

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
IDAHO POWER COMPANY FOR AN ORDER) CASE NO. IPC-E-97-11
AUTHORIZING THE FORMATION OF A)
HOLDING COMPANY AND THE EXECUTION)
OF A SHARE EXCHANGE AGREEMENT.)
)
) ORDER NO. 27348
)
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On October 31, 1997, the Commission issued a Notice of Modified Procedure soliciting comments in response to the Application of Idaho Power to form a holding company and to execute a share exchange agreement. At the request of the Idaho Legislature, the Commission's original comment deadline was extended from December 5, 1997 to December 29, 1997. In addition, and also at the request of the Idaho Legislature, the Commission conducted a hearing in this matter on January 13, 1998. Written comments were submitted by the Commission Staff, the Idaho Citizens Coalition, the Industrial Customers of Idaho Power and Idaho Power. The only person to present testimony at the January 13 hearing was Senator Laird Noh of the Idaho Legislature. The positions of all those who offered comments or testimony in this case are summarized below.

Senator Noh

Senator Noh is a member of the Idaho Legislature's interim committee on electric utility restructuring. He testified that the Commission must continue to have the ability to carry out its statutory mandate of regulating Idaho's public utilities. Implicit in this function is the ability to audit the books and records of those utilities. Senator Noh commented that the creation of a holding company and subsidiaries is an important step for Idaho's electric utilities to posture themselves in the event of deregulation so long as the Commission retains its ability to fully regulate and audit those utilities and their affiliates. The Senator noted that the legislative committee is interested in sponsoring legislation that would ensure the Commission's right to review appropriate documents of public utility affiliates. Senator Noh notes that Idaho Power has been cooperative in this regard.

Commission Staff

Staff generally supports Idaho Power's Application subject to the understanding that the Company will provide access to the books, records, officials and staff of its affiliated companies. Staff agrees that transferring non-utility's subsidiaries and operations to a holding company will

reduce the risk for the utility's operations. This, in turn, could improve or at least maintain credit ratings for Idaho Power to assure continued access to the capital markets at favorable rates.

Staff recognizes that Idaho Power proposes to transfer only the Ida-West subsidiary at this time. Staff agrees with Idaho Power that a filing should be made with the Commission requesting approval to transfer any other subsidiaries and non-utility operations to Idaho Power's holding company. Staff believes it is appropriate to transfer other subsidiaries and non-utility operations to the holding company eventually. In addition to the right of access to subsidiaries' books, records and personnel, Staff notes that the Company has agreed to provide to the Commission, for each affiliated company providing goods or services to or receiving goods or services from Idaho Power, the following:

1. Quarterly and annual financial statements;
2. Annual statements of intercompany transactions, and;
3. All financial reports filed with the Securities and Exchange Commission.

Idaho Power will also set up accounting controls and other procedures for the allocation of overhead and other costs of jointly used assets or personnel. Such controls and procedures will be designed to assure that Idaho Power's utility functions will not bear any costs associated with the diversified business activities of its affiliated companies. Assuming approval of the reorganization, Idaho Power states that it will submit these controls and procedures to the Commission for comment.

Staff also notes that if the Commission approves Idaho Power's Application, it will not affect Idaho Power's existing obligation to comply with all the provisions of the Idaho Public Utilities Law and the Commission's Rules and Regulations.

Idaho Citizens Coalition (ICC)

The ICC opposes Idaho Power's Application to some extent. The ICC is concerned about the lack of separation between board members of Idaho Power and the proposed subsidiaries. The ICC believes that there will be instances where the interests of a subsidiary are antithetical to the interest of Idaho Power and that Idaho Power's ratepayers may suffer. For example, the ICC asks whether off system sales of surplus power will be accounted for so that the benefits flow back to the ratepayers or whether they will show up on the books of the holding company or one of its subsidiaries.

The ICC is also concerned that there will be inadequate accounting to separate the costs of Idaho Power and its subsidiaries. The ICC sees potential problems relating to transactions between Idaho Power and the subsidiaries. Although expressing concern for the formation of a

holding company, the ICC believes that the degree of risk to Idaho Power's shareholders would be lessened if all of Idaho Power's subsidiaries, rather than just Ida-West, were spun off.

Industrial Customers of Idaho Power (ICIP)

The ICIP supports Idaho Power's Application to form a holding company. The ICIP complains that Idaho Power does not have in place an adequate system to prevent the cross-subsidization of cost and revenues between Idaho Power and its subsidiaries. The ICIP believes that the formation of a holding company will help in this regard.

