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DAVIS WRIGHT TREMAINE

LAW OFFICES

JEFFERSON PLACE · 350 N. 9TH, SUITE 400 · BOISE, IDAHO 83702
(208) 336-8844

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IDAHO PUBLIC
UTILITIES COMMISSION

PETER J. RICHARDSON

November 23, 1990

Ms. Myrna J. Walters
Commission Secretary
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83702

Re: Brief Of The Industrial Customers of Idaho Power
In Response To Commission Order No. 23380
Case Nos. IPC-E-90-2 and IPC-E-90-8

Dear Ms. Walters:

Enclosed is the original and eight copies of the above referenced Brief of the Industrial Customers of Idaho Power. Would you please file the same?

If you have any questions concerning this filing, please do not hesitate to contact Peter Richardson.

Sincerely,

Nancy Pfeifer
Secretary to Peter Richardson

np

Enclosures

Grant E. Tanner
DAVIS WRIGHT TREMAINE
2300 First Interstate Bank Tower
1300 SW Fifth Avenue
Portland, Oregon 97201
(503) 241-2300
Fax: 778-5299

Peter J. Richardson
DAVIS WRIGHT TREMAINE
350 North Ninth Street
Suite 400
Boise, Idaho 83702
(208) 336-8844
Fax: 336-8833

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 SWAN FALLS HYDROELECTRIC FACILITY	CASE NO. IPC-E-90-2
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE RATE BASING OF THE MILNER HYDROELECTRIC PROJECT, OR IN THE ALTERNATIVE, A DETERMINATION OF THE EXEMPT STATUS FOR THE MILNER HYDROELECTRIC PROJECT	CASE NO. IPC-E-90-8 BRIEF OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER IN RESPONSE TO COMMISSION ORDER NO. 23380

I.

INTRODUCTION

COMES NOW, the Industrial Customers of Idaho Power Company and pursuant to Commission Order No. 23380 issued in the above captioned matters and hereby files its brief regarding the legal issues surrounding the construction of hydroelectric generating facilities at Swan Falls and Milner.

On April 25, 1990, Idaho Power Company (Company) filed its application with the Commission initiating the Milner proceeding. In that application, Idaho Power requested:

> a Certificate of Public Convenience and Necessity for the Rate Basing of the Milner Hydroelectric Project or in the alternative a Determination of Exempt Status for that Project

Idaho Power Company's Application in Case No. IPC-E-90-8 at page 1. (Milner Application)

On February 14, 1990, Idaho Power filed its application with the Commission initiating the Swan Falls proceeding. In that application Idaho Power asserted:

> In Case No. U-1006-240 and Case No. IPC-E-89-8, the Idaho Public Utilities Commission . . . made it clear that Idaho Power Company . . . should file an application with the Commission requesting approval for the rate basing of construction costs before undertaking reconstruction of the Swan Falls powerhouse and generating facilities. . . . As noted by the Commission, I.C. Section 61-526, does not require that the Company apply for a Certificate of Public Convenience and Necessity to increase the capacity of existing generating plants, but the Commission does require that the Swan Falls rebuild be reviewed, and Commission approval for rate basing be obtained, before construction of the facilities commences.

Idaho Power Company's Application in Case No. IPC-E-90-2 at page 1. (Swan Falls Application).

Idaho Power is asking the Commission to commit now to include in the Company's rate base the future construction costs for Milner and Swan Falls in an amount equal to or less than the Company's commitment estimate. Idaho Power is not asking, however, for recognition of the impact of its rate base request in its retail rates at this time.

Idaho Power's claims are based on an assumption that by granting a certificate of public convenience and necessity, in addition to finding that construction of the two projects would be in the public interest, the Commission is estopped from consideration of the value of the projects once they are constructed.

