Office of the Secretary
Service Date
February 9, 2011

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY TO AMEND ACCOUNTING ORDER NO. 30940 AUTHORIZING THE DEFERRAL OF TRANSMISSION COSTS ASSOCIATED WITH FERC DOCKET NO. ER06-787	))))))	**CASE NO. IPC-E-10-28** **ORDER NO. 32177**

On October 30, 2009, the Commission issued Accounting Order No. 30940 authorizing Idaho Power Company to record and to defer its unrecovered transmission-related revenues that were disallowed in a transmission rate case before the Federal Energy Regulatory Commission (FERC) in Docket No. ER06-787. *See* Case No. IPC-E-09-21. That 2009 Accounting Order also directed that the Company amortize the unrecovered transmission-related revenues over a three-year period to begin on January 1, 2011. Order No. 30940 at 6.

On October 13, 2010, Idaho Power filed the present Application[1] to change the beginning of the three-year amortization period from January 1, 2011 to January 1, 2012. Application at ¶ 13. The Company also requested that the Commission approve the updated deferral amounts contained in the Application.

On November 10, 2010, the Commission issued a Notice of Application and Notice of Modified Procedure in the present case. Order No. 32110. The Commission invited interested persons to submit written comments regarding the present Application no later than December 1, 2010, with reply comments due no later than December 8, 2010. The Commission Staff was the only party to file written comments and Idaho Power filed timely reply comments. Based upon our review of the record, Idaho Power's Application in this case is granted in part and denied in part.

BACKGROUND

A. The FERC Proceeding

In March 2006, Idaho Power filed an application with FERC requesting an increase in its transmission rates subject to FERC's jurisdiction. In its filing, the Company proposed to

[1] Idaho Power initially filed the present Application using the case number from last year's case: No. IPC-E-09-21. In Order No. 32110, the Commission directed that this case be treated as a new docket: No. IPC-E-10-28. *See* Order No. 32110 at 5.

revise its Open Access Transmission Tariffs (OATT) from "stated" rates to "formula" based rates. Formula rates would be updated annually based upon Idaho Power's total cost to own, operate and maintain its transmission facilities for its transmission customers. *Order on Initial Decision*, 126 FERC ¶ 61,044 (Jan. 15, 2009). The "formula" rate methodology would use financial data reported annually in the Company's FERC Form 1.

In the FERC proceeding, the parties were able to settle most of the issues but they were unable to resolve the proper ratemaking treatment of three "Legacy Agreements." *Id.* at ¶ 11. Starting in the 1960s, Idaho Power entered into three long-term transmission service contracts, commonly referred to as the "Legacy Agreements," with PacifiCorp to provide transmission service from the Jim Bridger power plant in western Wyoming.[2] Both companies built and now operate transmission lines from Bridger to their respective service territories. Under the terms of the Legacy Agreements, Idaho Power charges PacifiCorp "use of facility fees" to use Idaho Power's transmission facilities until 2025. *Id.* at ¶¶ 3-9; Order No. 30940 at 2.

The FERC Administrative Law Judge (ALJ) initially determined and FERC subsequently affirmed that Idaho Power's charges to PacifiCorp under the Legacy Agreements were significantly lower than the OATT rates Idaho Power proposed to charge other customers for similar transmission services. This rate "disparity" between the lower rates in the old Legacy Agreements and the higher OATT rates has grown over time. *Id.* ¶ at 127. The ALJ found in his initial decision that it was unreasonable for Idaho Power to recover its transmission costs from other third-party transmission customers while the Legacy Agreements contain rates for PacifiCorp that are now considered below cost. Because its revenue recovery "was locked in" by the long-term Legacy Agreements, FERC found that Idaho Power must bear the under-recovery of transmission costs on its own. *Id.* ¶ 129; Order No. 30940 at 2.

In response to FERC's initial decision, Idaho Power took three actions. First, the Company filed a Petition for Rehearing with FERC. FERC subsequently granted the rehearing so it could consider the matter in greater detail. Docket No. ER06-787-006. Second, Idaho Power filed an application with FERC to amend portions of two Legacy Agreements which were subject to change or re-negotiation. FERC Docket No. ER09-1335-000. Third, on July 20, 2009, Idaho Power filed an application for an accounting order requesting that this Commission

[2] Idaho Power and PacifiCorp jointly own the Bridger facility.

authorize the deferral of unrecovered transmission costs that were denied in FERC Docket No. ER06-787. IPUC Case No. IPC-E-09-21.

