January 6, 1997

Mr. John Crockett

Idaho Department of Water Resources

1301 N Orchard ST

Statehouse Mail

Boise, ID 83720-9000

RE: Case No.  IPC-E-95-15

Dear Mr. Crockett:

This is in response to our telephone conversation of January 3, 1997, in which you expressed concern about the appropriateness in the manner in which the above referenced case has been handled by this Commission.  Because of the seriousness of your comments, I carefully reviewed our files and spoke with every member of the Commission Staff who has any relevant knowledge regarding this case.  The following is a summation of what I believe to have occurred.

On October 5, 1995, the Idaho Power Company filed an Application for an Order approving revisions to the Company’s current Schedule 86; “Cogeneration and Small Power Production—non- Firm Energy.”  On April 17, 1996, the Commission issued a Notice of Modified Procedure soliciting comments in response to the Company’s Application.  A number of parties submitted comments including the Idaho Department of Water Resources (IDWR) which filed its comments (through you) on May 6, 1996.  On July 17, 1996, the Commission conducted a decision meeting to discuss the merit of the Company’s Application.  The Commission did not reach a final resolution of all the issues in the case at that time but did indicate its preference with respect to certain issues and informally directed Idaho Power to amend its proposal consistent with those preferences.  On August 7, 1996, after the Commission conducted its first decision meeting, you submitted a letter to the Commission on behalf of the IDWR requesting that you receive all “future correspondence and documents in this proceeding and be given the opportunity to comment as appropriate.”  You also asked that you be kept apprised of any hearings, meetings or Commission action regarding this case.

On September 18, 1996, Idaho Power filed an Amended Application at the direction of the Commission and consistent with the Commission’s initial preferences reached during its July 17, 1996 decision meeting.  On October 24, 1996, the Commission issued a Notice of Amended Application giving parties 14 days in which to respond to the Company’s Amended Application.  A number of parties, including IDWR, requested additional time in which to submit comments.  Consequently, on November 7, 1996, the Commission issued an Amended Notice of Amended Application granting the parties until December 5, 1996, in which to file comments in response to the Company’s Amended Application.  On December 23, 1996, the Commission conducted another decision meeting for the purpose of finally resolving the issues in this case.

As I understand your position, you believe that the IDWR was somehow left out of the decision making process in this case and that you should have been given personal notice of the July 17, 1996 and December 23, 1996, decision meetings.  You further contend that the Commission Staff has somehow “conspired” with Idaho Power in a manner prejudicial to the IDWR and/or the objectives it seeks to accomplish in this case.

First, as I informed you this morning, the opportunity for any interested party to provide input in the decision making process in this case was through the submission of written comments to the Commission pursuant to Notice.  While the Commission’s decision meetings are generally open meetings in which the public is entitled to attend, they are not “hearings” in which interested parties or members of the public may provide testimony or other forms of input.  Thus, your assertion that you were somehow left out of the decision making process by not attending the decision meetings is not consistent with how this Commission processes any of its cases.  Regarding your contention that you should have been given personal notice of the decision meetings, it simply is not feasible for the Commission to inform every interested party of every case every time a decision meeting is to be conducted.  The Commission Staff does not have the resources to provide personal notice of this type.  As you acknowledged this morning, the Commission’s decision meeting agendas are available on the Internet.  I spoke with the members of the Commission Staff who are responsible for placing the agendas on the Internet and they assured me that both the agendas for the July 17, 1996 as well as the December 23, 1996, decision meetings were in fact published on the Internet.  You had access, therefore, to those agendas and could have attended the decision meetings had you desired.  Furthermore, in response to your letter of August 7, 1996 (received after the first decision meeting), you were placed on the “interested persons” service list which does ensure that you receive all Notices and Orders issued in this case.  Beyond this, we cannot and do not offer special treatment to any party.

Regarding your assertion that because you did not attend the July 17, 1996 decision meeting, you were somehow disabled in the preparation of your comments in response to the Company’s Amended Application, Tony Jones, one of the Commission Staff economists, informed me that he met and discussed with you, at length, the Commission’s July 17 decision meeting and the position of the Commission Staff regarding Idaho Power’s Amended Application.  This conversation took place several weeks before the December 5, 1996, comment deadline.  You were fully informed, therefore, as to the Commission’s preferences reached during the July 17 decision meeting and what position the Commission Staff intended to take in response to the Company’s Amended Application and were in no way impeded in your ability to subsequently prepare comments in this case.  Furthermore, Randy Lobb, the Supervisor of the Commission Staff’s Engineering Division, discussed this matter with you as well.  According to Mr. Lobb, he attempted to respond to your inquiry regarding your opportunity to file comments in this case, but when he called your telephone number, no one answered and there was no voice messaging available so he was not able to leave a message.  Finally, I have spoken with you about this case on a number of occasions.  For instance, I personally telephoned you to inform you that Idaho Power filed its Amended Application and that all parties would be given an opportunity to respond, which they were.  In hindsight, it appears that you were kept apprised of all relevant matters and events in this case including the results of the Commission’s July 17, 1996, decision meeting and the position of the Commission Staff with respect to Idaho Power’s Amended Application well before the final comment deadline of December 5, 1996.  Again, the fact that you failed to attend the December 23, 1996, decision meeting in no way impaired your ability to present your position to the Commission prior to that time nor does it affect the Commission’s final decision in this case.

Your allegation that the Commission Staff “conspired” with Idaho Power to accomplish some undefined but inappropriate objective is the most troubling.  It is true that members of the Staff had numerous informal conversations with Company personnel regarding this case.  This is a normal function necessary for Staff to analyze utility filings and take a position accordingly.  Not only is this appropriate, it is critical to satisfying this Commission’s statutory mandate to establish rates, terms and conditions of service that are fair, just and reasonable.  See I.C. § 61-501 et seq.  Again, you were given a detailed explanation of Staff’s position in this case by Mr. Jones prior to the December 5, 1996 comment deadline.

Finally, you also express some concern regarding how late in the process you received Idaho Power’s response comments.  It appears that this is due to the process by which documents are distributed within your department and has nothing to do with any action taken by this Commission.

In conclusion, I believe that the Commission and its Staff have handled this case in a manner that is appropriate and consistent with how all cases that come before this Commission are processed.

Very truly yours,

Brad Purdy

Deputy Attorney General

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