DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

TERRI CARLOCK

GARY RICHARDSON

WORKING FILE

FROM:BRAD PURDY

DATE:NOVEMBER 25, 1996

RE:CASE NO.  IPC-E-96-19

IDAHO POWER’S APPLICATION FOR DECLARATORY ORDER DETERMINING THAT RISK MANAGEMENT TRANSACTIONS ARE NOT SECURITIES SUBJECT TO TITLE 61, CHAPTER 9 OF THE IDAHO CODE

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 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.  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.  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 that the Company may utilize may 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.”

Commission Decision

Does the Commission wish to issue a declaratory ruling to the effect that the swaps and derivatives identified by Idaho Power in its Petition do not constitute securities pursuant to Idaho Code Title 61, Chapter 9?

Does the Commission wish to require that the Company file with the Commission Staff a confidential copy of any changes to Company’s Risk Management Policy, Procedures and Controls?

Brad Purdy

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