B. The Commission's Prior Accounting Order

In its prior Application in the 09-21 case, Idaho Power estimated its unrecovered transmission costs were approximately $8.084 million for the period March 2008 through May 31, 2010. The Company noted in its 09-21 application that if it was successful in recovering its transmission costs on rehearing at FERC or by amending its Legacy Agreements, then the Company "will reduce the deferral" request or balance. *Id.*

The only comments filed in response to the Company's July 2009 request for an accounting order were filed by the Commission Staff. The Staff noted that the FERC decision has the effect of reducing the transmission revenue credited to Idaho customers in Idaho rate cases. "With the FERC reconsideration and Legacy Agreement actions incomplete, Staff believes that deferral accounting for these unrecovered transmission revenues is appropriate through May 2010 as requested by Idaho Power. The question whether the deferred amounts should be recovered from Idaho ratepayers is a matter that should be reserved for a future proceeding." Order No. 30940 at 4.

When it issued the accounting Order, the Commission found

> it reasonable to grant the Company's request for an Accounting Order conditioned with Staff's recommendations. We authorize the deferral of the unrecovered transmission-related revenues through May 31, 2010, as requested by the Company. . . . We find that an amortization period of three (3) years is reasonable and that <u>the amortization period should begin on January 1, 2011</u>.
>
> . . . the Commission specifically reserves the right to determine in a future proceeding whether Idaho Power may appropriately recover the deferred amounts from Idaho customers. Granting the requested Accounting Order will allow Idaho Power to pursue its two other recovery options at FERC (rehearing and amending portions of the Legacy Agreements) while deferring transmission-related costs/revenues.

Order No. 30940 at 6 (emphasis added).

THE CURRENT APPLICATION

In its current Application, Idaho Power reported that it has amended two of the Legacy Agreements with PacifiCorp. Idaho Power terminated one of the Legacy Agreements (the Restated Transmission Service Agreement (RTSA), and replaced the old contract rate with its OATT rate in a new RSTA contract effective June 13, 2009. Idaho Power asserted that this change decreased the estimated deferral balance by approximately $2.81 million. Application at ¶ 4; Atch. 2. In another Legacy Agreement (the Interconnection and Transmission Service Agreement (ITSA), Idaho Power increased the old legacy rates to higher OATT point-to-point service rates on August 19, 2009. Idaho Power reported that the amendment of the ITSA decreases the deferral by approximately $2.918 million. Application at ¶ 5; Atch. 3.[3]

Idaho Power next reported that it found errors in the calculations of its OATT formula rate for the 2006, 2007 and 2008 test years. "The errors in the OATT formula rate overstated the Company's calculation of additional revenues received as a result of the termination of the RTSA as well as the calculation of additional ITSA revenues. . . ." Application at ¶ 7. The Company disclosed that it is in the process of issuing refunds for the OATT errors. The errors in the RTSA and ITSA calculations increased the deferral amount by $38,361 and $30,538, respectively. *Id.* In addition, the errors in the OATT rates also caused the Company to miscalculate the original deferral calculation. *Id.* at ¶ 8. The "net change of the deferral based on the actual OATT rates in effect is a $360,055 reduction." *Id.*

The Company calculates that the current deferral balance is $2,064,469, in comparison to the initial estimate of $8.08 million. Below is a summary of the proposed changes to the deferral balance.

DEFERRAL ITEM	DEFERRAL AMOUNT
Initial Deferral Estimate	$8,084,251
New RTSA Deferral Change	(2,810,178)
New ITSA Deferral Change	(2,918,448)
RTSA Revenue Correction	38,361
ITSA Revenue Correction	30,538
OATT Deferral Correction	(360,055)
Total Current Deferral	$2,064,469

Source: Application at 5

"Idaho Power respectfully requests authorization of the deferral amount of $2,064,469 of unrecovered transmission revenues." *Id.* at ¶ 9.

[3] In July 2010, FERC approved the parties' settlement that included the rate changes in the ITSA and RTSA contracts. FERC Docket No. ER09-1335.

The Company also requested that the beginning of the three-year amortization period shift from January 1, 2011 to January 1, 2012. The Company maintained that prior to receiving the Commission's accounting Order No. 30940, Idaho Power began settlement discussions "and entered into a stipulation committing that it would not file a general revenue requirement case which would result in a general rate adjustment to become effective prior to January 1, 2012." *Id.* at ¶ 10. The Company requested a postponement in the beginning of the amortization period "[b]ecause the Stipulation[4] does not allow the Company to recover the deferred transmission costs now. . . ." *Id.* (footnote added).

