

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR AN)
ORDER AUTHORIZING THE BLANKET)
SALE OF AIR EMISSION ALLOWANCES)
AND FOR AN ACCOUNTING ORDER.)
_____)
CASE NO. IPC-E-05-20
ORDER NO. 29852

On June 9, 2005, Idaho Power Company filed an Application with the Commission seeking (1) blanket authority to sell surplus sulfur dioxide (“SO₂”) allowances obtained by the Company under the provisions of the federal Clean Air Act Amendments of 1990; and (2) an accounting order to provide for recording any sale(s) of such allowances. On July 15, 2005, the Commission issued a Notice of Application and Modified Procedure. *See* Order No. 29821. Comments were received from the Commission Staff and two private citizens. After reviewing the Application and the filed comments, the Commission grants Idaho Power’s Application as set forth in greater detail below.

BACKGROUND

Title IV of the Clean Air Act Amendments of 1990 establishes a national program for the reduction of acid rain. 42 U.S.C. §§ 7651, *et seq.* The centerpiece of the acid rain program is the incentive- or market-based “cap and trade” SO₂ emission program. Under the cap and trade program, the Environmental Protection Agency (EPA) sets a cap or ceiling on the total amount of SO₂ emissions allowed nationwide. Based on this cap, EPA allocates a certain number of SO₂ emissions allowances to thermal power plant owners. Each allowance provides the authority to emit one ton of SO₂.

Each year a thermal power plant owner must hold sufficient allowances to cover actual SO₂ emissions. A thermal power plant owner holding insufficient allowances to cover its annual emissions must purchase additional allowances or it is automatically fined and must surrender future year allowances to cover the shortfall. A thermal power plant holding surplus SO₂ allowances in a given year may save the surplus allowances or sell them. SO₂ emissions allowances are fully marketable commodities and can be traded on the open market or in special EPA-sponsored auctions.

THE APPLICATION

Idaho Power has an ownership interest in three thermal power plants in the western United States that receive SO₂ allowances from the EPA. *Application* at 2. These plants are: Jim Bridger Units 1 through 4 (1/3 interest); North Valmy Units 1 and 2 (1/2 interest); and Boardman (1/10 interest). *Id.* Idaho Power believes that, after retaining sufficient allowances to cover the SO₂ emissions for its facilities and providing a reasonable cushion for unexpected changes and contingencies, it can make surplus SO₂ allowances available for sale. *Id.* at 3.

Idaho Power maintains that it cannot effectively participate in the SO₂ market unless it has the Commission's prior approval. *Id.* at 3-4. Therefore, the Company seeks blanket authority to sell the SO₂ allowances to avoid any potential "regulatory cloud" on their marketability. *Id.* at 4.

Idaho Power asserts that *Idaho Code* § 61-328 is not applicable to the sale of SO₂ allowances. *Id.* at 4. Pursuant to *Idaho Code* § 61-328, an electric utility must get Commission approval prior to selling or transferring any property that the utility owns, controls, or operates and which is "used in the generation, transmission, distribution, or supply of electric power and energy." *Idaho Code* § 61-328(1). Further, prior to approving the transaction, the Commission must find that: (1) the transaction is consistent with the public interest; (2) the cost of and rates for supplying the service will not be increased due to the transaction; and (3) the applicant for such acquisition or transfer must have the bona fide intent and financial ability to operate and maintain the property in the public service. *Idaho Code* § 61-328(3).

Idaho Power also requests an accounting order to provide for the recording of any proceeds received from such sales. *Application* at 5-6. The Company acknowledges that the Commission has jurisdiction over the Idaho portion of the SO₂ sale proceeds. *Id.* at 5. However, until the Commission makes a determination regarding the ultimate ratemaking treatment of these proceeds, Idaho Power proposes to book the proceeds in Account 254 (Other Regulatory Liabilities). More specifically, the funds would be assigned to Account 131 (Cash) flowing to Account 236 (Taxes Accrued) and Account 254 (Other Regulatory Liabilities). *Id.*

At this time, Idaho Power does not seek a Commission determination regarding the appropriate ratemaking treatment of the allowances. Instead, Idaho Power offers to provide a report with the Commission within sixty (60) days of receiving any proceeds from an SO₂ sale. *Id.* The Commission may determine the appropriate ratemaking treatment at a later date. *Id.*

COMMENTS

Public Comments

Two private citizens filed comments on Idaho Power's Application. One comment opposed the Application, and the other expressed concerns regarding the Application but did not explicitly oppose it. Both comments focused on the environmental effects of SO₂ emissions.

