

OCT 15 1990

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR AUTH- )  
ORITY 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 HYDRO- )  
ELECTRIC PROJECT )**

**CASE NO. IPC-E-90-8**

**ORDER NO. 23380**

This order directs the parties to address legal issues common to Idaho Power's two applications regarding construction of hydroelectric generation facilities at Swan Falls and Milner through briefs and oral argument at hearing and further directs that an evidentiary hearing be held in the Swan Falls Case, IPC-E-90-2.

**BACKGROUND**

On August 22, 1990, a prehearing conference was held on these two cases. At that conference, the parties requested an opportunity to submit written statements of position regarding legal or jurisdictional issues. They have done so, and we have reviewed them. We now desire further briefing on three issues that we set forth below and alert the parties to be prepared for oral argument on those issues at the hearing scheduled for November 27-28, 1990 in the Milner case, IPC-E-90-8.

Before defining the issues for briefing, we review the different postures of these two cases. Swan Falls (Case No. IPC-E-90-2) is an existing hydroelectric generating facility of Idaho Power Company. Thus, under I. C. § 61-526, Idaho Power may, without acquiring a certificate for the Swan Falls rebuild, increase its existing capacity at that generating plant. However, Order No. 19623 issued in Case No. U-1006-240 on April 24, 1985, said the following to Idaho Power:

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.

This language was recently quoted in Order No. 22412, issued on March 30, 1989, in Case No. IPC-E-89-8. Thus, this Commission has required Idaho Power to bring any rebuild of the Swan Falls project and increase in its capacity to the Commission's attention in much the same manner that it would file a certificate for new project. We therefore schedule a hearing in the Swan Falls case to address this question put at issue in the past. We also note that the Swan Falls water right is the most pivotal water right on the Snake River and that water flowing through Swan Falls normally also flows through the Company's three-dam Hell's Canyon complex.

The application for the Milner project (Case No. IPC-E-90-8), by contrast, has been filed under the certificate statute, but with a novel twist: Idaho Power asks for a certificate of convenience and necessity to build the project and to ratebase it for inclusion in retail rates, or to be exempt from the statutory certificate requirement and to sell the output of the project to wholesale customers separate from retail ratemaking.

## **THE ISSUES FOR BRIEFING**

The Swan Falls and Milner projects lie before us with different legal backgrounds as well as the different factual backgrounds always associated with different plants. Nevertheless, these projects are closely tied in time and may present overlapping legal or jurisdictional issues. For that reason, we ask the parties to brief the following legal issues in light of the facts of each project and be prepared to address them in oral argument at hearing:

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?

These three legal issues are overlapping. Because of the different legal and factual backgrounds for Swan Falls and Milner, there may be different answers to the questions posed for Swan Falls and for Milner. The parties to the Swan Falls and Milner cases are nearly identical, so we ask parties to either case to submit a common brief in the two cases, contrasting the two cases when the parties believe they should be treated differently and urging the same treatment in the two cases when the parties believe the two cases are legally similar.

The deadline for parties' submission of briefs is WEDNESDAY, NOVEMBER 21, 1990, the deadline for filing of rebuttal testimony in both cases. The parties should be prepared to argue the legal issues common to both cases in the hearing for the Milner proceeding. There will not be a separate oral argument with regard to Swan Falls in the hearing set for that proceeding.

#### O R D E R

IT IS THEREFORE ORDERED that the parties address by brief the issues set forth in this order.

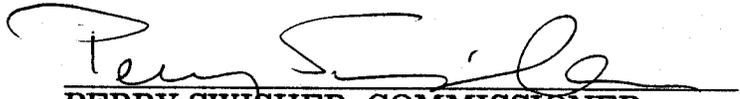
IT IS FURTHER ORDERED that an evidentiary hearing be held in Case No. IPC-E-90-2 as scheduled by notice of the Commission Secretary.

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DONE by Order of the Idaho Public Utilities Commission at Boise,  
Idaho, this 12<sup>th</sup> day of October 1990.



DEAN J. MILLER, PRESIDENT



PERRY SWISHER, COMMISSIONER



RALPH NELSON, COMMISSIONER

ATTEST:



MYRNA J. WALTERS, SECRETARY

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