COMMENTS

A. Staff Comments

Staff commended the Company for its efforts to reduce the deferral amounts from about $8 million to approximately $2 million. In particular, Staff noted that the re-negotiation of the two Legacy Agreements significantly minimized the revenue shortfalls in the deferral accounts.

Staff opposed the Company's request to postpone the beginning of the amortization period from January 1, 2011 to January 1, 2012, for two reasons. First, while Staff acknowledged that the Company began negotiating the Stipulation and the rate moratorium in Case No. IPC-E-09-30, Staff took issue with the implication that the Company entered into the Stipulation prior to the issuance of the Commission's Accounting Order No. 30940. Staff noted the deferral Accounting Order No. 30940 was issued October 30, 2009, but the Company signed the Stipulation on November 6, 2009. Staff Comments at 5. Staff also observed that the Stipulation contained several exceptions to the rate moratorium. However, there is no exception for recovery of the deferral amounts from Case No. IPC-E-09-21 (Exhibit 1 at ¶ 5.2).

Staff noted that the Company's initial deferral request was filed in July 2009 and proposed a three-year amortization period beginning June 1, 2010. *Id.*, Application IPC-E-09-21 at ¶ 10. Staff maintained "the Company must have been fully aware of its deferral request in IPC-E-09-21 while it was negotiating the Stipulation." *Id.* Moreover, it was the Company that suggested a three-year amortization period beginning June 1, 2010 – a period of 18 months before the end of the Stipulation's rate moratorium.

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[4] The Stipulation in the Company's last general rate case generally restricts Idaho Power from increasing its rates during a "moratorium" period ending January 1, 2012, Case No. IPC-E-09-30, Exhibit 1 at ¶ 5.1.

Second, even after the Commission issued Order No. 30940 setting the beginning of the amortization period as January 1, 2011, the Company did not seek reconsideration of that Order. Staff asserted that it is simply untimely for the Company to seek to amend the Commission's Accounting Order a year after it was issued.

In summary, Staff recommended that the Commission approve the deferral amount of $2,064,469 conditioned upon not changing the beginning of the amortization date. "If the beginning of the amortization date is delayed to January 1, 2012, Staff recommends that all adjustments related to periods prior to July 20, 2009 be disallowed from the deferral amounts to be recovered from Idaho customers." *Id.* at 6.

B. Idaho Power Reply

In its reply comments, the Company asserted that Staff's recommendation to not postpone the beginning of the amortization period "should not be followed [because] it effectively eliminates any possibility that at least one year of the amortization amount of unrecovered transmission revenue could be recovered by the Company." Reply Comments at 2. The Company maintained that the Staff's recommendation not to move the beginning of the amortization period provides the Company with "no possibility for corresponding rate recovery [resulting in] a disallowance of at least one year of the amortization expense." *Id.* at 3.

The Company argued that Staff's recommendation on the amortization period is inconsistent with Staff's prior comments that "it is reasonable for the Company to track the unrecovered transmission expenses in a deferral, and that the deferral [account] be subject to a future ratemaking and recovery determination." *Id.* The Company maintained that Staff knew as well as the Company that the initial deferral period set out in Order No. 30940 was "a time during which the Company is prohibited from seeking inclusion of those potential amounts in rates. The effect of this [Staff] recommendation is to prematurely disallow a portion of that potential recovery." Reply at 3. The Company "reiterates its request from both Case No. IPC-E-09-21 and this case that a three-year amortization be authorized to coincide with the time when the deferral could potentially be included in rates." *Id.*

The Company argued that not moving the amortization period is unlawful because it denies Idaho Power the opportunity to recover deferred amounts. The Company cited as support two divided Orders in the PacifiCorp-Scottish Power merger case. Order Nos. 29034 at 12 and 28998 at 2-3. In those two Orders the Commission allowed PacifiCorp to defer "unanticipated and extraordinary high power costs" during a rate moratorium at the time of the energy crisis of 2000-2001. Order No. 29034 at 12 *quoting* Order No. 28998 at 2-3.[5]

Idaho Power also takes issue with Staff's recommendation regarding calculation of the deferral amounts. The Company asserted that Staff is inconsistent between its 09-21 comments from 2009 to its current comments in 2010. For example, the Company noted that Staff stated in the prior case that deferred accounting "is an appropriate, just and reasonable means" of litigating future recovery of unrecovered revenues, as compared to arguing now "the revenue change subject to deferral are for previous years and up through May 2010." Reply at 4 *citing* Staff Comments in 09-21 at 5; Staff Comments in 10-28 at 6.

The Company also argued that it was "somewhat inconsistent of Staff to both recognize that the Company has reduced the potential deferral amount from more than $8 million to just over $2 million but insists" that a portion of the deferral amount will be unrecovered and disallowed. The Company concluded that an Order "to start the amortization of a deferred amount with no possibility of inclusion in rates is the equivalent of a disallowance of those amounts." Reply Comments at 5.

COMMISSION FINDINGS AND DISCUSSION

After reviewing the Application, prior accounting Order No. 30940 and the comments of the parties, the Company's Application is granted in part and denied in part. First, we are pleased that the Company has been able to re-negotiate two of its Legacy Agreements. The re-negotiation of these two Legacy Agreements with PacifiCorp has decreased the total deferral balance by approximately $5.728 million. As reported by Idaho Power, the revised total deferral balance is now $2,064,469. This reduction is consistent with the Company's pledge that it intended to amend two of its Legacy Agreements.

We next turn to the dispute between the Company and Staff about shifting the three-year amortization period. As outlined above, Staff opposed the Company's request to move the beginning of the amortization period from January 1, 2011 to January 1, 2012. Staff generally objected to shifting the amortization period for two reasons. First, Staff notes that the Commission's accounting Order No. 30940 was issued before the Company entered into the Stipulation in its last rate case that generally restricts Idaho Power from increasing its rates until January 1, 2012. Second, Staff takes the Company to task for not seeking reconsideration of

[5] The cited portions of those two Orders are attached to this memo for your review.

Order No. 30940 once the Company should have realized that the first year of the three-year amortization period would fall within the rate moratorium period.

For its part, Idaho Power asserts that the practical effect of maintaining the amortization period as directed in our accounting Order No. 30940 would effectively limit the Company's recovery of the deferral amount to two years of the three-year amortization period. Reply Comments at 2. The Company maintains that it is unreasonable to not postpone the amortization period because leaving the amortization period unchanged would deny Idaho Power an opportunity to recover a portion of its deferral amounts. The Company cites two Commission Orders from the PacifiCorp-ScottishPower merger case to support its position. In those two Orders, a divided Commission allowed PacifiCorp to defer "unanticipated and extraordinary high power costs" arising from the energy crisis of 2000-2001 during a rate moratorium period. Order No. 29034 at 12 *quoting* Order No. 28998 at 2-3 (Commissioner Hansen dissenting).

At the outset, we find Idaho Power's reliance on the two PacifiCorp Orders misplaced. As quoted above, those Orders addressed "unanticipated and extraordinary" power costs during the 2000-2001 energy crises. The transmission costs in this case are neither unanticipated nor extraordinary. In this case, what was "unforeseen" by Idaho Power was that FERC would not allow the Company to recover its ordinary transmission-related costs from the OATT customers.

However, we are not persuaded by Staff's arguments about keeping the existing amortization period. More to the point, neither the Staff nor the Company mentioned that FERC has not ruled on the Company's Petition for Rehearing. Until FERC has ruled on Idaho Power's Petition for Rehearing, there may yet be other developments that would reduce or otherwise affect the total deferral amount. Consequently, we find it reasonable to not set the beginning of the amortization period until such time as FERC issues its order on rehearing. Accordingly, we rescind that part of our accounting Order No. 30940 that the three-year amortization period shall start on January 1, 2011. When FERC issues its order on rehearing, Idaho Power shall advise the Commission and may renew its request for a starting date for the three-year amortization period. In addition, the Commission specifically reserves the right to determine in a future proceeding whether Idaho Power may appropriately recover the updated deferral amount in this case from Idaho customers.

O R D E R

IT IS HEREBY ORDERED that Idaho Power Company's Application is granted in part and denied in part. The deferral balance in this case is updated to be $2,064,469.

IT IS FURTHER ORDERED that Idaho Power shall advise the Commission when FERC has issued its Order on Rehearing and may then request a starting date for the three-year amortization of the deferral balance at that time.

IT IS FURTHER ORDERED that although the deferral amounts in this case have been revised, the Commission expressly reserves the right to examine the lawfulness, prudence and reasonableness of recovering the recorded deferral amounts from Idaho customers in a future case.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-10-28 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 or in interlocutory Orders previously issued in this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 9th day of February 2011.

JIM D. KEMPTON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

MACK A. REDFORD, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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