

APR 18 1990

**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 HYDRO- )  
ELECTRIC FACILITY. )**

**CASE NO. IPC-E-90-2****ORDER NO. 23000**

On March 6, 1990, Afton Energy, Inc., petitioned to intervene in this proceeding in which Idaho Power Company applied for authority to rate base its investment in the rebuild of the Swan Falls hydroelectric facility. Idaho Power timely opposed Afton's Petition to Intervene. For the reasons stated in this Order we grant the Petition to Intervene.

Afton sells electricity to Idaho Power under the Public Utility Regulatory Policies Act of 1978 (PURPA). It has one of the oldest agreements with Idaho Power, and its output under the agreement qualifies for sales rates that are more favorable than current rates. However, according to Afton's Petition, it is now delivering 50% more dispatchable capacity to Idaho Power than required under its agreement, and these additional sales are priced at subsequent, lower rates. Afton contends that there is a relationship between Idaho Power's cost of the Swan Falls rebuild and the Company's current or future avoided costs upon which the rates for sale of Afton's additional output are based.

Idaho Power opposes Afton's Petition to Intervene, contending that the issues Afton has identified are irrelevant and immaterial to this proceeding and would unduly broaden the issues in the Application. Idaho Power contends that Afton, which is not a customer, has no standing to request disallowance of any of Idaho Power's expenditures as legitimate ratemaking items. Idaho Power further

argues that there is another proceeding--Case No. IPC-E-89-11--in which the setting of avoided cost is at issue and that Afton should properly be channeled into that proceeding.

Idaho Power and Afton have been at loggerheads in regulatory and judicial forums for a number of years. *See, e.g., Afton Energy, Inc. v. Idaho Power Company*, 114 Idaho 852, 761 P.2d 1204 (1988); *Afton Energy, Inc. v. Idaho Power Company*, 111 Idaho 925, 729 P.2d 400 (1986); *Afton Energy, Inc. v. Idaho Power Company*, 107 Idaho 781, 693 P.2d 427 (1984). Idaho Power successfully opposed Afton's intervention in its drought surcharge rate proceeding. *See* Order Nos. 21869 and 21913, Case No. IPC-E-88-2 (1988). Much of the history of their disagreements is set forth in those decisions.

In Case No. IPC-E-88-2, in which Idaho Power sought a temporary surcharge unrelated to capital investment or expected long-term operating costs, we denied Afton's Petition to Intervene because we found that the issues related to the temporary surcharge did not affect Afton's relationship to Idaho Power as a qualifying seller of electricity under PURPA. It is not certain that the same can be said of this proceeding.

Ordinarily, there is a relationship between avoided costs and the rate basing of new generation. And, when there is such a relationship, any qualifying producer under PURPA would ordinarily have standing to participate in a proceeding considering the rate basing of the project. However, Idaho Power may well show in this proceeding that there is no connection between the expense of the Swan Falls rebuild and its avoided costs. If that will be the case, then the substance of Afton's arguments will fail. And, Idaho Power will not be prejudiced by Afton's status as a party in this case if Idaho Power's substantive arguments prevail.

On the other hand, if Afton's arguments should prevail, Afton would be prejudiced by denying its Petition to Intervene. The parties' rights can best be accommodated in this instance by allowing Afton to intervene. We do, however, agree with Idaho Power that Afton's intervention, if not properly limited, has the potential for unduly broadening the issues in this proceeding. Accordingly, we will not permit the interpretation of the rights and obligations of the parties under the Afton contract to become an issue in this case. This is not the appropriate forum or proceeding for relitigating the disagreements associated with that agreement. The intervention of Afton is strictly limited to the question of whether and to what extent the investment in the rebuild of the Swan Falls facility should be included in the rate base of the of the Company.

#### O R D E R

IT IS THEREFORE ORDERED that the Petition to Intervene filed by Afton Energy, Inc. is hereby granted, limited in scope as set forth in the text of this Order.

IT IS FURTHER ORDERED that all parties in this proceeding serve all papers hereafter filed in this matter on all other parties of record. This Intervenor is represented by the following for purposes of service:

Afton Energy, Inc.  
c/o Owen H. Orndorff  
Orndorff & Peterson  
Suite 230  
1087 West River Street  
Boise, ID 83702

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho,  
this 17<sup>th</sup> day of April 1990.

  
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DEAN J. MILLER, PRESIDENT

  
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PERRY SWISHER, COMMISSIONER

  
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RALPH NELSON, COMMISSIONER

ATTEST:

  
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MYRNA J. WALTERS, SECRETARY

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