DECISION MEMORANDUM

TO: **COMMISSIONER KJELLANDER**
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: **KARL KLEIN**
DEPUTY ATTORNEY GENERAL

DATE: **OCTOBER 21, 2011**

SUBJECT: **IDAHO POWER'S SALE OF SO2 EMISSION ALLOWANCES, CASE NO. IPC-E-11-17**

On September 19, 2011, Idaho Power Company filed its report about the Company's sale of SO2 emissions allowances in 2011.

THE REPORT

The Company says it has sold or contracted to sell 6,216 surplus sulfur dioxide emission allowances in 2011. The Company says it expects to receive $21,756 in net proceeds from the sale (after deducting brokerage fees of $1,554). The Company says it will account for the proceeds using the same interim accounting method that the Commission approved in Order 29852 (briefly described in § B, below). *See* Report ¶ 4, 7 and 8.

In addition, the Company says the Commission previously authorized it to record proceeds *net* of income taxes and transaction fees from future SO2 allowances sales in the PCA for purposes of calculating interest. However, the Company's review of tax law and policy have lead the Company to determine that it is more appropriate to record the *gross* benefits (less transaction costs) of the sale of excess SO2 allowances. The Company says that if SO2 allowances sales exist and the PCA's sharing mechanisms are triggered, customers will benefit by earning interest on the gross amount of the income from the SO2 allowances instead of the net amount. Report at ¶ 6.

The Company says it will file a subsequent report that includes contracts for the sale of surplus SO2 emission allowances entered into after the instant report was filed. *See* Report at ¶ 9.

BACKGROUND

A. The SO2 Program

Title IV of the Clean Air Act Amendments of 1990 establishes a national plan to reduce acid rain. 42 U.S.C. §§ 7651, *et seq*. The acid rain plan's centerpiece is the incentive- or market-based "cap and trade" SO2 emission program. Under the cap and trade program, the Environmental Protection Agency (EPA) caps the total amount of SO2 emissions allowed nationwide. Based on this cap, EPA allocates a certain number of SO2 emission allowances to thermal power plant owners. Each allowance provides a plant owner with authority to emit one ton of SO2. Order No. 29852 at 1.

Each year a plant owner must hold sufficient allowances to cover actual SO2 emissions. If a plant owner has insufficient allowances to cover its annual emissions, it must purchase additional allowances or it is automatically fined and must surrender future year allowances to cover the shortfall. A plant owner with surplus SO2 allowances in a given year either may save the surplus allowances or sell them. SO2 emission 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 SO2 allowances from EPA. *Id.*

B. Prior Commission Orders

The Commission previously issued an Order related to the sale of Idaho Power's surplus SO2 emission allowances. These include, without limitation, the following Orders.

In 2005, the Commission authorized Idaho Power to sell the Company's surplus SO2 emission allowances. *See* Order No. 29852. Pending Commission determination of how to treat the allowances for ratemaking purposes, the Commission said Idaho Power could account for the proceeds by booking them into Account 131 (Cash) flowing to Account 236 (Taxes Accrued) and Account 254 (Other Regulatory Liabilities). *See* Order No. 29852 at 2 and 4. The Commission also required Idaho Power to report the SO2 sale proceeds within 60 days of receipt. *Id.*

In 2006, the Commission directed the Company to include SO2 allowance sales proceeds in the Company's annual Power Cost Adjustment ("PCA") as an off-set to reduce the level of PCA rates. *See* Order No. 30041. The Commission decided that, like the then-approved

PCA sharing arrangement, "90% of the net proceeds [were] to be passed onto customers, and 10% [were] . . . to be retained as a shareholder benefit." *Id.*

In 2009, the Commission modified Idaho Power's PCA mechanism by changing how customers and shareholders were to share power purchase costs and benefits. *See* Order No. 30715. The Commission changed the 90%/10% customer/shareholder allocation to 95%/5%. *Id.*

In 2011, the Commission applied this change for use in allocating net proceeds from the Company's sale of SO2 emissions allowances during the 2010 calendar year. Thus, 95% of Idaho's jurisdictional share of the net sale proceeds, including tax effects, was allocated to customers, and the remaining 5% was allocated to shareholders. *See* Order No. 32162.

STAFF RECOMMENDATION

Staff recommends that the Commission process this matter under Modified Procedure with a 21-day comment period.

COMMISSION DECISION

Does the Commission wish to process this matter under Modified Procedure with a 21-day comment period?

Karl Klein
Deputy Attorney General

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