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

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| IN THE MATTER OF THE PETITION OF IDAHO POWER COMPANY FOR A DECLARATORY ORDER DETERMINING THAT CERTAIN RISK MANAGEMENT TRANSACTIONS ARE NOT SECURITIES WHICH ARE SUBJECT TO TITLE 61, CHAPTER 9, IDAHO CODE. | )  )  )  )  )  )  )  ) | CASE NO. IPC-E-96-19  ORDER NO.  26710 |

On September 9, 1996, the Idaho Power Company (Idaho Power; Company) petitioned the Commission for a Declaratory Order determining that electricity futures contracts or other types of risk management instruments; e.g., option contracts, forward contracts, swap agreements or other forms of derivatives are not security issuances subject to the provisions of Idaho Code, Title 61, Chapter 9.Idaho Code § 61-901 provides that an electric utility must receive authorization from the Commission and pay certain fees to the Commission for the issuance of securities.  Idaho Power states that it is preparing to become involved in risk management techniques by engaging in electricity futures contracts and other types of risk management instruments such as those listed above.  The Company seeks a declaration from the Commission that electricity futures contracts or other types of risk management instruments are not securities under those provisions of the Idaho Code.

On October 23, 1996, the Commission issued a Notice of Application/Notice of Modified Procedure soliciting comments in response to the Company’s Application.  The only party to submit comments was the Commission Staff.  Staff takes the position that the instruments identified by the Company do not constitute “securities” under Title 61.  Idaho Code § 61-901 provides, in part:

61-901.  Electric, telephone, water and gas utilities—Issuance of securities authorized—Liens—Pledges—Purposes—Terms— Supervision and control of public utilities commission—The right of every public utility, as defined in § 61-129, Idaho Code, furnishing electric, telephone, water or gas service in the state of Idaho, to issue, assume or guarantee securities and to issue mortgages, deeds of trust or other instruments of security with respect to its property situated within the state of Idaho, is hereby subjected to the regulation and supervision of the public utilities commission of the state of Idaho, as hereinafter set forth in this act.

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According to Staff, “securities” are best defined as financial instruments representing an ownership interest or evidence of indebtedness on the part of the holder.  Such instruments include bonds, loans, structured notes, mortgage backed securities, indexed debt instruments, interest only and principal only obligations, subordinated deferrable interest instruments, any other debt obligation, preferred stock and common stock.  Security instruments provide the major source of funding for utility companies.

Derivatives, on the other hand, are made up of two categories of instruments: [1] derivative financial instruments including futures, forwards, swaps, options and other financial instruments with similar characteristics and [2] derivative commodity instruments including, to the extent that they are not derivative financial instruments, commodity futures, commodity forwards, commodity swaps, commodity options and other commodity interests with similar characteristics that are reasonably possible to be settled in cash, with another financial or commodity instrument.  Staff notes that derivatives can be effective tools for managing exposure to market risks.  Market risk is the risk of loss from adverse changes in market rates and prices, such as interest rates, foreign currency exchange rates, commodity prices and similar market rate or price changes.

Staff notes that, effective July 11, 1996, Idaho Power’s board of directors approved the “Risk Management Policy, Procedures and Controls.  This policy assures Staff that the derivatives the Company may utilize will be used for hedging purposes only and not for speculative purposes.  Staff states that it will review the use of derivatives in audits and when determining the cost of electricity for Idaho Power.  Staff recommends that the Company be required to file with the Staff a confidential copy of any changes to the Risk Management Policy, Procedures and Controls.  It is Staff’s conclusion that the use of swaps or other forms of derivatives for the purpose of risk management does not require a filing under Idaho Code Title 61, Chapter 9.

On November 21, 1996, Idaho Power filed a response to Staff’s comments.  The Company asks that it not be required to make a confidential filing of its Risk Management Policy, Procedures and Controls on the basis that any such filing requirement “requires internal administrative procedures and personnel to carry out the required filing.”  The Company further argues that when this is coupled with the competitive situation confronting Idaho Power “the Company simply does not want to be required to make filings with the Commission, which filings by their very nature are sensitive to public disclosure.”

F I N D I N G S

We find that, by their nature, the risk management transactions enumerated in Idaho Power’s Application do not constitute “securities” as that term is used in Title 61, Chapter 9 of the Idaho Code.  By their nature, these transactions are designed to minimize the risk of loss from changes in the marketplace.  Security instruments, on the other hand, are primarily a source of funding for utilities.  We further find that it is not necessary to require Idaho Power to file a confidential copy of its Risk Management Policy, Procedures and Controls with the Commission Staff.  Staff is statutorily authorized to review such a document in the course of an audit at the Company’s offices.  We find that the risks inherent in disseminating information that is confidential to a company from a competitive standpoint outweighs the convenience to the Commission Staff of having to travel to the Company’s offices to review such information.

O R D E R

IT IS HEREBY ORDERED that the risk management transactions identified in Idaho Power’s Petition do not constitute “securities” pursuant to Title 61, Chapter 9 of the Idaho Code.  Idaho Power Company is not required, as proposed by Staff, to file with the Commission Staff a confidential copy of its Risk Management Policy, Procedures, and Controls.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No.  IPC-E-96-19 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No.  IPC-E-96-19.  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 December 1996.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:IPC-E-96-19.bp

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

December 6, 1996