Lee Halper commented that the environment already has excessive SO_x and NO_x levels. According to Mr. Halper, allowing Idaho Power to sell surplus allowances would simply allow more pollutants to be released.

Jerry Jayne expressed concern for the people living in the vicinity of a power plant that buys surplus allowances to emit additional SO₂. Mr. Jayne also expressed concern that allowing SO₂ trading might facilitate the construction of coal-fired plants in Idaho, an outcome he finds undesirable. In addition, Mr. Jayne asked the Commission to consider making a recommendation to the Idaho Legislature to limit SO₂ emissions to their current levels to prevent any environmental degradation.

Staff Comments

Staff recommended that the Commission approve Idaho Power's Application. Staff further recommended that the Commission retain the power to determine whether each sale of SO₂ emissions is reasonable and to proceed expeditiously with workshops to determine the appropriate ratemaking treatment of any proceeds from the sale of SO₂ emissions.

Staff concluded that blanket authority to sell SO₂ emissions was appropriate and Idaho Power need not seek Commission approval prior to each transaction in which it sells SO₂ emissions allowances. Staff also determined that, while SO₂ allowances are the by-products of Idaho Power's ability to generate electricity from its thermal generating plants, the SO₂ allowances are not directly used in the "generation, transmission, distribution, or supply of electric power and energy" as contemplated in *Idaho Code* § 61-328. Therefore, Staff concluded that *Idaho Code* § 61-328 does not apply to the sale of SO₂ allowances, and the Commission may grant blanket authority to Idaho Power to sell the SO₂ allowances. Nonetheless, Staff suggested that the Commission retain the authority to evaluate the reasonableness of each transaction for ratemaking purposes.

Staff also supported Idaho Power's proposed accounting treatment of the proceeds until a ratemaking determination is made. However, rather than wait up to sixty (60) days after

the first sale of SO2 emissions before determining appropriate ratemaking treatment, Staff suggests that the Commission proceed expeditiously with workshops to determine the appropriate ratemaking treatment of any proceeds acquired through the sale of surplus SO2 emissions allowances. Staff suggested that these workshops involve Idaho Power, Staff, and any other interested parties.

COMMISSION FINDINGS AND CONCLUSIONS OF LAW

Based upon our review of the Application and comments, the Commission finds it is reasonable to grant Idaho Power blanket authority to sell SO2 emissions allowances. The Commission further finds that *Idaho Code* § 61-328(1) does not apply to the sale of SO2 emissions allowances and that blanket authority will allow Idaho Power the discretion to react quickly to changes in the price of SO2 allowances and obtain the highest prices available. Nonetheless, the Commission will review the reasonableness of each sale. The Commission anticipates that this review will be part of future ratemaking proceedings.

The Commission finds that Idaho Power's proposed initial accounting treatment is reasonable until the Commission makes a determination regarding the appropriate ratemaking treatment of the proceeds. The Commission directs Staff to conduct workshops as soon as practicable in order to make a recommendation to the Commission regarding the appropriate ratemaking treatment of such proceeds. When the Commission has made a determination regarding the ratemaking treatment of any future proceeds, the initial accounting treatment approved herein will no longer be applicable.

The Commission declines to make a recommendation to the Idaho Legislature to set SO2 standards that are more stringent than the EPA's standards. The Department of Environmental Quality and not the Public Utilities Commission is the more appropriate state agency to make such a recommendation if reasonable and necessary.

ORDER

IT IS HEREBY ORDERED that the Application of Idaho Power for blanket authority to sell air emission allowances and for an accounting order is granted. The Company shall file a report with the Commission within 60 days of receipt of any SO2 proceeds.

IT IS FURTHER ORDERED that the interim accounting treatment proposed by the Company is reasonable until such time as the Commission determines the appropriate ratemaking treatment of the proceeds from the sale of surplus SO2 allowances.

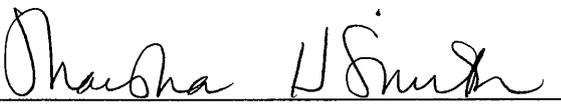
IT IS FURTHER ORDERED that Staff conduct workshops as soon as practicable in order to make a recommendation to the Commission regarding the appropriate ratemaking treatment of SO2 proceeds. The ratemaking treatment shall be determined in a separate docket and Notice for the workshop shall be provided under separate cover.

THIS IS A FINAL ORDER. Any person interested in the Order 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. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code §§ 61-626 and 62-619.*

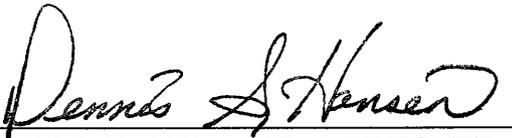
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 22nd day of August 2005.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary