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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO RATE BASE THE INVESTMENT REQUIRED FOR THE REBUILD OF THE SWAN FALLS HYDROELECTRIC FACILITY	CASE NO. IPC-E-90-2 CERTIFICATE OF MAILING
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE RATE BASING OF THE MILNER HYDRO-ELECTRIC PROJECT OR IN THE ALTERNATIVE A DETERMINATION OF EXEMPT STATUS FOR THE MILER HYDROELECTRIC PROJECT	CASE NO. IPC-E-90-8 CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of November, 1990, I Federal Expressed a true and correct copy of the within and foregoing REBUTTAL TESTIMONY OF JAN B. PACKWOOD and BRIEF OF IDAHO POWER COMPANY, addressed as follows:

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and service by hand delivery was made upon the following on this 23rd day of November, 1990:

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO RATEBASE THE INVESTMENT REQUIRED FOR THE REBUILD OF THE SWAN FALLS HYDROELECTRIC PROJECT	Case No. IPC-E-90-2
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE RATEBASING OF THE MILNER HYDROELECTRIC PROJECT OR IN THE ALTERNATIVE A DETERMINATION OF EXEMPT STATUS FOR THE MILNER HYDROELECTRIC PROJECT	Case No. IPC-E-90-8 BRIEF OF IDAHO POWER COMPANY

INTRODUCTION

On October 12, 1990, the Idaho Public Utilities Commission (the "Commission") requested that the Parties address the following legal issues regarding the construction of hydroelectric generation facilities at Swan Falls and Milner:

1. What is the legal authority for the Commission to approve ratebasing of the Swan Falls rebuild before the rebuild is in service? What is the legal authority for the Commission to approve ratebasing for the Milner project before the project is in service.

2. What is the legal authority or propriety as a matter of policy of using avoided costs as a cap for ratebasing the Swan Falls rebuild? What is the legal authority or propriety as a matter of policy of using avoided costs as a cap for ratebasing the Milner project?

3. Does the Commission have authority to declare in the abstract that a certified plant or a plant by statute exempt from certification may be ratebased without yet knowing the cost of ratebasing the plant in retail rates? Does the Commission have authority to declare in the abstract that a certified plant or a plant by statute exempt from certification may be excluded from ratebasing for a fixed period in the future without yet knowing the cost of ratebasing in retail rates? How are the rights of utility investors affected in the implied interval created by such a decision?

Before specifically addressing the above issues, a brief review of applicable Federal law, the statutory authority of the Commission, and pertinent Idaho Supreme Court decisions discussing the Commission's authority in this area, is beneficial.

1.

FEDERAL ENERGY REGULATORY COMMISSION (FERC) JURISDICTION

Since the Swan Falls and Milner projects are both hydroelectric facilities located on navigable waters of the United States, the construction and operation of these projects is subject to the Federal Power Act. The Federal Power Act clearly states that it is unlawful to construct, operate or maintain

a hydroelectric project in any of the navigable waters of the United States except under and in accordance with the terms of a license from the FERC. 16 U.S.C.S, § 817 Additionally, the Federal Power Act mandates that all licenses issued are subject to the condition that the FERC determine that the project best adapted to a comprehensive plan for improving or developing beneficial public uses be selected. 16 U.S.C.S. § 803 The projects, plans, and specifications, when approved by the FERC are a part of the license conditions and thereafter cannot be changed without approval. 16 U.S.C.S. § 802 Failure to comply with any rule, regulation, term, or condition of a license can subject the licensee to revocation of the license and civil penalties in an amount not to exceed $10,000 for each day that such violation or failure or refusal continues. 16 U.S.C.S. § 823(b)

2.

STATUTORY AUTHORITY

In 1970 the legislature of the State of Idaho amended I.C. § 61-526 by striking the provision that permitted power companies to develop new generating plants and market the products thereof without a Certificate of Public Convenience and Necessity (CPC&N). I.C. § 61-526 now requires that a public utility subject to jurisdiction of the Commission must obtain a CPC&N if it desires to construct a new generating plant, although it is permitted to increase the capacity of existing generating plants without the issuance of CPC&N. A copy of the applicable 1970 Session Law is attached for the convenience of the Commission and parties. It should also be noted that in Idaho Power Co. v. Idaho Public Utilities, 703 P.2d 707, 108 Idaho 943 (1985) the Idaho Supreme Court upheld the Commission's authority to disallow a portion of Idaho Power Company's investment in the Boardman facility noting that the boiler "had been

purchased prior to the issuance of a certificate of convenience and necessity, I.C. § 61-526, as amended in 1970."

