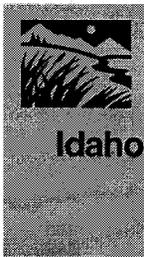


Idaho Public Utilities Commission  
Office of the Secretary  
RECEIVED

DEC 22 2009

Boise, Idaho



[www.idahoconservation.org](http://www.idahoconservation.org)

## Idaho Conservation League

PO Box 844, Boise, ID 83701  
208.345.6933

Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074

December 21, 2009

**RE: Idaho Conservation League Comments on the Application of Idaho Power Company for an Accounting Order to Amortize Additional Accumulated Deferral Income Tax Credits and an Order Approving a Rate Case Moratorium, Case No. IPC-E-09-30**

Honorable Commissioners:

Thank you for the opportunity to comment on the Application of Idaho Power Company for an Accounting Order to Amortize Additional Accumulated Deferral Income Tax Credits and an Order Approving a Rate Case Moratorium. For thirty-four years, the Idaho Conservation League (ICL) has been Idaho's voice for clean water, clean air, and wilderness—values that are the foundation to Idaho's extraordinary quality of life. As Idaho's largest state-based conservation organization we represent over 9,500 members, many of whom have a deep personal interest in protecting our clean air, clean water, and quality of life.

ICL's comments pertain to the procedure, not the substance of the Stipulation. ICL does not necessarily advocate that the Commission reject the application but seeks clarification on when public notice and the opportunity for the public to participate should be required. Specifically, ICL questions how the decision on who could be a party to these negotiations was made and which IPUC Rules of Procedure apply to this situation. ICL's position is that there should have been public notice and an opportunity for the public to participate in the negotiations leading up to the Stipulation and that the IPUC Rules of Procedure do not provide for this situation.

### **I. SELECTION OF PARTICIPANTS**

The Stipulation of issue is effectively the settlement of a rate case. Idaho Power filed a notice of intent to file a general rate case on August 28th, 2009. On September 21, 2009 the Company met with parties of its own choosing to discuss an agreed-upon return on equity, which then morphed into a discussion about several ratemaking and revenue sharing provisions and the rate case moratorium included in the Stipulation. As a result of the Stipulation, the Company did not file its rate case.

It is ICL's understanding that Idaho Power invited Parties to participate in these recent negotiations based on those who intervened in the Company's last general rate case. This is not sufficient. Awareness and interest of energy issues is growing. As electricity prices rise and the public becomes more aware of the impact energy consumption has on the environment more

people want the opportunity to learn about and participate in utility resource planning and regulation. More public participation leads to a more robust discussion of energy issues, which results in better energy policy and regulation. Moreover, the public has a right to participate in decisions that affect them. The ability to participate in settling a rate case should not be based on a previous intervenor status.

ICL did not participate in the last general rate case because the organization did not have an energy program at that time, and therefore, ICL did not receive an invitation to participate in these negotiations. ICL has an interest in this proceeding because the mission of ICL's energy program is to reduce greenhouse gas emissions through energy efficiency. Furthermore, many ICL members who are Idaho Power customers have an interest in developing cost effective, clean energy resources. The settlement of a rate case or stipulation could have adversely effected funding for efficiency and clean energy, and therefore, ICL had a right to participate. ICL did not learn about the ongoing negotiations until a few days before the Stipulation was filed when there was no time for meaningful input. ICL and any other party who might be affected by the outcome of this Stipulation should have been given the opportunity to participate in these negotiations.

## II. APPLICATION OF THE RULES OF PROCEDURE

It is unclear which IPUC Rules of Procedure apply to this situation. IPUC Rules of Procedure 271-280 govern settlements, but the rules only refer to "settlements in formal proceedings." If there was no docket filed prior to the negotiations, is this a formal proceeding? If this is not a formal proceeding, which IPUC Rules of Procedure apply?

If this is a formal proceeding and Rules 271-280 apply, then it is uncertain whether the correct procedure was followed. Rules 271 and 272 distinguish between passive and active settlements. Passive settlements are settlements in which, "a party agrees to concur in, accept, or not to oppose another party's positions previously on record with the Commission." IPUC Rule 271. Active settlements are settlements in which, "one (1) or more parties negotiate an agreement differing from positions of one (1) or more of the parties previously on record. IPUC Rule 272. The Stipulation is an active settlement because the Parties negotiated an agreement. Under the process for an active settlement, the Commission Staff, as a party to the settlement, must first notify all other parties that it has begun negotiations and, "must give all other parties an opportunity to participate in or be apprised of the course of the settlement negotiations before a final settlement agreement is reached." Id. If there has been no formal docket filed and no opportunity to intervene, how can the Commission Staff know who all interested parties are? Without public notification it is impossible to know what members of the public would participate if given the opportunity.

## III. CONCLUSION

When negotiating a settlement that affects all customer classes, the Company sending out invitations to a select group of parties is not sufficient public notice. The public should be allowed to participate in a settlement of this magnitude. This Stipulation affects all Idaho Power customers, and they should have been given the opportunity to participate.

ICL does not believe there was any malicious intent in the creation of this Stipulation but finds the process troublesome. Settling a case before it has been filed when the public has not been given an opportunity to intervene sets a dangerous precedent that deals can be made without

public participation with a self-selected group of parties. ICL understands the Parties' desire to settle, and in this case it may be in the best interest of Idaho Power's customers. However, in the future that may not be the case. Because it is unclear who gets to decide which parties get to participate in situations like this, we ask for the Commission to provide guidance on this matter.

Thank you for the opportunity to comment on this application. If you have questions about our interest in this matter, please contact me at (208)345-6933 ext. 12 or at [bbridge@idahoconservation.org](mailto:bbridge@idahoconservation.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Betsy Bridge", with a long horizontal flourish extending to the right.

Betsy Bridge  
Energy Efficiency Associate