The Commission recognized the difficulty with the Idaho Power's blurring of the distinction between the discrete concepts of valuation of utility property for purposes of determination of rate base and of the issuance of certificate of public convenience and necessity and therefore asked the parties to address the legal issues associated with the Company's application. The Commission asked the parties to address the following three broad questions:

1. May the Commission approve rate basing a facility prior to that facility's construction?

2. May the Commission predetermine a valuation methodology for a facility prior to that facility's construction?

3. May the Commission approve rate basing a facility without first having an understanding of the ramifications of that decision on retail rates?

The following brief of the ICIP will show that the Commission does not have the authority, either in case law or the Public Utilities Law, to approve an application to include property in rate base prior to facility being constructed and providing service to the utility's ratepayers. Because the Commission may not predetermine rate base for future plant, it cannot predetermine valuation methodologies for such plant. Finally, the Commission may not make valuation decisions without at the same time understanding the impact f those decisions on retail rates.

II.

THE COMMISSION HAS NO AUTHORITY TO RATE BASE ANY UTILITY PLANT PRIOR TO THAT PLANT'S PROVIDING SERVICE

1. The 'Valuation' Statute Does Not Support Idaho Power's Applications

The Commission asked the parties to brief the issue of ratemaking treatment of utility plant that has yet to be placed in service. Specifically, the Commission asked:

> 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 Idaho Public Utilities Commission is a creature of limited statutory jurisdiction. Grindstone Butte, v. Idaho Public Utilities Commission, 102 Idaho 175, 181, 627 P2d 804 (1981). Therefore, there must be some authority in the Idaho Code allowing the Commission to preapprove inclusion in a utility's rate base the predicted costs of constructing a facility that has yet to provide service.

The phrases rate base or "rate basing" have never been defined by the Idaho legislature. Rather than rate base, the Code speaks of "valuation" of utility property. The act of "rate basing" utility plant is not, strictly speaking, what the legislature contemplated when it passed the Public Utility Law. Placing a value on utility property, on the other hand, is the duty the legislature charged the Commission to perform in setting utility rates. The use of the phrases rate base or "rate basing" is merely a shorthand method of describing the valuation function of the Commission.

The statutory authorization for the Commission to value utility property is found at Idaho Code § 61-523. That Section provides:

> The commission shall have power to ascertain the value of the property of every public utility in this state and every fact which, in its judgment, may or does have any hearing [sic] on such value. The commission shall have power to make revaluations from time to time and to ascertain all new construction, extensions and additions to the property of every public utility.

In order to find a definition of the term rate base, one must turn to the Idaho Supreme Court. The Idaho Court's definition of rate base is:

> A utility's "rate base" represents the original cost minus depreciation of all property justifiably used by the utility in providing service to its customers. Utilities are allowed to charge customers rates which will yield a certain percentage return on the utility's total investment. Thus the larger the utility's rate base the higher the rates utilities can charge to customers.

Citizens Utilities Company v Idaho Public Utilities Commission, 99 Idaho 164, 169, 579 P.2d 110, 115 (1978).

In Application of Utah Power and Light Co., 107 Idaho 446, 690 P.2d 901 (1984) the Court explained that, for purposes of valuation of utility property under Idaho Code 61-523, rate base is:

> the value of that which [the utility] employs for the public convenience

Id. at 451, 690 P.2d at 906, Parenthetical in original.

The Idaho PUC therefore has an independent and ongoing responsibility (pursuant to Idaho Code § 61-523) to examine and value utility property. The result of that valuation process is termed rate base by the Idaho Supreme Court. See Application of Utah Power and Citizens Utility Company, supra. Finally, the Idaho Supreme Court has ruled that to be considered part of rate base, a utility's property must be actually used to provide service to the utility's customers. Id. In other words, if the property is determined to have a value of zero, there will be no rate base impact. If the property has a positive value then the

Commission will allow the utility to earn a return on that property through the mechanism popularly known as rate base. What Idaho Power is asking is for the Commission to make its valuation determination now to be implemented later.

That Idaho Power is not asking recognition of its rate base request in retail rates at this time is not relevant. If the Commission grants its order allowing Milner and Swan Falls to be included in rate base now, Idaho Power will argue that the Commission is estopped from placing any different value on those plants in the future.