3.

SUPREME COURT DECISIONS

In 1983 the Idaho Supreme Court issued its decision in Utah Power & Light v. Idaho Pub. Util. Com'n, 673 P.2d 422, 105 Idaho 822, (1983), wherein the Supreme Court ruled that construction work in progress could be included in a utility's ratebase for purposes of determining the utility's revenue requirement. In 1984 the Idaho legislature enacted I.C. § 61-502A to provide that construction work in progress could not be included in ratebase for revenue requirement purposes, but that the Commission must allow a reasonable allowance for funds used during the construction of utility plant. A copy of the applicable 1984 Session Law is attached for the convenience of the Commission and parties. In short, if a utility has obtained a Certificate of Public Convenience and Necessity authorizing the construction of plant, the Commission is required to permit a return on that plant during construction and cannot retroactively disallow the return or the investment upon which that return has been calculated. For the Commission to act otherwise would allow the Commission to prohibit the utility from earning a return on an investment which had previously been approved by the Commission.

In Citizens Util. Co. v. Idaho Public Util. Comm., 164 P2.d 110, 115 99 Idaho 169, 579, (1978), the Court stated: "A utility's 'rate base' represents the original cost minus depreciation of all property justifiably used by the utility in providing services to its customers. Utilities are allowed to charge customers rates which will yield a certain percentage return on the utility's total investment."

The Idaho Supreme Court has determined that the Commission's authority to establish avoided cost "rates" for a utility arise out of the Commission's obligation to establish a procedure for the purchase of power by utilities from cogenerators and small power producers under § 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) 16 U.S.C. § 824a-3. A discussion of the Commission's authority to set avoided cost "rates" and the purpose for setting such rates is discussed in Afton Energy, Inc. v. Idaho Power Co. 693 P.2d 427, 107 Idaho 781, (1984). As noted by the Idaho Supreme Court in Afton the intention of Congress in enacting PURPA and the avoided cost rate methodology is set forth in the House-Senate conferee's report:

> "The House and Senate conferees explicitly stated in their report on the PURPA bill that this language was not to be interpreted to permit pervasive regulation by state utility commissions over the avoided cost rates paid CSPPs by utilities:"
>
> "The conferees intend that the phrase 'just and reasonable to the electric consumers of the utility' be interpreted in a manner which looks to protecting the interests of the electric consumer in receiving electric energy at equitable rates. It is not the intention of the conferees that cogenerators and small power producers become subject, by virtue of this language, and the rules promulgated under this section, to the type of examination that is traditionally given to electric utility rate applications to determine what is the just and reasonable rate that they should receive

for their electric power. The conferees recognize that cogenerators and small power producers are different from electric utilities, not being guaranteed a rate of return on their activities generally or on the activities vis a vis the sale of power to the utility and whose risk in proceeding forward in the cogeneration or small power production enterprise is not guaranteed to be recoverable.

"The conferees wish to make clear that cogeneration is to be encouraged under this section and therefore the examination of the level of rate which should apply to the purchase by the utility of the cogenerator's or small power producer's power should not be burdened by the same examination as are utility rate applications, but rather in a less burdensome manner. *The establishment of utility type regulation over them would act as a significant disincentive to firms interested in cogeneration and small power production."* 1978 U.S. Code Cong. & Ad. News 7831-32 (emphasis in original Afton Energy, Inc. 693 P.2d 427, 433 (Idaho 1984)."

COMMISSION LEGAL ISSUES

1. What is the legal authority for the Commission to approve ratebasing of the Swan Falls rebuild before the rebuild is in service? What is the legal authority for the Commission to approve ratebasing for the Milner project before the project is in service.

The Commission in Case No. IPC-E-89-8, Order No. 22412 (a copy is attached to this Brief) set forth the requirements for the Company's Applications in these proceedings. Based upon the discussion set forth above it is clear that the FERC has authority to issue a license for a hydroelectric facility located on the navigable waters of the United States. Clearly, the Swan Falls and Milner projects are located on such navigable waters, and as such must be licensed by the FERC. In issuing the license the FERC determines the specifications and conditions of construction. The authority of the Commission must be read in harmony with the Federal statutory requirements. As set forth above, the Commission, upon the issuance of a certificate of public convenience and necessity has authorized the construction of the facility pursuant to the license issued by the FERC. While the Swan Falls and Milner projects are being constructed, Idaho Power is entitled by statute to an allowance for funds used during construction. Upon completion of the facilities these facilities will be included in Idaho Power's ratebase for revenue requirement purposes so long as Idaho Power Company has utilized reasonable and prudent construction practices. If during the construction of the facilities circumstances should change, the burden to demonstrate that the construction of the facilities should cease, is upon those parties that would request that construction cease. Of course this Commission on its own motion could also commence such an investigation as it did in earlier Orders involving the Swan Falls project. The statutory scheme set forth in the above discussion and the pertinent Idaho Supreme Court decisions are clear in this regard.

2. <u>What is the legal authority or propriety as a matter of policy of using avoided costs as a cap for ratebasing the Swan Falls rebuild? What is</u>

the legal authority or propriety as a matter of policy of using avoided costs as a cap for ratebasing the Milner project?

The statutory scheme for the establishment of a utility's revenue requirement is totally different than the establishment of rates a utility will pay for purchased power from cogenerators and small power producers. The determination of avoided costs for purposes of establishing the rates a utility will pay for purchased power from cogenerators and small power producers is made for a totally unrelated purpose and is not designed for the establishment of ceilings on the original costs of facilities that a utility has dedicated to the public use.

3. Does the Commission have authority to declare in the abstract that a certified plant or a plant by statute exempt from certification may be ratebased without yet knowing the cost of ratebasing the plant in retail rates? Does the Commission have authority to declare in the abstract that a certified plant or a plant by statute exempt from certification may be excluded from ratebasing for a fixed period in the future without yet knowing the cost of ratebasing in retail rates? How are the rights of utility investors affected in the implied interval created by such a decision?

Idaho Power Company's submission of the Milner Application in the alternative was an attempt by the Company to reconcile the jurisdictional conflicts between the FERC and this Commission if this Commission determined that it would not issue a Certificate of Public Convenience and Necessity (CPC&N) for the Milner project. Recognizing that the Commission had the statutory authority to refuse to issue a CPC&N for the Milner project, and that the FERC had statutory authority to issue a license, the Application reconciles the potential conflict between the two jurisdictions. The denial of the CPC&N by the Idaho

Commission would result in the Milner project not being included in Idaho Power's investment for revenue requirement purposes. In other words, the Milner investment would not be ratebased. Idaho Power's Application in the alternative is nothing more than a recognition of the Commission's existing authority to issue or to refuse to issue a CPC&N which authorizes the construction of a generating plant. This determination, whether the facility should receive a CPC&N, is made at the beginning of the project (as the Commission requires) and not at the completion of the construction of the project.

DATED at Boise, Idaho this 23rd day of November, 1990

/s/ Larry D. Ripley
Larry D. Ripley
Counsel for Idaho Power Company

CHAPTER 134
(H. B. No. 543)

AN ACT

AMENDING SECTION 61-526, IDAHO CODE, RELATING TO THE GRANTING OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO PUBLIC UTILITIES, BY PROVIDING THAT ON THE EXTENSION OR CONSTRUCTION OF THE PUBLIC UTILITIES' LINE, PLANT OR SYSTEM A HEARING MAY BE HELD BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION TO DETERMINE IF PUBLIC CONVENIENCE AND NECESSITY REQUIRE THE EXTENSION OR CONSTRUCTION; AND STRIKING THE PROVISION THAT PERMITS POWER COMPANIES TO DEVELOP NEW GENERATING PLANTS AND MARKET THE PRODUCTS THEREOF WITHOUT A CERTIFICATE OF CONVENIENCE AND NECESSITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 61-526, Idaho Code, be, and the same is hereby amended to read as follows:

