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IDAHO PUBLIC
UTILITIES COMMISSION

Attorney for the Idaho Conservation League

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S APPLICATION FOR A)	CASE NO. IPC-E-13-16
CERTIFICATE OF PUBLIC)	
CONVIENCE AND NECESSITY FOR)	IDAHO CONSERVATION LEAGUE'S
THE INVESTMENT IN SELECTIVE)	
CATALYTIC REDUCTION CONTROLS)	PPOST HEARING BRIEF
ON JIM BRIDGER UNITS 3 AND 4.)	

The Idaho Conservation League (ICL) submits this brief in support of our recommendation – deny binding ratemaking treatment under Idaho Code §61-541. At the close the technical hearing, Commissioner Smith expressed interest in two primary aspects of I.C. §61-541; what the code requires, and how conservatively the Commission should exercise the discretion afforded by the statute. ICL recommends the Commission conservatively exercise their discretion by holding Idaho utilities to the highest standards of planning, and requiring a demonstration of the direct benefits accruing to the public before awarding any binding ratemaking treatment. High quality planning coupled with a clear and convincing showing in a Certificate of Public Convenience and Necessity hearing allows the Commission to meet the duty imposed by I.C. §61-541(4) to “maintain a fair, just and reasonable balance of interests between the requesting utility and the utility's ratepayers” when awarding binding ratemaking treatment.

The Commission should cautiously exercise the discretion in I.C. §61-541

The binding ratemaking treatment statute is a relatively new addition to Idaho Code and has only been applied once before, for Idaho Power's Langley Gulch Plant. *Order No. 30892.*

Before the binding ratemaking treatment statute, Idaho's utilities were able to secure sufficient financing to construct large dams, enormous coal plants, long-distance transmission lines, and other capital projects. The traditional Certificate of Public Convenience and Necessity process was sufficient then, and remains sufficient today for the vast majority of utility capital projects.

While the traditional CPCN process typically provides sufficient regulatory assurance, sometimes extreme conditions require unique solutions. In 2009, when the statute was passed and the Commission applied it to Langley Gulch, capital and financial markets were in deep turmoil. *Order No 30892* at 37 – 39. By contrast, the record in this case does not demonstrate capital market turmoil and Idaho Power has not argued that binding ratemaking treatment is necessary to reasonably finance the Jim Bridger project.

The Binding Ratemaking Treatment Code, I.C. §61-541.

The binding ratemaking treatment code performs several functions. Along with procedural requirements,¹ the code covers three primary areas. First, the code establishes basic evidentiary requirements for utilities to provide. I.C. §61-541(2)(a). Second, the code points to specific factors the Commission shall consider when deciding to “accept, deny, or modify a proposed ratemaking treatment.” I.C. §61-541(4). Finally, the code allows the Commission to impose a future rate increase today by determining the prudence of project costs, I.C. §61-541(2)(b)(iii), and binding future Commissions to this decision. I.C. §61-541(4)(c). Idaho Power's application fails to meet two of the evidentiary requirements. For three of the factors the record does not support granting ratemaking treatment. Because of these failures, the Commission should not grant an effective future rate increase by determining the prudence of the Bridger project costs.

¹ For example, subsection (3) requires a public hearing. Because the Commission has completed the procedural requirements of the code ICL will not address these sections.

Evidentiary standards

To qualify for consideration of binding ratemaking treatment I.C. §61-541(2)(a) requires utilities to:

describe the need for the proposed facility, how the public utility addresses the risks associated with the proposed facility, the proposed date of the lease or purchase or commencement of construction, the public utility's proposal for cost recovery, and any proposed ratemaking treatments to be applied to the proposed facility.

Idaho Power's application and testimony in this case fails to meet two of these factors. While the application and testimony state that Idaho Power needs to continue operation of Bridger, the testimony also shows Idaho Power did not adequately consider alternative ways to meet this need. Mr. Harvey's rebuttal testimony states: "at the time the state of Wyoming decided to require SCRs at the Jim Bridger Units 3 and 4, it would not have been reasonable to consider the shutdown of the Jim Bridger plant[.]" *Harvey Rebuttal* at p 11 ln 7 – 12. While the record is not clear, Mr. Harvey also testified these Wyoming decisions occurred sometime before 2010. *Harvey Direct* at p 10 -11. The Commission should be skeptical of utilities determining "need" by refusing to consider alternatives.

Idaho Power's application and testimony state clearly the Company considers the Bridger project risky, particularly the "uncertainty surrounding coal-fired generation in today's political and social environment." *See e.g. Grow Direct* at p 15. While uncertainty is a form of risk, political uncertainty is a far different beast than economic uncertainty. In the face of economic uncertainty, binding ratemaking treatment may reduce risks by assuring capital markets a utility will recover capital investments. But nothing in the record establishes that binding ratemaking treatment can reduce "political and social" risk beyond what a traditional CPCN provides. The Commission should reject using binding ratemaking treatment to address social risk.

Factors the Commission must consider

The Binding ratemaking treatment code sets forth specific factors the Commission shall consider before accepting, denying, or modifying the requested treatment. I.C. §61-541(4)(a).