Idaho Power's applications raise serious practical questions. For example, does granting Idaho Power's request bind all future Commissions as to the proper value of the Swan Falls and Milner facilities? What would be the 'authority' of the Commission to return to the valuation question of these facilities in the event Idaho Power's load actually declines in the future and the Company is faced with the need to retire one of these facilities prematurely?

Distinct from its ongoing oversight responsibilities, the Commission must make a ruling, at a single point in time, as to whether a proposed new construction project is in the public convenience and necessity. Idaho Code § 61-526 provides:

> No ... electrical corporation ... shall ... begin construction of a ... plant ... without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.

Once a certificate is granted, the utility is authorized to commence construction. The question of the value of that construction to the ratepayers is not answered (or even at issue) until the plant is alleged to be used and useful to the utility's customers.

Idaho Code § 61-523 not only speaks of "valuation" of utility property but also of "revaluations" to ascertain the value of "all new construction." Idaho Power is asking the Commission to ignore the legislature's mandate that all utility property, including new construction, be subject to Commission scrutiny - not just once, but continually.

In 1984 the Idaho legislature enacted Idaho Code Section 61-502A which prohibits the Commission from setting rates based on utility property that is not currently used and useful. Idaho Code § 61-502A provides:

> Except [in] ... an extreme emergency, the commission is hereby prohibited ... from setting rates for any utility that grants a return on construction work in progress ... on property held for future use and which is not currently used and useful in providing utility service.

Idaho Code § 61-502A only addresses the issue of setting rates that are based on utility property yet to be placed in "used and useful" service. Idaho Power is not asking to have its rate set today on such plant. Rather, Idaho Power is asking the Commission to commit <u>today</u> to include such plant in rate base for future ratemaking purposes.

Although Idaho Power is not requesting the Commission to approve construction work in progress in its rate base, Section 61-502A makes an enlightening distinction between the concepts of "used and useful" and the valuation of utility property. In the statement of purpose to Idaho Code § 61-502A the legislature explained that it intended to prohibit the Commission from being required to include in rate base plant yet to be found to be "used and useful." The legislature's statement of purpose provides:

> It is hereby declared to be the legislative intent that this act should overrule [Utah Power & Light Company v Idaho Public Utilities Commission 105 Idaho 822, 673 P.2d 422 (1983)] ... which authorized or required construction work in progress on 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 ... to the extent that such precedent authorized construction work in progress on 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.

1984 Id. Sess. Laws, ch. 21 (Emphasis Provided).

The legislative intent makes it clear that the Idaho legislature has prohibited the Commission from either (1) allowing a return on, or (2) including in rate base any property that is not currently in service and used and useful to the customers of the utility. The use of the disjunctive "or" between the phrases "to be included in rate base" and the phrase "require the commission to allow a return on such property" is

convincing evidence that the legislature was aware of and intended to distinguish between (1) the act of inclusion of future property additions in rate base and (2) the act of setting rates based on future property additions.

The short answer to the Commission's questions is therefore: The Commission does not have the authority to include in rate base any plant that has yet to be built or plant that is not currently "used and useful." This conclusion is supported by examining how other jurisdictions have addressed the distinction between a certificate of public convenience and necessity and the ultimate question of how much of the investment in a certificated facility should be included in rate base.

2. Case Law Does not Support Idaho Power's Application

Although the questions presented by Idaho Power's applications appear never to have been brought to the attention of the Idaho Courts, those questions have been thoroughly litigated in other jurisdictions. The experience of the Montana Power Company in attempting to rate base its Colstrip plant Montana Power Co. v Public Service Commission, 692 P. 2d 432, 433 (Mont. 1984), is illustrative.