61-526. CERTIFICATE OF CONVENIENCE AND NECESSITY. – No street railroad corporation, gas corporation, electrical corporation, telephone corporation or water corporation, shall henceforth begin the construction of a street railroad, or of a line, plant, or system or of any extension of such street railroad, or line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction: provided, that this section shall not be construed to require such corporation to secure such certificate for an extension within any city or county, ~~or city or town,~~ within which it shall have theretofore lawfully commenced operation, or for an extension into territory whether within or without a city or county, ~~or city or town,~~ contiguous to its street railroad, or line, plant or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it necessary in the ordinary course of its business: and provided further, that if any public utility in constructing or extending its lines, plant or system, shall interfere or be about to interfere with the operation of the line, plant or system of any other public utility already constructed, **or if public convenience and necessity does not require or will require such construction or extension,** the commission on complaint of the public utility claiming to be injuriously affected, **or on the commission's own motion,** may, after hearing, make such order and prescribe such terms and conditions for the locating **or type** of the line, plant or system affected as to it may seem just and reasonable: provided, that power companies may, without such certificate, increase the capacity of their existing generating plants ~~or develop new generating plants and market the products thereof~~.

Approved March 9, 1970.

CHAPTER 21
(S.B. No. 1214)

AN ACT

RELATING TO PUBLIC UTILITY RATES; AMENDING CHAPTER 5, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-502A, IDAHO CODE, TO PROHIBIT THE IDAHO PUBLIC UTILITIES COMMISSION FROM SETTING RATES THAT GRANT A RETURN ON CONSTRUCTION WORK IN PROGRESS, EXCEPT UPON THE COMMISSION'S FINDING OF AN EXTREME EMERGENCY, OTHER THAN SHORT-TERM CONSTRUCTION WORK IN PROGRESS, OR PROPERTY HELD FOR FUTURE USE, AND DECLARING RATES GRANTING A RETURN ON SUCH PROPERTY IN THE ABSENCE OF THE FINDING OF AN EXTREME EMERGENCY TO BE UNJUST, UNREASONABLE AND UNFAIR, AND TO ALLOW FOR FUNDS USED DURING CONSTRUCTION; DECLARING LEGISLATIVE INTENT; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 5, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-502A, Idaho Code, and to read as follows:

61-502A. RESTRICTION ON RATES AUTHORIZING RETURN ON PROPERTY NOT PROVIDING UTILITY SERVICE. Except upon its finding of an extreme emergency, the commission is hereby prohibited in any order issued after the effective date of this act from setting rates for any utility that grants a return on construction work in progress (except short-term construction work in progress) or property held for future use and which is not currently used and useful in providing utility service. As used in this section, short-term construction work in progress means construction work that has begun and will be completed in not more than twelve (12) months. Except as authorized by this section, any rates granting a return on construction work in progress (except short-term construction work in progress) or property held for future use are hereby declared to be unjust, unreasonable, unfair, unlawful and illegal. When construction work in progress is excluded from the rate base, the commission must allow a just, fair and reasonable allowance for funds used during construction or similar account to be accumulated, computed in accordance with generally accepted accounting principles.

SECTION 2. It is hereby declared to be legislative intent that this act should overrule that portion of the decision of the Supreme Court of Idaho entitled Utah Power & Light Company v. Idaho Public Utilities Commission, issued December 14, 1983, which authorized or required construction work in progress or property held for future use to be included in a utility's rate base or otherwise authorized or required the commission to grant a return on such property, and that the commission be prohibited from following the precedent of that case in any order issued after the effective date of this act to the extent that such precedent authorizes construction work in progress or property held for future use which is not currently used and useful in providing utility service to be included in rate base or authorize or require the commission to allow a return on such property.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved February 29, 1984.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE REVIEW UPON THE COMMISSION'S OWN MOTION OF IDAHO POWER COMPANY'S PLAN TO REBUILD ITS SWAN FALLS HYDRO-ELECTRIC FACILITY.	CASE NO. IPC-E-89-8 ORDER NO. 22412

For the reasons stated in the text of this Order, the Commission initiates on its own motion an investigation into Idaho Power Company's plans to rebuild its hydroelectric generation facility at Swan Falls. The purpose of this investigation is to determine the Company's plans, not only with regard to reconstruction of the Swan Falls facility, but also its future ratemaking proposals for Swan Falls.

