

DECISION MEMORANDUM

TO: COMMISSIONER KJELLANDER
COMMISSIONER SMITH
COMMISSIONER HANSEN
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: KIRA DALE PFISTERER

DATE: AUGUST 8, 2005

RE: APPLICATION OF IDAHO POWER COMPANY FOR BLANKET
AUTHORITY TO SELL AIR EMISSION ALLOWANCES AND FOR AN
ACCOUNTING ORDER. CASE NO. IPC-E-05-20.

On June 9, 2005, Idaho Power Company filed an Application with the Commission for (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.

THE APPLICATION

Title IV of the Clean Air Act Amendments of 1990 establishes a national program for the reduction of acid rain. 42 USCA §§ 7651, *et seq.* The centerpiece of the Title IV 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, the EPA allocates a certain number of SO₂ emissions allowances to thermal power plant owners.

Each year, the thermal power plant owners must hold sufficient allowances to cover actual SO₂ emissions. A thermal power plant owner holding insufficient allowances to cover its annual emissions must either 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.

Idaho Power has an ownership interest in three thermal power plants in the western United States that receive allowances from the EPA. These plants include: (1) Jim Bridger Units 1 through 4 (1/3 interest); North Valmy Units 1 and 2 (1/2 interest); and Boardman (1/10 interest). 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.

Idaho Power seeks blanket authority to sell the SO₂ allowances to avoid any potential “regulatory cloud” on their marketability. Idaho Power also requests an accounting order to provide for the recording of any proceeds received from such sales. At this time, Idaho Power does not seek a Commission determination regarding the appropriate ratemaking treatment of the allowances. Instead, Idaho Power suggests that it can provide the Commission with notice of any future sale within sixty (60) days of the transaction, and the Commission, at that later date, may then initiate proceedings to determine the appropriate ratemaking treatment of the proceeds.

COMMENTS

Staff

Staff supports the Idaho Power Application for blanket authority to sell surplus SO₂ emissions allowances. Staff also supports a temporary accounting order for tracking proceeds. However, Staff does not want to wait for Idaho Power to give notice of a transaction before proceeding with a determination regarding the appropriate ratemaking treatment of the proceeds from such a sale. Rather, Staff suggests that the Commission proceed as soon as practicable with workshops to determine the appropriate ratemaking treatment for the proceeds.

Staff believes that blanket authority to sell allowances is appropriate. Based on the assumption that *Idaho Code* § 61-328 does not apply to SO₂ emissions allowances, Staff concludes that Idaho Power should not have to seek Commission approval prior to each transaction in which it sells SO₂ emissions allowances.

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).

While SO₂ allowances are necessary for Idaho Power 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” and cannot be “operated and maintained in the public service” as contemplated in *Idaho Code* § 61-328. Therefore, Staff does not think that *Idaho Code* § 61-328 applies, and the Commission may grant blanket authority to Idaho Power to sell the SO₂ allowances. Nonetheless, Staff notes that the Commission should be certain to retain the authority to evaluate the reasonableness of each transaction for ratemaking purposes.

Staff also agrees with Idaho Power’s proposed accounting treatment of the proceeds until a ratemaking determination is made. This accounting is consistent with Code of Federal Regulations No. 18, paragraph H of General Instructions 21.

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. These workshops should involve Idaho Power, Staff, and any other interested parties.

Public Comments

The Commission received timely comments on Idaho Power’s Application from two private citizens. Both comments oppose the Application.

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

Jerry Jayne of Idaho Falls, Idaho also filed comments. Mr. Jayne expressed concern for the people living in the vicinity of a power plant that buys surplus allowances in order to emit additional SO₂. In addition, Mr. Jayne expressed concern that allowing SO₂ trading might facilitate the construction of coal-fired power plants in Idaho, an outcome he finds undesirable.

Mr. Jayne also noted that the Clean Air Act allows states to set SO2 emissions standards provided that the states' standards are more stringent than the EPA's standards. Mr. Jayne suggested that the Commission consider making a recommendation to the Idaho Legislature to limit SO2 emissions to their current levels in order to prevent any additional environmental degradation.

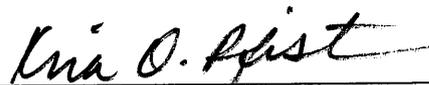
COMMISSION DECISION

Does the Commission grant Idaho Power Company's Application for an Order authorizing the blanket sale of air emissions allowances?

Does the Commission grant Idaho Power Company's Application for an accounting order?

Does the Commission want to adopt Staff's recommendation and proceed expeditiously with workshops in order to determine the appropriate ratemaking treatment of the proceeds from any such sale?

Does the Commission wish to make a recommendation to the Legislature regarding stricter limits on SO2 emissions?



Kira Dale Pfisterer

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