The Montana Major Facility Siting Act ("Siting Act"), Montana Code Ann. § 75-20-101 et seq. requires electric utilities in Montana to obtain a certificate of need before constructing new plant in much the same way as Idaho's certificate of public convenience and necessity. Cf Idaho Code 61-526. The Montana

Siting Act requires the Montana Board of Natural Resources and Conservation to make a finding that a proposed electric generating station will, inter alia:

> serve the public interest, convenience and necessity

Montana Code Ann. § 75-20-301(g).

Similarly, before an Idaho electric utility may commence construction of an electric generating facility, it must first obtain from the Idaho Public Utilities Commission ("PUC") a certificate that:

> the present or future public convenience and necessity require or will require such construction

Idaho Code 61-526.

The Idaho PUC and the Montana Board of Natural Resources are charged with making the same finding relative to construction of new electric generating stations. Both must find that the construction of a new electric generating facility is in the public interest. The Montana Natural Resources Board must make additional findings relative to possible environmental impacts of the plant. However, the Montana Board's additional duties do not dilute the comparison that both entities make the same findings relative to the public convenience and necessity of the construction of a new generating station.

Montana Power was issued a certificate of need to construct Colstrip in 1976. In issuing the power company its certificate, the Montana Board determined that there was a need for the energy that would be produced by Colstrip and that construction of the

facility would serve the public interest, convenience and necessity. See Montana Power Co. v Public Service Commission, 692 P. 2d 432, 433 (Mont. 1984).

After construction was complete, Montana Power Company filed an application with the Public Service Commission ("PSC") for an increase in rates to reflect inclusion of Colstrip in its rate base. The Montana PSC rejected MPC's application to include Colstrip in rate base concluding that the plant was not "used and useful." Id. at 434.

Montana Power appealed the PSC's decision to the Supreme Court of Montana. The Power Company argued before the Court that once a determination had been made that construction of the plant was in the public interest and a certificate of need was issued, the PSC was precluded from questioning whether the plant should be included in rate base for ratemaking purposes. Montana Power argued:

> the effect of certification under the Siting Act is to create a conclusive evidentiary presumption that a certified facility is actually used and useful

Id. at 437.

Idaho Power is making the same argument:

> It is the position of Idaho Power Company ("Idaho Power") that the issuance of a certificate of public convenience and necessity for a generating facility is a determination by the Commission that the facility upon construction, will be included in the ratebase of the utility when determining the service requirement of that utility.
>
> . . .

> The issuance of a certificate of public convenience and necessity is a determination that the facility should be constructed and is dedicated to the public use.

Response of Idaho Power Company to Comments of Staff and Parties in the Milner Proceeding, at 1-2.

Idaho Power's arguments in the Swan Falls proceeding are indistinguishable. In Swan Falls, Idaho Power asserts that authority to construct is equal to a determination that the project should be rate based for retail ratemaking purposes:

> The reconstruction of the Swan Falls facility in compliance with the FERC license is in the public interest and all the costs reasonably incurred in that reconstruction should be included in the Company's investment for ratemaking purposes.

Response of Idaho Power Company to Comments of Staff and Parties in the Swan Falls proceeding, at 4.

The question the Montana court faced was whether the Siting Act's requirement that the Board of Natural Resources and Conservation's charge of determining if a proposed plant will serve the public interest and convenience impliedly overruled the PSC's authority over ratemaking questions once the utility seeks to rate base the plant. Although the Idaho PUC is not faced with a possible conflict with a sister state agency, it is faced with the identical issue as the Montana Court. That is, whether the issuance of a certificate of public convenience and necessity predetermines a conclusion that the plant, once constructed, is used and useful for ratemaking purposes. In essence, Idaho Power is arguing that future Commission's will be estopped from

questioning the reasonableness or prudency of the Company's actions with regard to Milner and Swan Falls.

Although the Montana Court recognized the relationship between the two concepts of "used and useful" and "certificate of public convenience":

> While the public need determination under the Siting Act does include consideration of factors which can be associated with the used and useful concept of the utility regulation statutes, the Siting Act is not limited to determining whether a facility is actually used and useful.

Id. at 438.

