(text box: 1)BEFORE  THE  IDAHO  PUBLIC  UTILITIES  COMMISSION

 IN THE MATTER OF THE APPLICATION)

OF IDAHO POWER COMPANY FOR)CASE  NO.  IPC-E-96-3

AN ORDER APPROVING THE COMPANY'S)

PROPOSED PAYMENTS TO THE NEZ)

PERCE TRIBE PERTAINING TO THE)

COMPANY'S HELLS CANYON COMPLEX)

                                  AND)

FOR AN ACCOUNTING ORDER  )

CONCERNING THE PAYMENTS TO BE)

MADE IN THE EVENT OF FINAL)ORDER NO.  26513

SETTLEMENT.)

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On April 2, 1996, Idaho Power Company (Idaho Power; Company) filed an Application with the Commission seeking approval of proposed payments to be made to the Nez Perce Tribe (the Tribe) resulting from litigation between the Tribe and the Company.  The litigation involves the Tribe’s claims that the Company’s three Hells Canyon hydroelectric projects (Brownlee Dam, Oxbow Dam and Hells Canyon Dam) prevent anadromous fish from reaching their traditional spawning areas destroying certain fish runs and denying access to certain of the Tribe’s usual and accustomed fishing places.  These actions allegedly deprive the Tribe of its treaty rights to take fish from the Columbia and Snake Rivers.  The Tribe sought compensatory and punitive damages as a result.

Following the filing of a civil action against Idaho Power, the Company and the Tribe entered into settlement negotiations culminating in an agreement between the two parties.  That agreement, included with the Company’s Application, provides for the payment by Idaho Power to the Tribe of the equivalent of $16.5 million plus certain earnings from a Trust as set forth in the agreement.  Pursuant to the agreement, the Company would pay the Tribe $5 million when the Settlement Agreement is entered into between the parties.  At the same time, the Tribe would dismiss an action pending in federal court.  Idaho Power would thereafter pay the Tribe a total of $6.5 million in four equal installments.  Finally, the Company may also make a payment of $5 million into a trust account on August 3, 2003, the date by which the Company must file its Application to relicense the Hells Canyon complex.  The Company is not requesting any action by the Commission at this time in regard to this August 3, 2003 payment.

Idaho Power proposes to capitalize the settlement payments and book them to electric plant in service as a component of construction costs.  The payments reflect injuries and damages, insurance or legal expenditures consistent with the Uniform System of Accounts (18 CFR §1.101, A, 8, 14 and 15).  The amounts capitalized will be amortized through Account 404, amortization expense.

Idaho Power proposes an alternative treatment if it is determined that capitalization to utility plant is inappropriate.  The alternative accounting treatment would defer the settlement payments as a regulatory asset with the amortization through Account 557, other power supply expenses.

Under either alternative, Idaho Power proposes to begin amortization of the settlement payments one month after the payments are made.  The monthly amortization would continue through the year 2035.  As proposed, the monthly amortization amounts will be included in the Company’s next rate proceeding and will be reflected in the earnings test for purposes of Order No. 26216, Case No. IPC-E-95-11, the rate moratorium and stability of earnings proceeding.

The Commission issued a Notice of Modified Procedure, seeking comments in response to the Company’s Application.  The only party to comment was the Commission Staff.

Staff recommends that the Company’s proposed capitalization of the settlement payments be approved.  The payments through the year 2000 amounting to $11,500,000 reflect litigation costs for the settlement of claimed injuries and damages.  These expenditures are properly booked to plant in service as set forth in the Uniform System of Accounts (18 CFR §1.101, A, 8, 14 and 15) Staff contends.  Staff believes that the alternative proposal is also reasonable.  However, in light of competitive changes, Staff would prefer not to establish a regulatory asset if the expenditures can be properly capitalized to other plant accounts.

Staff agrees with the proposal to begin amortization of the settlement payments one month after the payments are made.  Staff considers the proposed amortization period through the year 2035 to be reasonable.

Idaho Power’s base rates will not change prior to January 1, 2000 as reflected in the rate moratorium adopted in Order No. 26216, Case No. IPC-E-95-11.  Therefore, the capitalization of the settlement payments and the amortization of these costs will not increase current rates before the year 2000.  The amortization costs will be reflected in the earnings test during the moratorium.  The actual return will be lower by including the amortization costs thereby impacting the return used to determine if Investment Tax Credits are utilized to attain an 11.5% return on year-end common equity or if sharing occurs when returns are above 11.75%.

Idaho Power’s proposal establishes a regulatory asset with the deferred credit for the four annual payments of $1,625,000 beginning in 1997.  When the annual payments are made, the regulatory asset associated with that payment will be removed from Idaho Power’s accounts as the expenditure is capitalized to plant in service.  If a rate case is filed prior to the time this regulatory asset is removed, Staff will review the timing of the remaining payment and probably recommend that the regulatory asset not be included in rate base unless it is offset by Idaho Power’s liability to the Tribe.

COMMISSION FINDINGS

The Commission has reviewed and considered Idaho Power’s Application in Case No. IPC-E-96-3 together with the comments and recommendations filed by the Staff.  We find that the public interest regarding the requested accounting treatment does not require a public hearing to consider the issues presented and that it is reasonable to process the Application and issue an Order without further notice or public comment.  Reference IDAPA 31.01.01.204.

We further find that it is reasonable to authorize Idaho Power to book the Nez Perce Tribe settlement payment to plant in service as set forth above.  We also find that it is reasonable to begin amortization of the settlement payments one month after the payments are made with the amortization continuing through the year 2035.  We accept the Company’s proposal to include these amortization amounts in Idaho Power’s next rate proceeding and in the annual earnings test for purposes of Order No. 26216, Case No. IPC-E-95-11; the rate moratorium and stability of earnings proceeding.  We recognize that timing and ratemaking issues will be reviewed in the next rate proceeding.

O R D E R

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that Idaho Power Company be authorized to capitalize the Nez Perce Tribe settlement payments to plant in service, amortize the payments through the year 2035 beginning one month after each payment is made, and reflect the amortization amount in the next rate proceeding and in the annual earnings test for purposes of Order No. 26216, Case No. IPC-E-95-11; the rate moratorium and stability of earnings proceeding.

THIS IS A FINAL ORDER.  Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard.  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this              day of  July 1996.

                                                                                   RALPH NELSON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

July 12, 1996