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Attorney for Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR A)
CERTIFICATE OF PUBLIC CONVEN-)
IENCE AND NECESSITY FOR THE)
RATE BASING 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

**STATEMENT OF STAFF
POSITION ON LEGAL AND
JURISDICTIONAL ISSUES**

On April 25, 1990, the Idaho Power Company (Idaho Power; Company) filed an Application seeking a certificate of public convenience and necessity for the rate basing of the proposed Milner Dam hydroelectric project or, in the alternative, for a determination by the Commission that the project would be exempt from regulation. The Commission Staff of the Idaho Public Utilities Commission makes the following statement of position concerning the legal and jurisdictional issues presented by Idaho Power's Application in this proceeding.

The Milner Dam has been in existence since the early 1900s. It was constructed to provide irrigation to the outlying farm areas of the Magic Valley. It has never been used for the production of electricity. Accordingly, Idaho Power's proposed construction of hydroelectric facilities at the Milner site constitutes a new

STATEMENT OF STAFF POSITION
ON LEGAL AND JURISDICTIONAL
ISSUES

facility. The Company must, therefore, obtain a certificate of public convenience and necessity prior to construction of this project pursuant to *Idaho Code* §61-526.

Idaho Power has couched its Application in the alternative. That is, it seeks either a certificate of public convenience and necessity to construct the Milner project and include it in rate base or a determination by the Commission that the project is exempt from regulation so that the Company may sell the power generated at wholesale rates to outside buyers. Staff asserts that *Idaho Code* §61-526 requires a certificate of public convenience and necessity before the Company may begin construction of the project regardless of whether it is rate based at its completion. Because statute authorizes the granting of the certificate for the *present* or *future* public convenience and necessity, if the Milner project need not be initially rate based for the *present* public convenience and necessity. The certificate could authorize a later application for rate basing for the *future* public convenience and necessity. In the interim, the Company could operate the facility "off the regulated utility books" with reasonable terms for future ratebasing spelled out in the certificate order.

Staff also points out that I.C. §61-526 is silent about rate basing new construction. It does not guarantee that a project that is granted a certificate will be rate based upon completion. This can only be determined after a subsequent prudency review of the Company's expenditures and the then present need for the facility. A project could be authorized for current construction for *future* ratebasing, with the utility excluding the project from retail rates in the interim. Authorizing construction and authorizing rate basing of plant are distinct issues.

If the Commission determines to exempt Milner from inclusion in retail ratebase, Staff asserts that a certificate must still be issued. The certificate should

simply state that the project received exempt ratemaking status under specified conditions for a specific period of time.

Staff has not yet formulated an opinion as to whether Milner should be rate based. On its face, the gist of the Company's Application appears sound. Regardless of the different constructions Staff and the Company may give to I.C. §61-526, Staff commends the Company for its rather progressive technique of presenting the Commission with two significant options in this case.

It is appropriate for the Company to seek, in effect, a declaratory ruling from the Commission on whether Milner is an appropriate project to rate base upon completion. The need for the rebuild of this aging dam is undeniable. The Company is pursuing a project with good potential at the appropriate time.

The amount of investment to be included in rate base, should the Commission choose this option, should not be decided in this case. In the event that the plant is put into rate base, and once it is in service, the Staff proposes that the amount to be included in rate base should be the lesser of these three figures:

- a. The plant costs reasonably incurred in construction of the hydroelectric facilities put in place at Milner Dam;
- b. The avoided costs of Idaho Power, appropriately calculated to take into account the difference between the Milner plant's expected useful life and the contractual commitment of a cogenerator or small power producer; or
- c. Idaho Power's proposed rate base cap.

RESPECTFULLY submitted,

Brad M. Purdy by Michael S. Gilmore
Brad M. Purdy

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STATEMENT OF STAFF POSITION
ON LEGAL AND JURISDICTIONAL
ISSUES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 31st DAY OF AUGUST, 1990, SERVED THE FOREGOING **STATEMENT OF STAFF POSITION ON LEGAL AND JURISDICTIONAL ISSUES**, CASE NO. IPC-E-90-8, ON ALL PARTIES OF RECORD BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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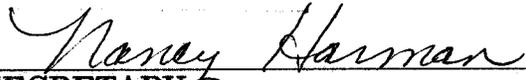
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