The Court went to some lengths to explicitly explain that the two concepts are very different. The Montana Supreme Court found that the procedure involved for each concept is unique and requires a

> A two-step process: (1) the utility obtains a certificate ... before construction may be commenced; (2) having constructed the plant, the utility requests rate base treatment for the new facility and the PSC then determines whether the facility is actually used and useful.

Id.

It cannot be plausibly asserted that the granting of a certificate of public convenience and necessity equates to a finding of used and useful. The Montana Court sympathized with the utility over the risk it assumes when it embarks upon a large construction project. The Court notes that after having spent funds on a project and having completed the project, a utility will find no comfort in its certificate of public convenience and

necessity when it comes time to seek rate making approval for its investment. Although sympathetic, the Court did not disturb the clear dual statutory scheme of requiring a certificate of public convenience and necessity prior to construction and requiring a finding of used and useful for ratemaking treatment once the plant was constructed:

> We do not suggest that the separate determinations over a turn of years constitutes the best or most efficient approach to major facility approval and cost recovery. It is unfortunate that after the expenditure of hundreds of millions of dollars, MPC has no indication of whether or not its facility may be charged to its ratepayers even though the NCRC found it to be needed. In the early 1970's it was difficult to forecast the changing energy requirements of the 1980's. However the balancing of these considerations is for the legislature.

Id.

Idaho Power's situation is no different. In the early 1990's it is difficult to predict the changing energy requirements of the mid-1990's into the 21st century. The legislature, through the certificate of public convenience and necessity process has mandated that the utility bear some of the risk of imprudent investment. Idaho Power is compensated for that risk through its rate of return and cost of equity.

The Wyoming Supreme Court also draws a line distinguishing between the granting of a certificate of public convenience and necessity and ratemaking treatment for investments made pursuant to such a certificate.

In Big Horn Rural Electric v Pacific Power & Light Co., 397 P.2d 455, 57 PUR 3d 362 (Wyo. 1964) the Wyoming Public Service Commission granted Pacific Power & Light a certificate of public convenience to serve a previously unserved territory in rural Wyoming. Big Horn Rural Electric objected to the Commission's finding that Pacific Power & Light was best suited to serve the new area. One of Big Horn's objections was that Pacific Power & Light was overbuilt and, impliedly, as a result of its excess capacity, would have to assess unreasonable rates.

The Wyoming Court agreed that Pacific Power & Light's capacity was "substantially in excess of actual requirements." Id. at 460, 57 PUR 3d at 368. The Court ruled, however, that the excess capacity issue (and the attendant issues of the ratemaking treatment for that excess capacity) is an issue to be addressed in a ratemaking proceeding and not a certificate of public convenience and necessity proceeding. The Court ruled:

> ...there was uncontroverted evidence that Pacific's proposed facilities were entirely adequate; and even though some excess was indicated, the extent and cost thereof beyond reasonable requirements for the area were not shown. Furthermore, such element is directly related to the matter of rates and charges for the service. In these matters the commission has continuing jurisdiction, and if it should develop that the rates proposed are unjust and reasonable, as a result of excess capacity, the matter can be adjusted without too much difficulty in a proper proceeding before the commission.

Id. at 461 57 PUR 3d at 369.

The Wyoming Supreme Court's decision in Big Horn is premised on the assumption that an investment that is approved for

purposes of issuance of a certificate of public convenience and necessity may well be disallowed in subsequent ratemaking proceedings, "without too much difficulty."

The Kentucky Supreme Court also draws a bright line distinguishing between valuation of a facility for ratemaking purposes and whether or not that facility ought to be certificated. In Blue Grass State Tel. Co. v Public Service Commission, 382 S.W. 2d 81, 55 PUR 3d 428 (KY 1964) the Kentucky Supreme Court overturned a decision by the Kentucky Public Service Commission (PSC) in which the PSC denied Blue Grass' application for a certificate of public convenience and necessity. Blue Grass had purchased the assets of the previous telephone company which was in receivership. The purchase price ($125,000) was far in excess of the depreciated original cost ($25,000) of the assets. The Kentucky PSC, feared that if it granted a certificate of public convenience and necessity to Blue Grass, it would also be committing to allowing the entire purchase price in rate base for ratemaking purposes:

> The Commission determined that the depreciated original cost of this system was $25,366.90, and its order shows that it refused to issue the certificate of convenience and necessity solely because of the disparity between this cost basis and the sale price paid by Blue Grass. It assumed that the price paid would have to be considered as a determining factor in establishing a rate base at some later date.

Id. at 82, 55 PUR 3d at 429. (Emphasis provided).

The Court corrected the PSC's misunderstanding of the difference between ratemaking and certificates of public convenience and necessity. The Court ruled that:

> This does not mean that the commission has no discretion in setting the rate base. If it is established that the price paid is grossly excessive or that the facilities purchased are not entirely useable, then the rate base should be adjusted accordingly.

Id. (Emphasis provided).

The Kentucky PSC was not required to include in the utility's rate base the purchase price of the telephone system simply because the PSC had allowed the purchase through the issuance of a certificate of public convenience and necessity. Likewise, the Idaho PUC is not bound - indeed, cannot be bound - to a predetermined rate base amount on utility plant that has yet to be placed in service and has not been found to be used and useful.

III.

THE COMMISSION HAS GREAT DISCRETION IN DETERMINING THE USEFULNESS AND, HENCE VALUE, OF UTILITY PROPERTY FOR RATEMAKING PURPOSES

The Commission asked the parties to address the following question:

> 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?

As noted in the preceding section, the term rate base is not defined under the Idaho Public Utilities Code. Idaho Code Section 61-523 provides:

> The Commission shall have power to ascertain the value of the property of every public utility in this state and every fact which, in its judgment, may or does have any hearing [sic] on such value.

The threshold question the Commission must ask prior to making a determination of the value of a particular plant is whether that plant is used and useful to the customers of the utility. If it is concluded that the plant is in fact used and useful then the Commission will be called upon to determine the value of that plant for ratemaking purposes.

The range of possible methodologies the Commission may employ in valuing utility property is extremely wide. The Commission is primarily constrained by the need to set rates that are, taken on the whole, reasonable. The United States Supreme Court has found on several occasions that state public utility commissions have wide latitude in selecting an appropriate methodology for setting rates:

> an otherwise reasonable rate is not subject to constitutional attack by questioning the theoretical consistency of the method that produced it. It is not the theory, but the impact of the rate order which counts

Duquesne Light Co. v. Barasch, 488 US ___, 102 L.Ed 2d 646, 661, 109 S.Ct. ____ (1989); quoting Federal Power Commission v. Hope Natural Gas Company, 320 US 591, 88 L.Ed 2d 333, 64 S.Ct. 281 (1944).

Pursuant to both the Idaho statutory scheme of utility ratemaking and pursuant to the gloss placed on such schemes by the United States Supreme Court, Idaho has great leeway in selecting a methodology for valuing utility plant. The Commission may legitimately determine that the value of new generating plant is limited by the cost by which the utility may acquire similar power and energy elsewhere. Under such a theory, the usefulness to the ratepayers of the more expensive utility plant would be limited if that plant's costs to exceeded the cost of power of similar quality that could be acquired from other, less expensive, sources.

The Commission therefore has both the legal authority and the policy prerogative to use whatever yardstick at its disposal in determining the value of the rate base of any given plant. Idaho Power's avoided cost is one such yardstick.

The Commission has exercised its policy prerogative in the avoided cost arena on other occasions. For example, the Commission declared, as a matter of policy, in Case Nos. U-1006-173, P-300-12 by Order No. 16739 that:

> Failure to exhaust all power supplies available from cogeneration and small power production shall be ground for rejection of applications for certificates of convenience and necessity regarding construction of conventional thermal units or for the issuance of securities to finance such units.

