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Attorney for Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR AN ) CASE NO. IPC-E-06-06  
ACCOUNTING ORDER ADDRESSING THE )  
DEFERRAL OF COSTS RELATED TO THE ) COMMISSION STAFF  
DEVELOPMENT OF GRID WEST ) REPLY BRIEF ON  
RECONSIDERATION )**

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On October 24, 2006, the Commission issued Order No. 30157 authorizing the deferral of loans Idaho Power Company made to further development of a regional transmission organization (RTO) that became known as Grid West. Beginning in 2000, Idaho Power and other northwest electric utilities attempted to develop an RTO pursuant to orders issued by the Federal Energy Regulatory Commission (FERC). After attempts to develop an RTO failed, Idaho Power filed an Application for authority to create a deferral account for its costs in the effort. The Commission in Order No. 30157 authorized deferral of only the loan amounts the Company made to Grid West under a series of funding agreements, but the Commission did not approve a carrying charge on the amount allowed for deferral.

Idaho Power filed a Petition for Reconsideration on November 14, 2006, requesting reconsideration "only on that portion of the Order that prevents the Company from recovering carrying charges on the deferral balance during the period of amortization." Idaho Power Petition, p. 1. On November 30, 2006, the Commission issued Order No. 30192 granting the Petition for Reconsideration "to allow further briefing or written comments on the sole issue of whether carrying costs should be allowed on the deferral balance." Order No. 30192, p. 1. The Commission Order directed that written comments or legal briefs be filed by January 5, 2007 and that reply briefs or written comments be filed by January 26, 2007.

Idaho Power in its Brief on Reconsideration first clarified the amount it loaned to Grid West and allocated to its Idaho jurisdiction. The Commission in Order No. 30157 identified the principal amount authorized for deferral as \$1,274,158. The Company stated in its brief that that amount included a carrying charge the Company accrued since April 1, 2006, as well as a small cash distribution made by Grid West in October 2006. Accounting for those adjustments, and using an allocation percentage of 86.62% for its Idaho jurisdiction, the Company states that the Idaho jurisdictional share of the amount loaned to Grid West is \$932,177. Staff concurs with the Company's calculation and agrees that the principal amount of the loans authorized for deferral by the Commission is \$932,177.

**A Carrying Charge is not Required by Law but is a Matter of Discretion for the Commission**

Idaho Power alleged in its Petition for Reconsideration that the Commission's decision to disallow a carrying charge "is unreasonable, arbitrary, capricious, unlawful, erroneous, unduly discriminatory, and not in conformity with the facts of record and/or the applicable law, resulting in a revenue requirement and rates which are confiscatory." Idaho Power Petition on Reconsideration, pp. 1-2. The Company's Brief on Reconsideration, however, fails to provide either compelling facts or applicable law to support its argument.

Despite its allegation that the Commission's denial of the Company's request for a carrying charge is "unlawful" and "not in conformity with . . . the applicable law," Idaho Power cannot identify even one law that would require a carrying charge on the loans the Company made to Grid West. The Company references only one statute, *Idaho Code* § 61-502A, and that for the proposition that the Legislature "has recognized that allowing utilities to receive carrying charges or interest on deferred accounts is in the public interest." Idaho Power Brief on Reconsideration, p. 4. The Company supports this broad proposition by noting that Section 61-502A requires the Commission to include a carrying charge on a construction account for work in progress when the construction costs are not included in rate base.

Idaho Power's argument regarding Section 61-502A does not support its claim for a carrying charge in this case. First, Section 61-502A applies to a unique, narrow set of facts not present here. Section 61-502A applies only to accounts accumulated for construction work in progress when, following a rate case, the partially completed project is excluded from rate base. The section prohibits the Commission from including incomplete projects in rate base, unless it

is short-term construction work in progress, but requires an allowance for funds used on disallowed construction to be accumulated and computed. None of the elements unique to the Section 61-502A situation is present here; that section simply has no application to this case.

The fact that the Legislature addressed one situation where a deferral account is required actually cuts against Idaho Power's claim that the law requires a carrying charge in this case. Section 61-502A demonstrates the Legislature understands the usefulness of deferral accounts in one special circumstance. The Legislature has declined to direct their use in any other circumstance, implying the Legislature does not intend to circumscribe the Commission's discretion on carrying charges in other situations where a deferral account may be appropriate.

Because no law directs the Commission to allow a carrying charge on deferral accounts, other than in the situation identified in Section 61-502A, it is left to the Commission's discretion to approve a carrying charge in particular circumstances. The Supreme Court explicitly affirmed this discretionary authority of the Commission in *Idaho Power Company v. Idaho State Tax Commission*, 141 Idaho 316, 109 P.3d 170 (2005). The Supreme Court in that case reviewed the nature of a deferral account as a regulatory asset. The Supreme Court explained that "a regulatory asset is an accounting convention designed to enable Idaho Power to defer an otherwise current expense," and that in order for such a regulatory asset to be created, it must be authorized by the Commission. *Idaho Power Company v. Idaho State Tax Commission*, 141 Idaho 323. The Court then stated, "the treatment of regulatory assets (i.e., whether or not rates of return or carrying charges are allowed on them) is subject to the discretion of the IPUC." *Id.* (Italics added.)