The ICIP notes that Idaho Power engages in certain non-regulated activities which are not reflected in the Company's proposed corporate reorganization. These activities include:

- Natural gas trading, marketing, speculating business
- Fiber optic cable installation and leasing businesses
- Hydroelectric project consulting services businesses
- Substation equipment testing businesses

The ICIP is concerned that leaving these businesses within the auspices of Idaho Power Company places the Company's ratepayers at risk. For example, the ICIP contends that Idaho Power's ratepayers have been unwittingly providing financial support for Idaho Power's foray into natural gas markets and should be compensated. This is because Idaho Power does not offer any form of letters of credit or the like in support of its natural gas trading business although it is common industry practice to do so. Idaho Power is not required to provide this type of security because of its healthy balance sheet provided by ratepayers. Consequently, the ICIP believes that ratepayers should be somehow compensated for the reduced costs that Idaho Power incurs in its natural gas speculation business.

Finally, the ICIP believes that the Commission should require that all of Idaho Power's non-regulated entities and activities be moved to separate company status under the holding company now. The ICIP contends that Idaho Power should no longer be an incubator/promoter for non-regulated business activities.

Idaho Power Reply

Idaho Power agrees with all of the parties that adequate safeguards must be in place to ensure a proper accounting of the revenues and expenses of Idaho Power and its subsidiaries. The Company reaffirms the understanding that the Staff will have reasonable access to the books, records, officials and staff of all of the subsidiaries and the right to obtain reports and periodic financial statements of material transactions.

Idaho Power believes that the ICIP's recommendation to immediately spin off all non-regulated activities and subsidiaries is premature. The Company believes that any such decision from the Commission should come after the formation of the holding company and the spinning off of Ida-West. Idaho Power explains that the reason only Ida-West has been proposed to be spun off at this time is because, from the time of its formation, Ida-West has operated as a separate and distinct, unregulated business. Consequently, it is sufficiently developed to operate as a stand-alone, unregulated business separate and distinct from Idaho Power. The Company states that it does not currently know when or if its other subsidiaries and business initiatives will need to be transferred. The purpose of the Company's Application, Idaho Power states, is to place the Company in the position to respond quickly to potential changes in the industry.

FINDINGS

We hereby approve Idaho Power's Application. In reaching our decision, we find it significant that nearly all the comments received in response to the Company's Application supported Idaho Power's proposal. Even the ICC did not oppose the concept of a holding company per se. The ICC's concern is simply that the formation of a holding company and subsidiaries could be detrimental to Idaho Power's ratepayers if adequate safeguards are not in place to ensure that transactions between the various entities are accounted for fairly and properly. In fact, Idaho Power is aware of the need for such safeguards and has agreed, as a condition to the approval of its Application in this case, that the Commission shall have reasonable access to the books, records, officials and staff of all of the proposed subsidiaries and the right to obtain reports and periodic financial statements of material transactions between the various entities. Consequently, our approval of the Company's Application in this case is specifically conditioned on the Commission's right to have that access to the books and records of all of the proposed subsidiaries and entities.

Along these lines, in response to the testimony given by Senator Noh, the Commission will work with the legislative committee to ensure that the Commission has appropriate access to the books and records of utility affiliates. We appreciate the insight provided by the Senator. While we do not believe that such legislation is necessary for us to approve Idaho Power's Application in this case, because of Idaho Power's agreement to allow Commission access to the books and records of its affiliates, we believe that such legislation could provide the ratepayers of Idaho's investor-owned utilities with adequate protection as the utility industries continue to evolve.

In its Reply Comments, Idaho Power also acknowledged that at the time it determines that a particular subsidiary or business activity has been determined to be a candidate for removal from Idaho Power and transferred to the parent company, the Commission and its Staff will have the right to examine that subsidiary's books and records. We further condition our approval of the Company's Application in this case on the requirement that Idaho Power will file for Commission approval prior to transferring ownership of any additional subsidiaries (other than Ida-West) to the parent company.

The Company is directed to provide Staff with proposed accounting policies and procedures associated with the establishment and cost allocation to each of the subsidiary and business entity. These policies and issues relating to the transfer of additional subsidiaries to the parent company affiliated transactions shall be established prior to the transfer of those subsidiaries.

Regarding the comments of the ICIP, we note that Idaho Power provided an updated status report regarding its proposed subsidiary operations in a letter on December 31, 1997. That letter notes, among other things, that the Company has spun-off its natural gas operations into a subsidiary known as Idaho Power Services Company, LLC. We find that it is not necessary, at this time, to spin off the remainder of the affiliated business operations identified by the ICIP in its comments to a subsidiary. We find that any further decisions regarding segregating affiliated business operations into subsidiaries should come only after careful consideration of the matter, particularly considering the time and expense involved in doing so.

ORDER

IT IS HEREBY ORDERED that the Application of Idaho Power Company is approved subject to the terms and conditions set forth in this Order.

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-97-11 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-97-11 . 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 January 1998.

DENNIS S. HANSEN, PRESIDENT

RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters
Commission Secretary

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