44 PUR 4th 160, 165 (1981).

The Commission therefore has set the precedent of the use of its ratemaking authority over conventional generating facilities

to encourage the development of cogeneration and small power production. The use of avoided costs as a ceiling on the value of Idaho Power's rate base for Milner and Swan Falls is clearly within the policy prerogative of the Commission. The above referenced Order, admittedly issued in somewhat more contentious days, clearly provides the Commission with precedent to use avoided cost issues as a policy tool in the ratemaking arena.

IV.

THE COMMISSION DOES NOT HAVE THE AUTHORITY TO RATE BASE ANY PLANT THAT IS NOT USED AND USEFUL THEREFORE MAKING THE QUESTION OF THE IMPACT OF SUCH AN ACT ON RETAIL RATES IRRELEVANT

The parties to this proceeding were asked to address the following questions by the Commission:

> Does the Commission have the authority to declare in the abstract that a certified plant or a plant exempt from certification may be ratebased without yet knowing the cost of ratebasing the plant in retail rates?

As discussed above, the Commission does not have the authority to declare, in the abstract, that a plant will be included in Idaho Power's rate base. The Commission cannot value utility property for ratemaking purposes before that plant is actually used and useful to the customers of that utility. The Montana Supreme Court in Montana Power supra recognized that a determination of need and a finding of used and useful are distinct from retail ratemaking issues. The Court made it clear

that granting a certificate of public convenience and necessity is just the first step in a multifaceted process:

> The NCRC's findings of fact concerning public need in this case related to anticipated energy needs based upon utility projections. These findings did not attempt to address questions of cost of the facility, the proportion of energy production to be devoted to Montana consumers, or MPC's share of the power to be generated by Colstrip.

Id.

Distinct inquiries must be made for each finding. It is beyond dispute that a finding of future need based on projected load does not equate with a current finding of prudency of investment and usefulness of the plant to serve current customers.

Evaluating the impacts of including a particular plant in rate base on retail rates is a critical part of the Commission's responsibility in setting fair, just and reasonable rates. Including new plant in rate base for ratemaking purposes without at the same time examining the impact of the addition of that new plant on Idaho Power's retail rates would clearly be an abdication of the Commission's responsibility to set fair, just and reasonable rates.

RESPECTFULLY SUBMITTED this 23rd day of November, 1990.

DAVIS WRIGHT TREMAINE

By 
Peter J. Richardson
- Of The Firm -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of November, 1990, served the foregoing BRIEF OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER IN RESPONSE TO COMMISSION ORDER NO. 23380, CASE NOS. IPC-E-90-2 AND IPC-E-90-8, on all parties of record by hand delivering a copy thereof, to the following:

Michael S. Gilmore
Brad M. Purdy
Idaho Public Utilities Commission
472 W. Washington
Boise, ID 83720

Larry D. Ripley, Esq.
Legal Department
Idaho Power Company
P.O. Box 70
Boise, ID 83707

Steven L. Herndon, Esq.
Legal Department
Idaho Power Company
P.O. Box 70
Boise, ID 83707

and by mailing a copy thereof, postage prepaid, to the following:

Harold C. Miles
Idaho Consumer Affairs, Inc.
316 15th Ave. S.
Nampa, ID 83651

R. Scott Pasley
Assistant General Counsel
J.R. Simplot Company
P.O. Box 27
Boise, ID 83707-0027

David H. Hawk, Director
Energy Natural Resources
J.R. Simplot Company
P.O. Box 27
Boise, ID 83707-0027

James N. Roethe, Esq.
Pillsbury, Madison & Sutro
P.O. Box 7880
San Francisco, CA 94120

R. Michael Southcombe, Esq.
Clemons, Cosho & Humphrey
815 W. Washington
Boise, ID 83702-5590

Afton Energy, Inc.
c/o Owen H. Orndorff
Orndorff & Peterson
1087 W. River St., Suite 230
Boise, ID 83702-7035

By Peter J. Richardson
Peter J. Richardson