HISTORY OF THE SWAN FALLS PROJECT

The Swan Falls project occupies a unique position in this state's hydrological and legal history. In 1901, Trade Dollar Consolidated Mining Company constructed the first hydroelectric dam on the Snake River at Swan Falls. By 1919, its successors to the project had secured water rights at Swan Falls for 9,450 cubic feet per second with priority dates ranging from 1900 to 1919, although it is undisputed that the hydraulic capacity of the project was 8,400 cfs. The nameplate capacity of the project's generators was about 12 megawatts.

Swan Falls' construction preceded Congress's enactment in 1920 of the Federal Water Power Act. Swan Falls was not

licensed by the Federal Power Commission until 1928, after Idaho Power Company had succeeded to the project and its rights. The original license for the project expired in 1970, and it was annually renewed for a number of years thereafter.

Beginning in 1977 the validity and the priority of Idaho Power's water rights for that project became the focus of a complaint that began the most far-reaching water rights litigation in this state's history. See *Idaho Power Company* v. *State of Idaho*, 104 Idaho 575, 661 P.2d 741 (1983). In the meantime, Idaho Power applied to the Federal Energy Regulatory Commission (the FPC's successor agency) to relicense the Swan Falls project. In 1982, FERC issued License No. 503 for the project, which will expire in 2010 (forty years after the expiration of the original license).

When the project was relicensed, Idaho Power was authorized to build a new powerhouse and increase the capacity of the project to 25 megawatts. The license also recited that reports from FERC's engineering staff found that the spillway at the project was in poor condition and that major rehabilitation was needed. Following receipt of the project license, Idaho Power began reconstruction of the spillway. It had intended to rebuild the powerhouse and increase the generation as well.

On August 27, 1984, this Commission initiated Case No. U-1006-240, an investigation into Idaho Power's plans to rebuild

its generation facility at Swan Falls. The purpose of the investigation was "to determine whether the Swan Falls rebuild is consistent with the least-cost energy future for Idaho Power ratepayers." That Order noted Idaho Power did not need a certificate of public convenience and necessity to "increase the capacity of [its] existing generating plants," I.C. §61-526, but further referred to the recently completed investigation of Idaho Power's future plans in Case No. U-1006-197 and said:

> We concluded Order No. 18189 [the final Order in Case No. U-1006-197] by putting Idaho Power on formal notice that it could no longer expect automatic rate base treatment of construction expenditures that went significantly beyond original cost estimate or that were not competitive with the cost ratepayers would have to pay for power from alternative resources. . . .
>
> The Commission finds that this is the appropriate time to initiate a review of the Swan Falls rebuild. . . .
>
> The Company should . . . explain the history of its decision to rebuild an expand production at Swan Falls rather than simply to refurbish the existing site, including a narrative of alternative studies the Company performed in deciding that a total rebuild and expansion of the site was the least-cost alternative. Further, the status of the Company's license and water right at the Swan Falls site should be presented. Finally, a comparison with the cost of power available from alternative resources should be presented to show that the Swan Falls rebuild is consistent with the least-cost energy scenario for Idaho Power ratepayers.

In clarification of this initial Order, the Commission issued Order No. 19129 on September 20, 1984. That Order said:

> We put Idaho Power on formal notice that it acts under its own peril for costs associated with the Swan Falls rebuild until such time as the Company is prepared to submit its definitive cost estimate and to demonstrate that the project will be cost-effective. As we stated in the -197 case, the era of "hell-or-high-water-financing" is over. The ratepayers should not be at risk if management commences construction before it receives a definitive cost estimate, or before it has an approved water right, or if it fails to study reasonable alternative projects, or if the project itself is not cost-effective compared to power that is readily available from competitors.

