DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

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WORKING FILE

FROM:TERRI CARLOCK

DATE:JULY 5, 1996

RE:IDAHO POWER COMPANY'S REQUEST FOR ACCOUNTING ORDER RELATED TO NEZ PERCE TRIBE PAYMENTS, CASE NO.  IPC-E-96-3.

Idaho Power Company (Idaho Power) requests approval of accounting entries for proposed payments to be made to the Nez Perce Tribe (Tribe) resulting from settlement of the litigation between the Tribe and Idaho Power.  The Notice of Modified Procedure was issued May 7, 1996 with the Commission Staff filing comments on May 29, 1996.  No other party filed comments.

BACKGROUND

On April 2, 1996, Idaho Power Company filed an Application with the Commission seeking approval of proposed payments to be made to the Nez Perce Tribe resulting from litigation between the Tribe and Idaho Power.  The litigation involves the Tribe’s claims that Idaho Power’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, Idaho Power and the Tribe entered into settlement negotiations culminating in an agreement between the two parties.  That agreement, included with Idaho Power’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, Idaho Power 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, Idaho Power may also make a payment of $5 million into a trust account on August 3, 2003, the date by which Idaho Power must file its Application to relicense the Hells Canyon complex. Idaho Power 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 Idaho Power’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.

STAFF RECOMMENDATION

Staff recommends approval of capitalizing the settlement payments as proposed.  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).  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.  The proposed amortization period through the year 2035 is 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 DECISION

Capitalization

Should the payments be capitalized to plant in service as requested in the application and supported by Staff?

Or should the payments be capitalized as a regulatory asset (alternative proposal)?

Or do you wish some other treatment (i.e. not capitalized but expensed as paid)?

Amortization

Should the amortizations (if capitalization is accepted) begin one month after each payment is made?

Do you accept the amortization period through the year 2035?

Earnings Review

Do you wish to comment on including the amortization cost in the earnings review?

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