- (i) The public utility has in effect a commission-accepted integrated resource plan;
- (ii) The services and operations resulting from the facility are in the public interest and will not be detrimental to the provision of adequate and reliable electric service;
- (iii) The public utility has demonstrated that it has considered other sources for long-term electric supply or transmission;
- (iv) The addition of the facility is reasonable when compared to energy efficiency, demand-side management and other feasible alternative sources of supply or transmission; and
- (v) The public utility participates in a regional transmission planning process.

The record in this case demonstrates that three of these factors cut towards denying, not granting, binding ratemaking treatment. First, Idaho Power's currently accepted Integrated Resource Plan is from 2011. While the 2011 plan mentions that PacifiCorp agreed to install SCRs at Bridger units 3 and 4 in 2015 and 2016 respectively, the plan does not analyze whether this is a prudent decision for Idaho Power. *Idaho Power 2011 IRP* at 20. Idaho Power's 2013 IRP is not yet accepted by the Commission. This stands in stark contrast to the prior use of binding ratemaking for Langley Gulch where Idaho Power had consistently identified a need for the resource in several IRP cycles. *Order No. 30892* at 21, 38. Before providing binding ratemaking treatment, the Commission should continue to require a consistent showing the Company considered the need for the project compared to an array of alternative resources through several IRP cycles.

Second, the record demonstrates Idaho Power only considered a narrow range of other sources as an alternative to Bridger – in short natural gas, or more natural gas. By contrast, in the Langley Gulch situation several IRP cycles had examined both different options for new resources as well as different interactions with existing resources. Before granting binding ratemaking treatment the Commission should require a more rigorous evaluation of alternatives than Idaho Power presents in this case.

Third, the record demonstrates Idaho Power inadequately considered the roll of energy efficiency, demand side management and other feasible alternative sources to offset some or all of the Bridger output. The only IRP to analyze the Bridger project did not allow for additional, identified, and cost effective energy efficiency as a resource in alternative portfolios. Idaho Power Attachment 4, *Idaho Power 2013 IRP*, at 93 – 96. The IRP load and resource balance used to compare Bridger to other resources assumed 400 MW of Demand Responses would not be available, when Idaho Power elected to suspend the programs.² And the 2013 IRP shows a substantial amount of excess energy throughout the planning period, but did not allow some of the excess position to absorb the loss of some or all of Bridger, say unit 4 for instance. *ICL Exhibit 301*. Before granting binding ratemaking treatment, the Commission should require utilities to demonstrate how additional, identified, cost-effective demand side savings, and other existing resources, cannot offset some or all of the proposed project.

Determining prudence today is an effective rate increase for customers

When read as a whole, the binding ratemaking treatment statute allows the Commission to approve an effective rate increase today that customers will begin paying in the future. After a public hearing, the Commission “shall issue an order that addresses the proposed ratemaking

² ICL did acquiesce to this elective suspension contingent upon a process and timeline for reviewing the programs. ICL participated in this review, supports the outcome, and specifically supports the workshop process used to address that issue. *See ICL Comments* in IPC-E-13-14.

treatments.” I.C. §61-541(4). The proposed treatments include determining “the maximum costs the commission will include in rates . . . without the public utility having the burden of moving forward with additional evidence of the prudence and reasonableness of such costs.” I.C. §61-541(2)(b)(iii). Idaho Power requests the Commission “provide base rate treatment” for \$129,837,393 to be collected “at such time the plant is placed in operation.” *Idaho Power Application* at 12. While any rate increase will occur when the project is completed, under the binding ratemaking treatment code the Commission can determine the prudence of these costs today and foreclose further review.

The Commission should decline to rule on the prudence of the Bridger costs based on the record in this case. First, as described above, Idaho Power’s application and testimony failed to meet two evidentiary requirements, and three of the factors for the Commission to consider cut against granting binding treatment. Second, absent a compelling public benefit to early determination, the Commission should maintain the flexibility to determine prudence at the traditional time – when costs are moved into rate base. In the Langley Gulch case, the record supported binding ratemaking treatment would address Idaho Power’s need to raise funds in a tumultuous capital market environment. *Order No. 30892* at 37 – 39. Commission assurances in this case may swage the Company’s concerns, but the record in this case simply does not demonstrate a benefit to the public from binding ratemaking treatment. Without a corresponding public benefit, granting binding ratemaking treatment does not “ maintain a fair, just and reasonable balance of interests between the requesting utility and the utility’s ratepayers.” I.C. §61-541(4).

DATED this 15th day of November 2013,



Benjamin J. Otto
Attorney for the Idaho Conservation League

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November 2013, I delivered true and correct copies of the foregoing POST-HEARING BRIEF OF THE IDAHO CONSERVATION LEAGUE to the following persons via the method of service noted:

Hand Delivery

Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
427 W. Washington St.
Boise, ID 83702-5983

Electronic delivery only

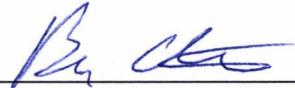
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