The -240 case did not proceed further, however, because Idaho Power postponed its plan to upgrade the plant's generating capacity. Accordingly, the Commission closed the case, but advised the Company that further proceedings would be initiated if the Company revived its construction plans. Order No. 19623, issued April 24, 1985, said:

> [W]e have been informally notified that Idaho Power Company does not plan to upgrade the capacity of the Swan Falls dam from 12 to 25 megawatts in the near future, as it earlier had planned, but has scaled back the bulk of its work on the project to improvement of the spillway of the existing dam. If that be the case, then it is unnecessary to proceed to an investigation of the economics of the Swan Falls rebuild at this time, and it is appropriate to dismiss the case.
>
> We put Idaho Power on explicit notice, however, that before it undertakes any substantial reconstruction or replacement of the Swan Falls facility, other than improvement or reconstruction of the existing spillway, it must first demonstrate to this Commission in a formal proceeding that the project is the least-cost method of acquiring a new resource for its system.

On February 21, 1989, this Commission received a cover letter accompanying the 1989 Supplement to Idaho Power's Second Amended Application for New License: Project No. 503, for the Swan Falls rebuild. That cover letter said:

> When the Swan Falls project, FERC No. 503, was relicensed in 1982, the license contained the authorization to build a new powerhouse and upgrade the capacity to 25 mw. However, Idaho Power chose to defer installation of the additional capacity at that time. Recently, concerns have arisen surrounding the structural integrity of the old powerhouse. Thus safety and operation considerations dictate that Idaho Power now consider completion of the project as originally relicensed in 1982. To this end, the Company will be asking the FERC for permission to proceed with construction as soon as possible.

The 1989 Supplement to the Second Amended Application contains revised cost estimates for the project in 1988 dollars: $53,814,800 total cost, $7,683,000 levelized annual costs, and 46.3 mills/kwh cost of generation. The Supplement contrasts these estimates of the average cost of generation from Swan Falls with 56.8 mills/kwh system avoided costs and 86.9 mills/kwh cost for replacement thermal generation.

Idaho Power's 1989 Supplement to Second Amended Application leaves a number of important questions unanswered. We list them below and direct the Company to submit written responses to them within 28 days of the service date of this Order.

1. Does the Company intend to initiate a formal proceeding before this Commission before it undertakes any

reconstruction on the Swan Falls project's powerhouses and generating facilities? If so, when does it anticipate filing its application or petition, and when does it anticipate beginning construction? If not, why not?

2. Does the Company intend to propose that this plant be included in its rate base? If so, is this based upon the Company's expectation that the plant will be used to serve its load (either retail or firm wholesale) under its own planning criteria? Is Swan Falls a nonavailable resource if the Company will not be in load/resource balance when the project is completed.

3. If the Company does not plan to include this rebuild in rate base, why not? Does the Company intend to keep new or increased hydroelectric facilities for an unregulated division or subsidiary?

4. The cost estimates contained in the Company's 1989 Supplement to its Second Amended Application appear to show a 1988 levelized cost of production from Swan Falls significantly lower than similar calculations would show costs for the Company's investment in the Valmy or Boardman thermal plants. Is this the case? If so, is it the Company's proposal that the Valmy and Boardman plants will continue to be rate based at a higher unit cost of generation than Swan Falls? How will this upgrade and ratemaking treatment benefit the ratepayers?

5. What is the status of the Company's water rights at Swan Falls? In making estimates of the amount of hydroelectric generation that would be available from Swan Falls, what assumptions did the Company use with regard to increased, similar, or decreased flows at Swan Falls from those available to the Company in the mid-1970s through mid-1980s? How do changes in those water rights affect generation upstream and downstream from Swan falls?

6. What is the status of the Company's license at Swan Falls beyond 2010? Have the Company's cost estimates assumed the retention of the project beyond 2010?

7. Are the cost estimates in the Company's application based on detailed designs and critical path scheduling? If so, please submit the plan and a critical path chart. If not, please explain and document the basis of the estimates.

The Commission at this time is not scheduling a prehearing conference or hearings in this investigation. Instead, following the Company's written answers to the questions posed by this Order, the Commission will decide whether or what further investigation is appropriate.

O R D E R

IT IS THEREFORE ORDERED that Idaho Power Company answer the questions posed by the text of this Order within 28 days of the service date of this Order.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this 30th day of March, 1989.

DEAN J. MILLER, PRESIDENT

PERRY SWISHER, COMMISSIONER

RALPH NELSON, COMMISSIONER

ATTEST:

MYRNA J. WALTERS, SECRETARY

MG:dc/O-485