff is committed to working with Idaho Power to ensure the corrections are accurate and complete. Idaho Power and Staff will submit a statement to the Commission showing all computational errors that should be corrected in Order No. 29505.

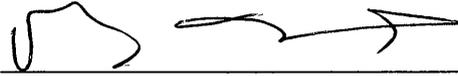
## **SUMMARY OF STAFF’S ANSWER TO IDAHO POWER’S PETITION FOR RECONSIDERATION**

Consistent with the purpose of reconsideration, Staff believes the Commission should grant Idaho Power’s Petition for Reconsideration to correct computational errors in Order No. 29505. Staff further believes reconsideration of Order No. 29505 is appropriate to clarify the Commission’s intent regarding a DSM program for Schedule 19 customers. Neither of these objectives for reconsideration requires further evidence, and instead are issues the Commission can address directly in a final order on reconsideration.

The Company’s request that the Commission grant reconsideration and simply issue an order reversing its decision to establish tax costs based on a five-year average should be denied. Staff objects to the new evidence on this issue Idaho Power filed with its Petition for Reconsideration. If the Commission determines to grant reconsideration to receive additional evidence on the treatment of the Company’s actual tax expenses, Staff agrees a hearing would be appropriate and is prepared to offer additional relevant evidence, including on the effect normalization of the significant tax refund would have had on customer rates.

Finally, the Commission should deny Idaho Power’s request for reconsideration of the three-year recovery period for the additional tax assessment, disallowance of the refund litigation expenses, and removal of the capitalized portion of incentive pay. The Company does not point out factual or legal errors relating to these issues, but merely asks the Commission to reverse the decisions based on the assertions of the Company.

Respectfully submitted this 22<sup>nd</sup> day of June 2004.



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 22ND DAY OF JUNE 2004, SERVED THE FOREGOING **STAFF'S ANSWER TO IDAHO POWER'S PETITION FOR RECONSIDERATION**, IN CASE NO. IPC-E-03-13, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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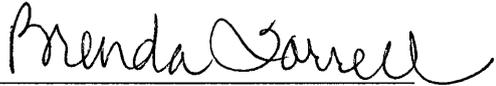
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