### **The Commission Properly Exercised Its Discretion in this Case to Disallow a Carrying Charge**

Idaho Power's Brief on Reconsideration identifies previous cases where the Commission exercised its discretion to approve carrying charges on deferral accounts. Clearly there are numerous occasions where the Commission approved a carrying charge on a deferral account. The Commission commonly approves a carrying charge where a utility requests an order authorizing deferred accounting in advance of the expenditure, or the deferral account is related to implementation of a program the Commission has ordered. In those circumstances, the Commission has an opportunity to evaluate the necessity and anticipated benefit for customers before the expense is incurred by the company. In fact, the Commission periodically reminds

companies they may not be allowed recovery of an unusual expense if they fail to obtain Commission approval for deferral before making the expenditure. *See e.g.*, Idaho Power General Rate Case, Case No. IPC-E-94-05, Order No. 25880 (\$7 million environmental clean-up cost not recoverable in rates because no deferral order obtained in advance); United Water General Rate Case, Case No. UWI-W-04-04, Order No. 29838 (Employee retirement and severance costs disallowed because company did not request deferral order in advance).

The Commission exercises its discretion on carrying charges in different ways, depending upon the circumstances presented. For example, Idaho Power concludes in its Brief on Reconsideration that Commission approved interest rates for carrying charges vary depending on the amortization period for recovery. In the cases mentioned by the Company, the Commission used a lower carrying charge rate when authorizing a shorter amortization period, like one year, and higher carrying charge rates when longer amortization periods are used.

Sometimes the Commission exercises its discretion to disallow a carrying charge altogether, or to allow a very low carrying charge rate, depending on the circumstances of the deferral account. For example, in Case No. UWI-W-01-2, United Water Company requested approval of a deferral account for unusual and unexpected increases in electric rates paid by the company to run its pumps. The Commission approved the deferral account, but not a carrying charge. The uncertainty of the amounts to be spent, and thus the size of the account at the time of recovery, and the uncertainty of the timing of a future rate case, caused the Commission to reserve judgment on whether a carrying charge would be appropriate. Order No. 28800, issued August 1, 2001. When United Water sought recovery of the deferred account balance four years later, the Commission approved a one percent carrying charge on the account. Order No. 29838, pp. 21-22, issued August 2, 2005.

The Commission allowed deferral of costs, but no carrying charge, in Case No. AVU-G-00-1. In that case, Avista Corporation requested authority to defer clean-up costs on property previously owned by the company. The property in Spokane, Washington, operated by a previous owner as a coal gasification plant until 1948, and Avista acquired it in a merger in 1958. After Avista was notified that it and other companies might be liable for cleaning up hazardous materials, the company requested authority to defer the investigation and clean-up costs. Under these circumstances, Staff recommended the expenses be deferred, and ultimately shared by ratepayers and the shareholders, and that no carrying charge accrue on the deferral

account. Order No. 28512, pp. 2-3. The Commission allowed deferral of the hazardous clean-up expenses, but found the company's proposal for a carrying charge "to be unsupported and unacceptable." Order No. 28512, p. 4.

The unique circumstances giving rise to Idaho Power's request for a deferral order in this case justify the Commission's decision to deny a carrying charge. Unlike the usual deferral order request, where the deferral authorization is sought in advance of the expenditure, Idaho Power did not request a deferral order prior to making the loans to Grid West. It would not have made sense for Idaho Power to make such a request, because the Company made the Grid West loans at the behest of FERC, not the Commission. The Commission had no jurisdiction over the Grid West transactions because they were for the development of a wholesale electricity market. Had the RTO effort been successful, Idaho Power's loans would have been paid off, with interest, by surcharges collected from Grid West customers. In that case, Staff expects the interest would have benefited Idaho Power's wholesale market jurisdiction, and would not have benefited the Company's retail customers.

In one aspect, it seems unfair to Idaho Power's retail customers to allow deferral of even the loan amounts—the loans were not made for their benefit. On the other hand, as the Commission determined in its Order, Idaho Power participated in the RTO process to further a larger public interest. It would be unfair to penalize the Company for making the loans merely because the Grid West process proved unsuccessful. It also seems unfair, however, to ask the Company's customers to shoulder the entire burden of the failed effort. In the unique circumstances of this case, the Commission wisely exercised its discretion to allow deferral of the loans, but denied a carrying charge, or interest, on the deferral account. The Commission's decision, in the specific case before it, seems just and reasonable.

Respectfully submitted this 2<sup>4th</sup> day of January 2007.



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Weldon B. Stutzman  
Deputy Attorney General

b1s/N:IPC-E-06-06\_ws\_Reply Comments

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 24TH DAY OF JANUARY 2007, SERVED THE FOREGOING **COMMISSION STAFF REPLY BRIEF ON RECONSIDERATION**, IN CASE NO. IPC-E-06-6, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY