1 BOISE, IDAHO, TUESDAY, APRIL 7, 1998, 9:30 A.M.

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 4 COMMISSIONER SMITH: Good morning,

 5 ladies and gentlemen. This is the time and place

 6 set for oral argument in the Case No. IPC-E-97-12.

 7 It's in the matter of the Application of Idaho Power

 8 Company for authority to increase its rates and

 9 charges to recover demand side management/

 10 conservation expenditures.

 11 We'll begin today by taking

 12 appearances of the parties. Mr. Ripley.

 13 MR. RIPLEY: Larry D. Ripley,

 14 appearing on behalf of Idaho Power Company.

 15 COMMISSIONER SMITH: Thank you.

 16 Mr. Richardson.

 17 MR. RICHARDSON: Peter Richardson of

 18 the firm Davis Wright Tremaine, appearing on behalf

 19 of the Industrial Customers of Idaho Power.

 20 COMMISSIONER SMITH: Mr. Richey.

 21 MR. RICHEY: Alan Richey, Senior

 22 Corporate Counsel for Micron Technology,

 23 Incorporated, appearing on behalf of Micron

 24 Technology, Incorporated.

 25 COMMISSIONER SMITH: Mr. Ward.

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 1 MR. WARD: Conley Ward of the firm

 2 Givens Pursley for FMC Corporation.

 3 COMMISSIONER SMITH: Everyone sounds

 4 like they have a cold.

 5 Mr. Jauregui.

 6 MR. JAUREGUI: Paul Jauregui, attorney

 7 at law, on behalf of the Rate Fairness Group.

 8 COMMISSIONER SMITH: And Mr. Purdy.

 9 MR. PURDY: Thank you. Brad Purdy,

 10 deputy attorney general, appearing on behalf of the

 11 Commission Staff.

 12 COMMISSIONER SMITH: Is there anyone

 13 else who wishes to make an appearance today? I note

 14 there are some persons who have been granted

 15 intervention who are not in attendance.

 16 We have several Motions we're going to

 17 discuss today. It was my intention to begin with

 18 the Motions to Dismiss unless there's a different

 19 preference. So with that, we'll start with

 20 Mr. Richardson.

 21 MR. RICHARDSON: Thank you, Madam

 22 Chairman.

 23 I struggled a little bit with how --

 24 COMMISSIONER SMITH: Would you please

 25 turn on your mike.

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 1 MR. RICHARDSON: How do I do that?

 2 COMMISSIONER SMITH: You just punch

 3 the "touch," where it says "touch."

 4 MR. RICHARDSON: Thanks. Thank you,

 5 Madam Chairman.

 6 I struggled a little bit with how to

 7 get beyond the rhetoric in this matter to cut to the

 8 quick, if you will. I think what we have here in a

 9 nut shell is Idaho Power's attempt to get a head

 10 start on competition on the road to electric utility

 11 deregulation. That's really it and nothing more.

 12 And one might ask legitimately, Well,

 13 isn't the Industrial Customers -- or, aren't the

 14 Industrial Customers in favor of competition?

 15 We are. We consistently and

 16 emphatically have promoted competition at every turn

 17 we can find. But what the problem here is that we

 18 want to go to competition without giving anyone any

 19 undue advantage or at costs to ratepayers that are

 20 unnecessarily incurred.

 21 And what the Idaho Power's Application

 22 does, it gives Idaho Power undue advantage. It

 23 gives them a leg up when and if competition happens.

 24 And the reason it does that is because by

 25 accelerating the recovery of this discrete cost

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 1 item, Idaho Power is clearing its books of what it

 2 would term are stranded costs, and it does so before

 3 this Commission or the Legislature or any other

 4 policy-making body has had an opportunity to decide,

 5 A, if competition is a legitimate road for us to

 6 travel down in Idaho; and B, if it is a legitimate

 7 road, how do we accomplish that, how do we navigate

 8 it.

 9 Well there's only three possible

 10 outcomes for dealing with stranded costs, assuming

 11 there are positive stranded costs. The first

 12 outcome is that the ratepayers pay all the stranded

 13 costs; the second outcome is that there's a sharing

 14 between ratepayers and shareholders; and the third

 15 outcome is that the market takes care of stranded

 16 costs.

 17 And you might ask, Well, what do you

 18 mean by the market taking care of stranded costs?

 19 The answer to that is if Idaho Power

 20 has in its overall mix the negative -- cost of

 21 generation below the market, then there is no need

 22 for the ratepayers to pay a surcharge to recover

 23 those costs, that the market will have taken care of

 24 those costs. If Idaho Power's overall costs of

 25 generation are above market, then this Commission or

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 1 other policy-making entities in the state is going

 2 to have to decide how those above-market costs are

 3 recovered and from whom. But until that day comes,

 4 if it indeed does come, it's premature; and frankly,

 5 it takes away from you the legitimate role of

 6 deciding and implementing in an orderly fashion the

 7 road to competition.

 8 In our Motion to Dismiss, we made

 9 three arguments. One is that the Company's

 10 Application is vague, it doesn't support a finding

 11 by this Commission supporting -- in favor of

 12 Idaho Power's Request. And the Application, as I

 13 noted in my Brief, only pointed to two items that

 14 support Idaho Power's requested relief, and that was

 15 a statement by Mr. Said in his prefiled testimony

 16 that 24 years is way too long, and a statement in

 17 the Application that -- of similar import. But

 18 nowhere in Idaho Power's papers does Idaho Power

 19 tell us why this Application is necessary at this

 20 time. Nowhere does Idaho Power tell us what's wrong

 21 with the current system this Commission litigated in

 22 detail in the last general rate case.

 23 The second issue we pointed out -- and

 24 Idaho Power really doesn't address that in their

 25 reply Brief.

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 1 The second issue is the stranded cost

 2 issue, and as I noted earlier, I think that's really

 3 the crux of this case is the stranded cost end-run I

 4 will call it.

 5 And the third issue we raised in our

 6 Brief which was -- again went unresponded to in

 7 Idaho Power's reply is this Commission's Order that

 8 Idaho Power timely request recovery of the DSM

 9 referrals, and you put a limit of three years on

 10 that and Idaho Power didn't address that issue and

 11 it's a significant amount of dollars in this case.

 12 And with that, I think that's all I

 13 need to say unless the Commissioners have any

 14 questions of me. I'd be more than happy to respond,

 15 but I do think this is end run around the

 16 policy-making prerogative of this Commission and the

 17 Legislature for implementing deregulation.

 18 COMMISSIONER SMITH: Okay. Thank you,

 19 Mr. Richardson.

 20 Do we have questions from the

 21 Commissioners of Mr. Richardson or do you want to

 22 wait?

 23 COMMISSIONER NELSON: I don't at this

 24 time.

 25 COMMISSIONER HANSEN: I believe I have

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 1 one.

 2 COMMISSIONER SMITH: Commissioner

 3 Hansen.

 4 COMMISSIONER HANSEN: Mr. Richardson,

 5 I guess the question I have is in 1995, in the

 6 Commission Order on page 16, the last paragraph, it

 7 states that Idaho Power Company proposed in its

 8 Application to amortize all DSM program expenditures

 9 over a seven-year period. And I guess my question

 10 would be is do you think at that time in that rate

 11 case, that Idaho Power was trying to get an

 12 advantage on competition back in '94 when they

 13 prepared for that rate case?

 14 MR. RICHARDSON: Commissioner Hansen,

 15 I really can't speculate as to what was in Idaho

 16 Power's mind. I think competition was on the

 17 horizon at that point; I don't think it was unheard

 18 of in 1994. Whether or not we viewed it as the

 19 certainty that I think a lot of people view

 20 competition today, I couldn't answer that. So I

 21 guess you would probably be better off asking

 22 Mr. Ripley what was the Company's intent when they

 23 proposed seven years.

 24 COMMISSIONER HANSEN: Well as a

 25 follow-up, I guess if I heard you correctly, I

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 1 thought you stated earlier that you thought that

 2 their proposal now to change the rate -- or, change

 3 the time to five years was to get an advantage on

 4 stranded costs, to determine a policy there for

 5 stranded cost, how it was going to be addressed.

 6 And I guess my question is if you have those

 7 feelings how that that's the motive; and I was just

 8 wondering, evidently back three years ago they had a

 9 motive to reduce that to seven years, and I just

 10 wondered if you thought at that time the motive was

 11 the same or it's just changed recently.

 12 MR. RICHARDSON: Well,

 13 Mr. Commissioner, I think that probably the motive

 14 was in part motivated by competition three years

 15 ago, but as you know, the concept of competition in

 16 the electric industry really has gained currency

 17 over the last three or four years, and although was

 18 probably being discussed, I don't think it was seen

 19 with the certainty that it is today.

 20 Frankly, Commissioner, if I were in

 21 Idaho Power's shoes, I would be making the same

 22 attempt here today that they are making; that is, to

 23 clear the books so that when competition comes, that

 24 they are poised to reap great rewards. But one must

 25 remember, they could be doing something like right

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 1 now asking to accelerate the depreciation rate on

 2 all of their generating assets. Same sort of thing.

 3 This has always been seen as a generating asset, a

 4 production asset.

 5 COMMISSIONER HANSEN: Well I guess the

 6 question I'm really driving at is I'm trying to find

 7 out from you in your mind what do you think

 8 Idaho Power's motive three years ago for amortizing

 9 over a seven year period, is it the same as it is

 10 today. That's the question that I'd like you to

 11 answer "yes" or "no."

 12 MR. RICHARDSON: I don't know what

 13 Idaho Power's motive is three years ago.

 14 COMMISSIONER HANSEN: So you're saying

 15 it could change.

 16 MR. RICHARDSON: It could be the same

 17 motive. I wouldn't be surprised if it were partly

 18 motivated by this concern.

 19 COMMISSIONER HANSEN: Thank you.

 20 That's all I have.

 21 COMMISSIONER SMITH: We also have a

 22 Motion to Dismiss by Mr. Richey and Micron. Should

 23 we take all of them at once, Mr. Ripley?

 24 MR. RIPLEY: We'd prefer that.

 25 COMMISSIONER SMITH: Mr. Richey.

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 1 MR. RICHEY: Sure. Thank you,

 2 Commissioner. I'll try not to go over some of the

 3 same issues that Mr. Richardson raised. Some of our

 4 arguments are similar, but in Micron's Motion to

 5 Dismiss we had really four factors that we looked at

 6 and moved to have this Application dismissed.

 7 The first one was we felt the

 8 Application inappropriately asked the Commission to

 9 increase rates in a single issue context that really

 10 precludes the Commission from following its legal

 11 mandate to determine just and reasonable rates.

 12 The second one was that we felt the

 13 Application violates the settlement stipulation,

 14 this Commission's Order establishing a rate

 15 moratorium.

 16 And the third was that the Application

 17 is a premature and unsupported attempt to recover

 18 supposed stranded costs.

 19 And then the last one, we felt the

 20 Application in essence pre-empts the Legislature

 21 that's currently working on deregulation issues from

 22 determining what costs are stranded and how they

 23 could be treated.

 24 And I'll take each of these and just

 25 go over what our basis was in making these

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 1 arguments, and then deal with the response that

 2 Idaho Power provided to them.

 3 Under the issue of the single rate

 4 case issue that we raised, our argument is really

 5 relatively simple. The Idaho Code requires the

 6 Commission to determine just and reasonable rates

 7 for public utility services. The burden is on the

 8 Utility to prove this standard, and other than cost

 9 increases beyond the Utility's control, the only

 10 appropriate forum for these types of rate increases

 11 is a general rate case.

 12 And in doing that, in dealing with

 13 that argument that we raised, Idaho Power's response

 14 was really twofold: One was that this was

 15 essentially a tracker case and that these increases

 16 should be allowed because they don't increase the

 17 authorized rate of return. And in dealing with this

 18 tracker case issue, they cited a Supreme Court case

 19 J. R. Simplot versus Intermountain Gas Company, and

 20 I took a look at the case and my view of the case is

 21 on point. That truly was purely a tracker case

 22 where Intermountain Gas wanted to increase their

 23 rates shortly after a general rate increase because

 24 the cost of gas had increased. And one thing I

 25 think is significant is that in that case, that was

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 1 not a deferred cost, that was an actual cost that is

 2 new that was going to be put on Intermountain Gas,

 3 and the Court stated that in that case, the Utility

 4 had no control over substantially increased costs.

 5 That's not the case here. These costs

 6 are not going up. They're set for a 24-year period

 7 what they're going to be, they're known, they're not

 8 new, and the risk to Idaho Power is not changed. At

 9 least from the papers they filed it hasn't shown it

 10 to have changed.

 11 In essence, that case is similar to

 12 Rule 122 of the Idaho -- of the PUC Rules of

 13 Procedure, and I just wanted to read that because I

 14 thought that is really one of the most compelling

 15 bases for not having a single rate case issue. And

 16 in Rule 122, it says that utilities need to file

 17 notice of general rate case for rate increases, and

 18 the exception is for trackers. And it says Examples

 19 of cases outside the scope of this Rule include

 20 commodity or purchased power tracker rate increases;

 21 emergency or other short notice increases caused by

 22 disaster, weather-related or other conditions;

 23 unexpectedly increasing a utility's expenses; rate

 24 increases designed to recover governmentally-imposed

 25 increases in the cost of doing business such as

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 1 changes in tax laws or ordinances; or other

 2 increases designed to recover increased expenses

 3 arising on short notice beyond the Utility's

 4 control.

 5 And I think in looking at that, it's

 6 clear that in going with an abbreviated rate

 7 increase, we don't have a general rate increase but

 8 that's going to be for increases in costs that are

 9 new or unexpected or outside the control of the

 10 utilities. I don't think anyone would disagree with

 11 that. I don't know that these deferred costs fall

 12 under any of these categories, and that's where we

 13 essentially base this on as far as this single rate

 14 case not being appropriate here.

 15 Another issue that was raised by

 16 Idaho Power was that these costs should be allowed

 17 because they do not increase the authorized rate of

 18 return, and I think it's a bit disingenuous to come

 19 and say, Well, we've got an increase in costs, we're

 20 going to increase rates by an equal amount, that's

 21 not going to increase the rate of return.

 22 In most cases, that's not going to

 23 happen. I think that's where the just and

 24 reasonable standard comes in.

 25 In the case we cited, Utah Department

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 1 of Business Regulation versus the Public Service

 2 Commission, it is a Utah Supreme Court case, but in

 3 that case, there was a fairly heavy wage increase

 4 for employees of Mountain Fuel in Utah, and again,

 5 they were going to increase the rates the same

 6 amount as the wage increase which is not going to

 7 change the rate of return, but the Court looked at

 8 it and said that is the question. Of course it's

 9 not going to change the rate of return on that, but

 10 you've got to look is it a just and reasonable

 11 increase along with that. And in this case that's

 12 where this comes in; it goes to the Commission to

 13 decide that issue.

 14 It seems from our view that if this

 15 goes forward, that it starts to set a bad precedent

 16 that if we allow expenses to be increased with that

 17 that do not fall under this exception for trackers

 18 as in Rule 122 or in the Simplot case, that you

 19 know, where does it end? Where does the slippery

 20 slope stop? What costs could not be out there that

 21 couldn't be passed through in this manner without

 22 considering all the costs in total? And I think

 23 that's where we get to the issue of negative

 24 stranded costs.

 25 You know, one thing we have not looked

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 1 at here if you're going to bring in potentially

 2 costs that may be stranded at some point in time is

 3 where are the offsetting negative stranded costs

 4 that should be considered here also? Are there some

 5 negative costs out there that need to be passed on

 6 to the ratepayers if it's found that this increased

 7 amortization schedule needs to be passed on? That's

 8 where I think things need to be looked at as a whole

 9 versus in a vacuum.

 10 I want to move just quickly to the

 11 issue of the settlement stipulation. The

 12 Commissioners' Order established a rate moratorium.

 13 I don't want to go into what happened in the NEA

 14 funding case, because that's been decided and I

 15 think that this is distinguishable from the

 16 Commission's ruling in that case or the Order in

 17 that case. The costs that were being decided -- DSM

 18 costs that were going to be passed on there -- as

 19 we're all aware were new costs. Costs that were

 20 going to be currently being incurred were going to

 21 be incurred in the future, but they were not costs

 22 that had been around when the stipulation had been

 23 entered into. So, I think there's one

 24 distinguishing fact from what we have here were

 25 these costs were present and at least part of these

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 1 were decided on at that time that there was going to

 2 be a 24-year amortization period, and all the

 3 parties agreed to that in that stipulation. And I

 4 think that that is in our Brief.

 5 As you'll see, we divided these DSM

 6 costs into two factors: Post-1993 DSM costs and

 7 pre-1994 DSM costs. And with respect to the costs

 8 prior to 1994 that were incurred in the settlement

 9 stipulation, the Commission's Order, I'd like to

 10 read what the Commission stated. That even though

 11 we do acknowledge there was an exception for DSM

 12 charges that are recovered in that stipulation to --

 13 that they can recover those outside of the --

 14 outside of the stipulation and not violate the rate

 15 moratorium, that the Commission still stated that

 16 Any attempts by Idaho Power to increase base rates

 17 through one of the exceptions -- which was this DSM

 18 exception -- shall be rigorously scrutinized. The

 19 primary benefits of the stipulation are low rates

 20 and rate stability. We intend to hold Idaho Power

 21 to the assurances provided in the stipulation in

 22 this regard.

 23 And in our view with respect to these,

 24 at least the pre-1994 DSM case, the parties agreed

 25 it was going to be a 24-year amortization period;

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 1 and to come in now, you know, it -- if it doesn't

 2 violate the letter, it violates the spirit of that

 3 stipulation where we agreed that they were going to

 4 keep rates low, to have rate stability. But this

 5 really promotes rate instability if we're going to

 6 go back and change especially those costs.

 7 Now the post-1993 DSM costs, we do

 8 agree that the Commission has ruled that there is

 9 some flexibility in that case with allowing

 10 Idaho Power to pass some of those costs on having a

 11 rate increase to deal with those, but I think the

 12 key there -- and the Commission brought this out in

 13 its NEA funding case with the statement that those

 14 costs have to be prudent, they've got to be

 15 reasonable before those can be passed on. And in

 16 this case, we do not feel that what we've seen in

 17 the Application that's been filed shows that what

 18 Idaho Power wants to do is reasonable and prudent.

 19 We just haven't seen enough evidence of that. They

 20 may be if it comes that there's more evidence

 21 provided, but we haven't seen that from what the

 22 filings have shown. So at this time, we think based

 23 on both the cost that -- the pre-'93 and the

 24 post-'93 costs, that just the Application should be

 25 dismissed at this time.

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 1 The other -- third -- issue we

 2 raised -- and I'll move quickly here also -- is that

 3 we felt the Application is a premature and

 4 unsupported attempt to recover supposed stranded

 5 costs. Idaho Power states in its Response that the

 6 DSM deferred balance is not a stranded cost. And it

 7 may not be, but there's no evidence now that it's

 8 going to become stranded again. We -- there's not

 9 evidence that they're not going to recover those

 10 costs. There's no risk to Idaho Power present that

 11 we see that Idaho Power is not going to be able to

 12 recover those in the future. If at some point it

 13 becomes apparent that they may not recover those and

 14 those will become stranded, then that's an issue

 15 that we need to look at, but it needs to be looked

 16 at in the issue of all of Idaho Power costs, not

 17 just this one. Are there some investments out there

 18 that are going to become stranded or some negative

 19 costs to be considered also. Really, looking at

 20 this in a piecemeal fashion is really not the

 21 just -- is -- in our view does not meet the just and

 22 reasonable standards.

 23 One other thing that it seems to be by

 24 this going forward is it tends to open a Pandora's

 25 box. If this goes forward, it seems that the issue

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 1 that needs to be raised is are there some other

 2 costs that can offset this; are there some negative

 3 stranded costs that we need to consider. If it's

 4 looked at that these are legitimate costs that Idaho

 5 Power needs to recover on an accelerated basis, are

 6 there others that need to be offset with it.

 7 Idaho Power made the comment in the

 8 response that it would be better to have current

 9 ratepayers pay for -- or at least they posed a

 10 question -- isn't it better to have current

 11 ratepayers pay for those stranded costs or these

 12 costs than pass them on to future ratepayers; and I

 13 think if that statement is going to be answered as

 14 yes, then the converse needs to be applied also that

 15 are there some negative stranded costs, are there

 16 some negative stranded investments that need to be

 17 passed on to current ratepayers versus passing them

 18 on to future ratepayers or not passing on to

 19 ratepayers at all. I think that's the issue. When

 20 you get into this looking at one and not looking at

 21 the other, it raises these other issues of what else

 22 is out there.

 23 And the last point that we made was --

 24 it's more of a general point -- we don't dispute

 25 that the Commission has the authority to rule in

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 1 this case. This is completely within their

 2 jurisdiction. But as from what we have seen, we

 3 would like these issues to be decided globally, in

 4 one forum, and it looks as if the Legislature is

 5 moving in that direction to attempt to decide these

 6 issues and not to handle in one forum and not in the

 7 next. But in relatively short period of time as

 8 these things go -- 12 to 24 months -- there ought to

 9 be some resolution in the Legislature, if not

 10 earlier if there's Federal legislation. And we

 11 don't see where there's really any problem of

 12 putting this thing on hold until the Legislature

 13 could decide if they're going to. At least there's

 14 nothing we've seen in Idaho Power's Application that

 15 shows that there's a real urgency that this has to

 16 happen now.

 17 Happy to pose any questions -- or,

 18 answer any questions.

 19 COMMISSIONER SMITH: Are there any

 20 questions from the Commission?

 21 COMMISSIONER NELSON: Not at this

 22 time.

 23 COMMISSIONER SMITH: Commissioner

 24 Hansen.

 25 COMMISSIONER HANSEN: Thank you.

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 1 Mr. Richey, I guess one question I'd

 2 have is to your knowledge, are you aware of the

 3 Commission ever looking at just a single rate case

 4 issue and changing the rates accordingly?

 5 MR. RICHEY: Not in -- except for the

 6 tracker issue, no I'm not; and I think there's an

 7 exception to that that allows when there's trackers

 8 in place for unexpected costs for the Commission,

 9 quite fairly it can raise those because those are

 10 costs that have been passed on. But no, I'm not.

 11 If there are, I'd be happy to look at those, but I'm

 12 not aware of any.

 13 COMMISSIONER HANSEN: Approximately

 14 three years ago, the Washington Water Power asked

 15 the Commission to be able to write off their current

 16 DSM expenses with a surcharge, which the Commission

 17 granted. In your mind, would that be a single issue

 18 rate request?

 19 MR. RICHEY: Without having read that

 20 and looked at that, it's hard for me to answer that

 21 knowing the full facts of that, but if it is the

 22 case that those were costs that were not unexpected,

 23 were not new, then in that context I would say I

 24 think it probably is. I'd have to look at the facts

 25 and read that, I'd hate to just hypothesize on that,

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 1 but you know, I'm not familiar with the facts of

 2 that. You know, that's my fault, I probably should

 3 be, but I'm not really -- I can't really answer

 4 that. But if it -- I will stand by argument that if

 5 it does not fall within that tracker exception, I

 6 think it needs to be considered in toto with other

 7 costs, other expenses, and other benefits to the

 8 ratepayers that need to be considered before rates

 9 are increased.

 10 COMMISSIONER HANSEN: I had just one

 11 other question because you had brought up your

 12 concern about pre-empting the Legislature on policy

 13 issue, stranded cost. Do you think three years ago

 14 when Idaho Power asked for a seven-year amortization

 15 that they were trying to pre-empt the Idaho

 16 Legislature to formulate and determine a policy of

 17 stranded cost at that time?

 18 MR. RICHEY: You know, I don't know

 19 the answer to that question. In all honesty, they

 20 probably were not. But what I -- when I -- when

 21 that question is raised, what I have to really fall

 22 back on is what ultimately was decided to be done

 23 with those costs. And the costs that we're talking

 24 about here, there was an agreement to amortize these

 25 over 24 years and everyone that -- Micron agreed to

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 1 that stipulation, Idaho Power agreed to that

 2 stipulation, and others. As Mr. Ripley pointed out,

 3 we agreed to it also. And for whatever reason they

 4 asked for the seven years, I don't know the exact

 5 motivation for that, but I think in the current

 6 environment, seeing that deregulation is going to

 7 happen at some point in time -- at least it looks as

 8 if it will -- that if the motivations were different

 9 then, I still -- the motivations now may have

 10 changed somewhat and it -- even if motivation does

 11 not pre-empt the legislation of Idaho Power, I think

 12 a result is what would happen with this. You know,

 13 I'm more concerned with the results and the

 14 motivation of Idaho Power, and I think the result is

 15 that if this goes forward, you actually do pre-empt

 16 what they I think should be deciding on this very

 17 important issue as a global issue. But whether

 18 Idaho Power has inappropriate or appropriate motives

 19 is not necessarily the concern I have; it's the end

 20 result that's going to happen from that.

 21 COMMISSIONER HANSEN: I just have one

 22 last question: Are you aware of the amortization

 23 rates of any other utility, rate for DSM charges,

 24 rates of any other utilities, changing in the past

 25 few years in Idaho?

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 1 MR. RICHEY: I'm not aware of that.

 2 COMMISSIONER HANSEN: Thank you.

 3 That's all I have.

 4 COMMISSIONER SMITH: Mr. Jauregui, you

 5 had filed a Motion to join those Motions.

 6 MR. JAUREGUI: Thank you, Madam

 7 Chairman. Yes, I would second --

 8 COMMISSIONER SMITH: You need to turn

 9 your microphone on. Thank you.

 10 MR. JAUREGUI: Thank you.

 11 I would second the comments of the two

 12 prior speakers with respect to the Motions to

 13 Dismiss. We also requested to join in those

 14 Motions. We also submitted a supplemental argument.

 15 In thinking about how to approach this

 16 and recognizing that I would probably be last, I

 17 think that I would point out that in the opinion of

 18 the Rate Fairness Group, the Applicant failed to

 19 file an Application and direct case that met its

 20 burden. And from the comments made, it essentially

 21 isn't a tracker in the way that you'd think of as

 22 trackers. It asked for more money and it asked for

 23 money to be spread amongst its customers. However,

 24 there are additional issues here, and that is the

 25 change in the amortization time from 24 years to

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 1 five; and it has been discussed before of the lack

 2 of -- what is wrong with the 24 years, why the

 3 five-year proposal. And the same comment can be

 4 made for the change in the allocation among classes

 5 of the recovery of the costs. What is wrong with

 6 the existing allocation and why should it be changed

 7 and why should it be changed to what is being

 8 proposed by the Applicant.

 9 So in our opinion of the Rate Fairness

 10 Group, the Applicant has not met that initial burden

 11 for its case and it's very difficult to respond to,

 12 try and think about all of the reasons of what

 13 happens, why are they saying it needs to be changed

 14 and why does it need to be changed to what they're

 15 proposing that it be changed to.

 16 The shift of class -- of cost from

 17 class to class would have a greater impact on

 18 certain customers of Idaho Power Company, both in

 19 the class, among classes, and within the classes.

 20 Most of the members of the Rate Fairness Group are

 21 older and they're on fixed incomes, and so the

 22 impact on them would be more significant while the

 23 benefits of these facilities which have in the past

 24 been looked at as production costs and amortized out

 25 of our long period of time like other generating

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 1 resources seems to shift that burden unduly, but

 2 those are issues that we can discuss at a later

 3 time.

 4 As indicated by I believe both of the

 5 prior speakers, the Application fails -- asks only

 6 for increases, they recover certain costs. It fails

 7 to recognize cost reductions due to program

 8 elimination, which have been the matter of this

 9 Commission's proceedings.

 10 In the opinion of the Rate Fairness

 11 Group, the Applicant needs to file a complete direct

 12 case so that all of the parties know what the

 13 proposal is, why it's being proposed, and what is

 14 supporting that, so that a proper hearing on this

 15 matter could be held for the due process of the

 16 Applicant and the other parties.

 17 That concludes my comments. I'd be

 18 happy to respond to any questions.

 19 COMMISSIONER SMITH: Are there any

 20 questions?

 21 COMMISSIONER HANSEN: I have no

 22 questions.

 23 COMMISSIONER SMITH: Mr. Ward, do you

 24 care to weigh in on this Motion to Dismiss?

 25 MR. WARD: Yes, thank you, Madam

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 1 Chair. We did not file briefs or formal pleadings

 2 in this -- on either -- on any of these matters,

 3 anticipating that the issues would be, as they have

 4 been, well-addressed by very capable hands other

 5 than ourselves. However, on FMC's behalf, we join

 6 in the Motion to Dismiss, and the brief comments I'm

 7 going to make will also constitute all I have to say

 8 on the question of the Motion to Offset, so I'll

 9 need to go over this only once.

 10 I too will try to avoid plowing ground

 11 that's been plowed. I'd like to restate the

 12 question, however, in a somewhat different way and

 13 see if we can't get back to the fundamental issue

 14 here.

 15 It seems to me the fundamental issue

 16 is a mixed question of law and fact, and that

 17 fundamental issue is are DSM expenditures part and

 18 parcel or indistinguishable from generating

 19 resources. That question seems to me has to be

 20 answered first; and the reason why it's crucial is

 21 that all of us here know that there is a possibility

 22 that this industry will be restructured in the

 23 relatively foreseeable future. It may or may not

 24 happen, but if it does happen, the overwhelming

 25 issue will be whether utilities subject to this

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 1 Commission's jurisdiction have stranded costs, and

 2 if so, how we will compute them.

 3 It's also no secret to either the

 4 Commission or the parties in this room how the

 5 arguments on that issue will shake out. Idaho Power

 6 will argue that there are certain generating costs

 7 or there are certain costs within the category of

 8 generating resources or where there are substitutes

 9 like DSM that are distinguishable from the ordinary

 10 entries in that bookkeeping category. And it will

 11 argue that those include things like DSM

 12 expenditures, cogeneration purchases, other items in

 13 which Idaho Power contends it had less than a free

 14 hand in acquiring resources.

 15 The opponents of that argument that

 16 will include FMC will argue that all generating

 17 resources must be bundled together when we look to

 18 see whether we have stranded costs or not.

 19 Now, I'm not asking the Commission to

 20 decide that issue now and I'm not -- I hope -- I

 21 don't want to get into trying to state it and the

 22 further arguments on the merits that each party will

 23 make. I'm just pointing out that that's an issue

 24 that will have its time. That being the case, let

 25 me return to my first question: Are these DSM

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 1 expenditures indistinguishable from generating

 2 resources.

 3 First of all, if the Commission

 4 answers that question "no," or answers that question

 5 that DSM resources are not, in fact, generating

 6 resources or substitute therefor, then the follow-up

 7 question is on what basis then are we charging

 8 parties who are not participants in the benefits of

 9 those programs for their cost. Specifically, FMC

 10 which does not receive any of the benefits of any of

 11 these programs in terms of expenditures being made

 12 for its direct benefit, can only be charged for the

 13 costs or for its portion -- or, for its

 14 apportionment of a cost if, in fact, the argument is

 15 that these are generating resources or substitutes

 16 for generating resources that would otherwise be

 17 acquired for all customers. If that's not the case,

 18 then there's no basis for recovering any of this --

 19 the costs of these resources from FMC.

 20 Now let's assume that it is the case,

 21 that the Commission determines that DSM resources

 22 are part of a larger package of generating

 23 resources. Certainly your unbundling Order suggests

 24 that is the determination you will make. If that is

 25 the case, then let's consider how the parties stand

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 1 as of this moment.

 2 As I recited earlier, we know what the

 3 parties will argue when the ultimate determination

 4 on stranded costs is made, if it is made, if that

 5 becomes an issue. What happens if Idaho Power

 6 prevails today on this issue? What it has done is

 7 selected then a portion of the larger category of

 8 generating resources and had a prior determination

 9 of its ability to recover, and taken those resources

 10 essentially off the table when we come to the

 11 unbundling argument.

 12 Now, at the moment, I'm not trying to

 13 suggest anything about whether that ultimately will

 14 be the right result. Idaho Power may convince you

 15 that we should parcel these resources out in a

 16 variety of ways and some portions should be

 17 recoverable from ratepayers regardless of the

 18 overall status of stranded costs. But I'm only

 19 trying to point out that if you accept Idaho Power's

 20 filing here, you decide that issue in Idaho Power's

 21 favor with respect to these resources.

 22 If you reject it, you don't

 23 necessarily decide that issue in favor of the

 24 parties who will argue for an en masse

 25 determination. You simply preserve the status quo

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 1 and wait for the ultimate decision that you'll be

 2 called upon to make regarding stranded costs.

 3 It seems to me that's the very

 4 strongest argument to be made on behalf of this

 5 Motion to Dismiss. If you dismiss this, you are not

 6 prejudicing Idaho Power's subsequent argument. If

 7 you don't dismiss this, you have essentially taken

 8 away the opponents' arguments about unbundling or

 9 determining stranded costs altogether.

 10 On that basis, the fair thing I think

 11 to do is to dismiss this Application at this

 12 juncture on the grounds that it is a premature

 13 attempt to decide part of the stranded cost issue.

 14 Now I won't -- Mr. Richey and Mr. Richardson have

 15 both made the argument that if we're going to parcel

 16 out a portion of these resources for determination

 17 now, then we could look at some others as well. I

 18 won't follow that, but I will urge you to give that

 19 some consideration. What is the next subset of

 20 generating resources that we're going to predecide.

 21 Finally, I would like to --

 22 Commissioner Hansen raises a very good question that

 23 I would like to address and I'm going to take the

 24 liberty of restating it in the hope that I know what

 25 he was driving at. As the Commission is well aware,

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 1 in the Water Power case, Water Power has been

 2 permitted to expense DSM expenditures,

 3 notwithstanding of course that there are also rate

 4 guarantees or have been rate guarantees in the

 5 Washington Water Power service territory, and I'm

 6 sorry to say I can't recall whether those have

 7 expired yet or not. But it does seem to me that

 8 there is a significant difference in this case, and

 9 I would state it this way: When the Washington

 10 Water Power rate determinations were entered into,

 11 it is my recollection that DSM resources were being

 12 expensed at that time -- in other words, that Water

 13 Power had sought year-by-year expensing of DSM

 14 resources -- and the Commission had granted that

 15 ab initio from the very beginning; and so to expense

 16 additional DSM resources seems to me not to be

 17 offensive to the rate previous guarantee. You are

 18 continuing the existing practice.

 19 And I would point out also that in

 20 Idaho -- well let me then distinguish Idaho Power's

 21 situation. In the Idaho Power rate case, these

 22 resources were being capitalized and amortized over

 23 a significant period of years. And of course the --

 24 there were earnings on those expenditures, which is

 25 different than the case in which you're expensing

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 1 them; and so to now several years later say, We want

 2 to accelerate the amortization of these costs,

 3 notwithstanding the original Agreement was

 4 predicated at least on the idea that they would be

 5 capitalized and amortized over a significant period

 6 of time, seems to me that's quite different from a

 7 company that has been expensing those resources from

 8 the get-go and simply says Our level of expenditure

 9 has changed, we want to recover that. That is a

 10 classic tracker case, a cost that is otherwise

 11 beyond the Company's control.

 12 And I'd further distinguish this by

 13 saying it seems to me -- it seems to me entirely

 14 consistent with the rate stipulation if Idaho Power

 15 were to say to the Commission, We want to expense

 16 these resources going forward. I would not object

 17 to that. But it is a different thing when you have

 18 an accrued balance that was supposed to have been

 19 amortized over a period of years to in midstream

 20 say, We want to accelerate that amortization. That

 21 is in principle no different from saying, We want to

 22 accelerate depreciation on our generating plants and

 23 recover that in a rate case, notwithstanding rate

 24 increase.

 25 With that, I think all the other

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 1 issues have been adequately covered, and I'd be

 2 happy to respond to questions.

 3 COMMISSIONER SMITH: Questions?

 4 I guess I have a couple, and one

 5 theoretical given your discussion of the differences

 6 in how the Commission has treated Water Power and

 7 Idaho Power may be due to the differences of how the

 8 Company has requested to be treated, I'm not sure.

 9 Is there then no correct public policy that a

 10 Commission should have adopted either one way or the

 11 other?

 12 MR. WARD: Well, Madam Chair, of

 13 course whatever the Commission did adopt was the

 14 correct public policy.

 15 COMMISSIONER SMITH: I understand that

 16 in a legal sense, but I'm just wondering on a

 17 policy, it seemed to me that -- is it both ways are

 18 correct?

 19 MR. WARD: Either way was correct, so

 20 long as we assume that the regulatory norm would

 21 remain unchanged. The essential premise of allowing

 22 a utility to capitalize an investment and write it

 23 off over a number of years is that we're going to

 24 smooth out a lumpy investment just as we do for

 25 generating resources. We try to smooth that out by

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 1 a depreciation period of some considerable length,

 2 and that hopefully equates roughly to the life of

 3 the investment, the Utility. I don't want to follow

 4 that very far, but it seems to me as long as we

 5 assume that regulation is going to continue, then

 6 either system -- either expensing, or capitalizing

 7 and amortizing -- is appropriate, and the ratepayers

 8 should be indifferent. If we've used the correct

 9 capitalization rate, it should make no difference to

 10 the ratepayers either way.

 11 Now, the question is in an environment

 12 where restructuring may be looming, is there a

 13 better way. I'd have to say clearly expensing these

 14 items makes the most sense, and that's why I say if

 15 Idaho Power filed on a going-forward basis and said,

 16 We propose henceforth to expense all these DSM

 17 expenditures; I think that's within the spirit and

 18 letter of the rate agreement which basically allowed

 19 Idaho Power to propose and the Commission to grant

 20 differences in the method of recovering expenses. I

 21 think that's entirely appropriate and probably

 22 should be done regardless of how this case turns

 23 out. But it's a different thing when we have past

 24 expenditures that have been capitalized, that have

 25 earned for the Utility, it seems to me that's quite

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 1 different.

 2 COMMISSIONER SMITH: And just my other

 3 question was -- and you recall the NEA Application

 4 Idaho Power had maybe a year ago. What was FMC's

 5 position there: Did you support their proposed

 6 current expensing of that fee for participation?

 7 MR. WARD: No, we did not Madam Chair,

 8 but the reason why we opposed that expenditure was

 9 not on the same grounds that we're discussing here

 10 today. Well, I shouldn't say that. I'm sure we did

 11 raise the issue of additional expenditures in the

 12 face of possible restructuring, which is a somewhat

 13 analogous issue. But our real objection there was

 14 that that, to put it bluntly, was money in search of

 15 a purpose, and that was a -- an expenditure that was

 16 the level of which was set and the manner of

 17 administering was determined outside the state of

 18 Idaho, the level was set before there was any

 19 understanding of whether there would be any merits

 20 in the actual objective of the organization. That

 21 really was our prime objection is that the -- there

 22 was no assurance that the money would be well-spent.

 23 COMMISSIONER SMITH: So if you had

 24 been confident that the program expenditures would

 25 have resulted in some cost-effective energy

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 1 conservation measures being implemented, you

 2 wouldn't oppose a surcharge to have the current

 3 recovery of those expenses?

 4 MR. WARD: I think in fairness, we

 5 probably -- starting ab initio with a new program,

 6 we probably would have argued that if the rationale

 7 is to prevent additional acquisition of generating

 8 resources, which is generally the DSM rationale,

 9 then at the time that we determined whether a

 10 surcharge is appropriate, we should have a

 11 determination of the ultimate stranded cost issue.

 12 I think I can distinguish that from this case, where

 13 presumably we have DSM programs that in the past the

 14 Commission has determined are in the public interest

 15 and are a reasonable method of acquiring resources.

 16 Treating those programs going forward, I think it's

 17 different to say, Go ahead and expense them; whereas

 18 in the NEA case, it was a new program and I think

 19 probably in honesty we would argue let's determine

 20 the stranded costs now then before imposing a new

 21 cost to be expensed.

 22 COMMISSIONER SMITH: Okay. Thank you.

 23 And Mr. Fothergill.

 24 MR. FOTHERGILL: We have no comment.

 25 COMMISSIONER SMITH: I should have

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 1 noted a long time ago for the record that you were

 2 present.

 3 Mr. Purdy, are you commenting at all?

 4 MR. PURDY: As the Commission -- as

 5 the Commission is aware, Commission Staff did not

 6 choose to respond to any of the Motions to Dismiss,

 7 but in -- so therefore, I hesitate to now create a

 8 position for the first time. But in the course of

 9 listening to this morning's arguments, I did feel

 10 compelled to point out a couple of things.

 11 Clearly, the Commission can take

 12 official notice of any Orders it has issued in the

 13 past, and is the best party to determine what its

 14 intentions in issuing those Orders were.

 15 I would like to point out that to the

 16 extent there's been the suggestion or the inference

 17 today that somehow the 24-year amortization period

 18 for Idaho Power's DSM was litigated in the same case

 19 that the rate moratorium stipulation was executed,

 20 that's not the case, and I wanted to clear up any

 21 potential confusion there. The 24-year

 22 amortization, as I recall, was -- I think it was the

 23 Idaho Power 94-5 case. I don't recall the exact

 24 number, but it was certainly a separate proceeding

 25 that occurred prior to the 95-11 case, which was the

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 1 rate moratorium case.

 2 The Stipulation did not -- was not --

 3 the purpose of it was to not -- not to litigate the

 4 amortization period for Idaho Power. And in that

 5 vein, I really hesitate to say what Staff's

 6 intentions were when it executed that stipulation.

 7 Certainly Staff had an active part in drafting that

 8 document, including the exception language

 9 pertaining to DSM. But I do note that the

 10 stipulation was adopted by the Commission, it became

 11 part of the Commission's Final Order issued in that

 12 case, and I think that really the Commission needs

 13 to decide what its intentions were in adopting that

 14 stipulation and the exemption language.

 15 The other point I wish to make was

 16 that there has been a lot of characterization of the

 17 Water Power case, the DSM proceedings relating to

 18 Water Power this morning, and obviously the

 19 Commission can take official notice of its Decisions

 20 in relation to that as well. But I -- in listening

 21 to some of the parties characterizing that case, I

 22 just wish to caution the Commission, I'm not sure

 23 that the characterization has been entirely

 24 accurate, and perhaps it would be in the

 25 Commission's best interest prior to making a

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 1 Decision today to take a look at that and see

 2 exactly what the issues were and what the mechanics

 3 of that were as well.

 4 Aside from that, I don't really have

 5 anything else. Thank you.

 6 COMMISSIONER SMITH: Thank you.

 7 Mr. Ripley.

 8 MR. RIPLEY: Thank you, Commissioner.

 9 I've practiced law before this

 10 Commission since 1963. I have a lot of pride for

 11 what I've done over the years, have a lot of pride

 12 for this Commission, and frankly it's kind of a sad

 13 day when we're sitting here arguing about what a

 14 stipulation of the parties was intended to cover,

 15 because that goes to the heart of what we're talking

 16 about. If I go to the stipulation signed by the

 17 parties in this proceeding which is on page 4, which

 18 talks about the rate moratorium and it provides some

 19 exceptions, and it states -- these -- this isn't

 20 drafted by the Commission; this is drafted by the

 21 parties that are in this hearing room. And

 22 furthermore, the moratorium does not apply to the

 23 following three exceptions:

 24 A legislatively-imposed surcharge for

 25 hydro relicensing, which if you'll recall was hotly

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 1 debated and the Industrial Customers refused to sign

 2 the stipulation because of that language, but they

 3 then went on in that proceeding and said everything

 4 else, we totally agree with, which I assumed

 5 included an Application by Idaho Power or any other

 6 party requesting changes in the manner in which

 7 demand side management charges are recovered.

 8 Now that's -- that formed the basis of

 9 Idaho Power Company agreeing to a rate moratorium,

 10 agreeing to sharing earnings, agreeing to everything

 11 else that was contained in that proceeding, and that

 12 as we had a stipulation, which I assumed that the

 13 parties were going to live up to. And now I find in

 14 this hearing room that suddenly, Oh, no, that's not

 15 what we meant at all. And frankly I am saddened. I

 16 am. I won't go into it any further because I don't

 17 want to say any harsh words that I might have to

 18 live with later, but frankly I'm very upset, and if

 19 that's what the bar is coming to, then I guess

 20 that's what the bar is coming to. But let's go on

 21 from there.

 22 I had a stipulation -- I thought -- I

 23 had a stipulation which I thought permitted Idaho

 24 Power Company to apply to change the matter and

 25 method by which it was going to collect DSM. It was

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 1 no secret, discussed by everybody in the proceeding

 2 that Idaho Power Company was extremely upset with 24

 3 years to recover demand side management

 4 expenditures. It did never agree to 24 years. It

 5 accepted 24 years and it didn't appeal, so from that

 6 standpoint, yes, there is an Order out there that

 7 says 24 years. But did Idaho Power Company think it

 8 was a good Order? Absolutely not. It thought it

 9 was the worst Order there ever was and so said every

 10 chance it got. During the stipulations, in

 11 discussions with this Commission, I don't think

 12 there's any secret that we thought 24 years was

 13 atrocious.

 14 Now time moves on. We filed the NEA

 15 Application. And what do I hear in the NEA

 16 Application? Again, interpretations of the

 17 stipulation, which I would request that you go back

 18 and review that transcript because the argument

 19 there was, hey, wait a minute, sure we agreed to the

 20 existing charges, and sure we agreed as to how they

 21 would apply to the existing DSM programs of Idaho

 22 Power Company. I can recall Counsel for FMC saying,

 23 Well, now, wait a minute, there's a difference

 24 between DSM programs that this Commission has

 25 approved for the service territory of Idaho and a

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 1 regional application, and therefore, don't allow

 2 them to do it as far as NEA is concerned, but of

 3 course the stipulation applied to the DSM programs

 4 specifically authorized by this Commission.

 5 The Commission so found in its Order

 6 that we were not prevented from applying for a

 7 change for NEA. It didn't give us one, but it

 8 stated very clearly in that Order that we had the

 9 authority to come in and apply for a change. That's

 10 what we're doing today.

 11 Secondly, in that Order, the

 12 Commission said, We invite you to come in to review

 13 this. Okay, we're here; we've been invited. Now we

 14 find out, Oh, king's X, we didn't really mean that.

 15 The parties to that proceeding all

 16 thought, Oh my gosh, we've got a stipulation. This

 17 is a heinous thing Idaho Power is engaged in.

 18 And then they intimate, Well, you

 19 shouldn't do anything, because the Legislature might

 20 do something. I have gone to enough legislative

 21 meetings in the last year as you have, as most of

 22 the parties in this proceeding have, and the Idaho

 23 Legislature has said, Leave it to the Commission.

 24 We filed this Application in November

 25 of 1997 before the Idaho Legislature even convened.

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 1 Now to suddenly at this late date to say, Oh, let's

 2 defer it for a couple of years to see what the Idaho

 3 Legislature thinks; I submit to you you are

 4 abrogating your responsibilities. It is your

 5 responsibility until the Idaho Legislature says

 6 otherwise to carry out the mandates of the Idaho

 7 public utilities law, and you do a good job. Most

 8 of the time the parties are relatively happy. But

 9 that's the nature of the beast. You make tough

 10 decisions. But don't defer it. Don't say, Well,

 11 we're not going to do anything, because something

 12 might happen in the future. We've got two CPAs up

 13 there. Good heavens, of course depreciation rates

 14 change as you go out and make a study to determine

 15 the number of years that the equipment is determined

 16 to be used and useful. That's no sudden miraculous

 17 underhanded skulduggery, and that's no different

 18 than what we're doing here. We're saying 24 years

 19 for DSM programs is not reasonable, and it should be

 20 reviewed by you. I thought that frankly the

 21 Commission had agreed that it would review it.

 22 And now let's get to the final thing,

 23 and that's this stranded cost that keeps creeping

 24 into this. There's no stranded cost determination

 25 in this proceeding. These are costs that

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 1 Idaho Power Company incurred for programs

 2 specifically approved by this Commission. The

 3 accounting was specifically approved and we deferred

 4 them. We deferred them under Orders of this

 5 Commission. Now, the rate of recovery of those

 6 deferrals is always subject to a Commission review.

 7 And that's exactly what the trackers are for.

 8 That's exactly what the stipulation was intended to

 9 take care of.

 10 I have difficulty following the

 11 arguments. They cite some Utah cases; they cite an

 12 Idaho case and say, Well, that just doesn't apply.

 13 Why doesn't it apply? I didn't hear anything as to

 14 why it doesn't apply. What Idaho Power Company is

 15 attempting to recover here are some deferred costs,

 16 deferred expenses, that has been translated into a

 17 pseudo asset by the fact that you are a regulatory

 18 agency and you have said, I will let you recover

 19 those expenditures over a period of time. We have

 20 come back to you and said, Let us review that period

 21 of time. Does that subject us to a Motion to

 22 Dismiss? I find that incredible.

 23 I think our Brief has covered

 24 everything, and I think the stranded cost is nothing

 25 but a red herring. Whether we will ever be

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 1 deregulated or not, I don't know. I know that

 2 President Clinton came out with legislation that

 3 said, Well, it's going to be State choice. I know

 4 that the bulk of the Idaho Legislature didn't want

 5 to engage in a long discussion as to what to do with

 6 deregulation in the last session. I don't know what

 7 they're going to do next session, but you are

 8 charged with conducting business until it changes.

 9 Therefore, I submit to you, you have to decide how

 10 the Company should recover its demand side

 11 management expenditures.

 12 Clearly there have been some changed

 13 conditions on the horizon and the Commission can

 14 take those into account in its Decisions, not that

 15 we're going to be deregulated, not that you should

 16 retain the status quo until you get some bulletin

 17 from the Legislature, but you should take into

 18 account the ever-evolving lay of the land, if you

 19 will, and that's why we have administrative

 20 agencies. If the Legislature could carry out your

 21 duties, then you wouldn't -- you wouldn't be

 22 necessary. It's you that have to carry out the

 23 day-to-day mandates of the Idaho Legislature, and

 24 one of those mandates is Idaho Power Company has

 25 costs on its books which it believes it expended

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 1 under Orders of this Commission and it's entitled to

 2 recover those costs, over what period of time and

 3 who should pay for it.

 4 Now, obviously it's of interest to me

 5 that the ones that scream the loudest are the

 6 Industrial Customers, who may -- who may -- be the

 7 first ones that leave the system to go somewhere

 8 else, leaving any costs that they might avoid for

 9 the remaining ratepayers. That's an issue. That's

 10 been unsaid to date, but that obviously is one of

 11 the basic issues which you have to decide in an

 12 evidentiary proceeding, not in a Motion to Dismiss.

 13 Thank you.

 14 COMMISSIONER SMITH: Mr. Richardson.

 15 I guess I should ask, are there

 16 questions from the Commission?

 17 COMMISSIONER NELSON: I do have one

 18 question, Madam Chair.

 19 COMMISSIONER SMITH: Commissioner

 20 Nelson.

 21 COMMISSIONER NELSON: This is a

 22 question for Mr. Ward, and Mr. Ripley started to

 23 touch on this subject but I wonder, Mr. Ward, if you

 24 would comment on the differences you see in this

 25 Application from situations you might be familiar

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 1 with in the telephone industry where we have had

 2 Applications recently for changes in depreciation

 3 rates because of the changing landscape.

 4 MR. WARD: That's a good question,

 5 Commissioner Nelson.

 6 The fact is -- let me answer it this

 7 way:

 8 Mr. Ripley just said something -- I

 9 hope I quoted him correctly -- that there's no

 10 stranded cost issue in this proceeding. I have to

 11 reply to that by saying if that's the case, why are

 12 we here?

 13 A utility can get a very lengthy

 14 recovery of its assets as long as it's fully

 15 regulated. As long as it has a monopoly protection,

 16 it knows that at the back end of that 24 years, the

 17 money is still there, the recovery is still there.

 18 And as I said earlier, if we've set the

 19 capitalization rate correctly and the discount

 20 rate -- call it the flip side of either question --

 21 if we've set that correctly, the utilities are

 22 indifferent, the ratepayers are indifferent,

 23 everybody is held harmless.

 24 Does the same thing exist if we are

 25 going to have competition? And the answer is no,

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 1 because the Utility is not assured of the back end

 2 recovery of this long amortization period.

 3 Now I will give Mr. Ripley that, that

 4 that is a motivation for Idaho Power's filing here,

 5 and I think his filing makes that case. And that

 6 may be a case to be made. I tried in stating what

 7 the parties will ultimately argue on stranded cost

 8 to state that relatively fairly, in that that's

 9 going to be the Utility's case is, A, we need more

 10 rapid recovery of these resources; and B, these were

 11 not discretionary on our part, and so therefore,

 12 they can be treated separately. But the opposite

 13 argument is they should be all bundled together.

 14 Now in the case of the telephone

 15 company, the reason why that ties to the telephone

 16 companies is the telephone companies made similar

 17 arguments regarding their depreciation rates, and in

 18 effect, you can argue that that in a sense became a

 19 sort of a stranded cost recovery, if you will, in

 20 the telephone industry. But there was no argument

 21 there that there were -- that there were negative

 22 stranded costs or that we weren't fairly looking at

 23 all of the assets. We were looking at all of the

 24 assets of the companies, so I think that's a

 25 different situation. It's a different situation if

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 1 Idaho Power chooses to after its rate moratorium

 2 ends come in and says, We want to accelerate our

 3 depreciation rates if we're still regulated because

 4 they are too long with a possible restructuring

 5 covenant; that's a different argument. The problem

 6 I have here is the piecemeal nature of this, whereas

 7 the telephone companies, it was not piecemeal. The

 8 argument was we needed accelerated depreciation

 9 during the remainder of our regulatory regime

 10 because the depreciation rate is too long for a

 11 competitive world, and they were not under a rate

 12 moratorium either.

 13 COMMISSIONER NELSON: Just a short

 14 follow-up:

 15 Their argument rested I think largely

 16 on the change in the economic life. Don't you --

 17 don't you -- do you think that same argument could

 18 be made by Idaho Power that the economic life of

 19 DSM -- I think they would argue that it was shorter

 20 than that when we set it and maybe has even changed

 21 some today.

 22 MR. WARD: Well then I think you have

 23 the question of what does the stipulation mean.

 24 I don't for my part find, as

 25 Mr. Ripley suggested, Idaho Power's Application

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 1 heinous and somehow unfair, but I think it is fair

 2 for the opponents to raise the issue of what did the

 3 stipulation mean when it said Changes in the manner

 4 of DSM recovery. If it is simply a question of

 5 Idaho Power now saying, Well, let us assume that,

 6 first of all, the stipulation means essentially that

 7 the manner of recovery going forward could be

 8 changed; then if you assume that's the proper

 9 interpretation, then Idaho Power has no case for an

 10 accelerated amortization, notwithstanding that they

 11 may have an argument in equity. They would be bound

 12 by their stipulation.

 13 If you don't determine that's the

 14 case, then you have to look at their equitable

 15 argument about whether the period is too long. But

 16 is the period too long? For what reason is the

 17 period too long? I think Idaho Power has to reply,

 18 It's too long because we may be restructuring.

 19 And then I get to my essential point

 20 that if you decide this matter in Idaho Power's

 21 favor, you've decided the essential argument on

 22 stranded cost with respect to DSM. The opponents

 23 will never have their day in court, so to speak.

 24 But as long as they're regulated, if you continue

 25 the amortization period you have, Idaho Power is not

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 1 yet out anything. They may ultimately be from their

 2 point of view, but they're not yet from a regulatory

 3 point of view. So that's my -- that would be how I

 4 distinguish it.

 5 COMMISSIONER NELSON: Thank you,

 6 Mr. Ward.

 7 Thank you.

 8 COMMISSIONER SMITH: Let's take about

 9 a seven-minute break, come back at ten till.

 10 (Recess.)

 11 COMMISSIONER SMITH: Okay, let's go

 12 back on the record.

 13 Mr. Richardson, would you care to

 14 respond or close debate on the Motion?

 15 MR. RICHARDSON: Thank you, Madam

 16 Chairman. I would be happy to do so.

 17 Madam Chairman, Idaho Power's

 18 frustration is understandable. They're operating in

 19 a world that's changing and they're having to learn

 20 new ways to do business while they're continuing to

 21 do business the old way. They're sort of in a

 22 damned if you do, damned if you don't situation, and

 23 hence their frustration. But it is misplaced

 24 frustration when it's directed at their customers.

 25 It is patently wrong for Idaho Power to suggest that

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 1 the Industrial Customers are going to be first to

 2 leave the system and leave costs to the remaining

 3 ratepayers. It's the last thing the Industrial

 4 Customers intend or want to accomplish.

 5 Yes, we do want to accomplish access

 6 to the market and we don't want access to the market

 7 to prejudice or jeopardize any other ratepayer or

 8 place costs thereby on any other ratepayer. How do

 9 you accomplish that? You accomplish that by looking

 10 at in a comprehensive fashion in a rational way how

 11 you move this Utility to competition, if indeed we

 12 even want to move this Utility to competition; and

 13 the only way to do that is to decide -- is to

 14 examine stranded costs. That's the heart of the

 15 issue.

 16 And Conley Ward was absolutely right

 17 when he suggested to you that if you choose not to

 18 go to competition, there is no reason to change the

 19 depreciation method or the recovery method for the

 20 DSM deferrals. Idaho Power will be made whole and

 21 we'll all continue operating without any adverse

 22 effect. If competition comes to fruition, you will

 23 have already in essence decided how to respond to

 24 the stranded cost issues at least as it relates to

 25 the DSM; and you will have taken the issue away

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 1 indeed from the parties, from the Legislature, and

 2 from yourselves, because this issue will be off the

 3 table. And it is an integral part of the entire

 4 stranded cost question.

 5 And like I said earlier, there's three

 6 possible ways to respond to stranded costs:

 7 Ratepayers pay them all, the shareholders and

 8 ratepayers split the costs, or maybe there aren't

 9 any positive stranded costs and thereby the market

 10 has taken care of those. But you will be

 11 prejudicing not only the parties but the Company and

 12 anyone else that we want to have a say in how these

 13 issues are finally resolved by deciding this

 14 question today.

 15 And also as Mr. Ward has pointed out

 16 and I will second is that by deferring this, no one

 17 is out anything. The Company is still whole, the

 18 parties are still whole. But what you've done by

 19 deferring this is preserve the issue to be decided

 20 in an integrated rational fashion, rather than in a

 21 piecemeal fashion.

 22 Mr. Ripley pointed out several times

 23 in his oral argument that the costs are on the books

 24 and they're entitled to recovery, that you have to

 25 decide how you're going to recover the DSM

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 1 expenditures and that these are issues uniquely in

 2 your province, and I would suggest in response to

 3 that that you've already decided those questions.

 4 You've already made the decision as to how DSM

 5 expenditures are to be recovered by this Utility.

 6 These costs are on the books and the Company is

 7 recovering them. So those issues are already

 8 decided by you.

 9 Finally, I guess I'd just point out or

 10 underscore that this Application is a big step down

 11 the road to deregulation, and it's a big step down

 12 that road with blinders on. If you don't know what

 13 that road is going to look like, you don't know what

 14 this utility's entire cost mix is going to be when

 15 it's compared to the market, and for you to be

 16 taking a step blind, a big step, you may be on the

 17 edge of a cliff or you may be going the right

 18 direction. No one can tell you that right now.

 19 In terms of the moratorium, the

 20 Industrial Customers did endorse the moratorium as

 21 Mr. Ripley pointed out, but there's a big difference

 22 between applying for a change in the way DSM costs

 23 are recovered and automatic approval of the

 24 Application. And I think that this Commission it is

 25 incumbent upon this Commission to look beyond this

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 1 Application and see where it's really taking you,

 2 and I think it's taking you in a place where you may

 3 or may not be, but you just don't know until that

 4 day.

 5 That's all I have, Madam Chair.

 6 COMMISSIONER SMITH: Thank you.

 7 Mr. Richey.

 8 MR. RICHEY: Thank you. Just a couple

 9 of items:

 10 One issue, I thought I addressed it,

 11 but I'll go back over it just briefly on the single

 12 issue raised, the question that we've raised, again,

 13 that the case that's cited for the authority is the

 14 J. R. Simplot case; and in our view that is purely a

 15 tracker case. It's nondeferred costs as we have

 16 here, it is -- it was an unknown cost, unexpected

 17 cost, costs completely outside Intermountain's

 18 control, and that's not what we have here. It's a

 19 cost that's been planned for, been agreed to in a

 20 stipulated settlement as to how it's going to be

 21 recovered, and it's not outside of their control.

 22 They know they're going to recover it; it's been

 23 planned for. So that's how we distinguished that,

 24 and I look to that case and I look to the Rules of

 25 Procedure to go with that. I don't see anywhere in

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 1 the Rules of Procedure of that case that DSM costs

 2 have already been -- have an amortization schedule

 3 set, are following the exception for an abbreviated

 4 rate case. You know, I don't see that in this

 5 instance.

 6 But even putting that aside and going

 7 to the issue of the stipulation, if you will recall

 8 in the NEA funding case, Micron didn't intervene or

 9 oppose that on the grounds that it violated the rate

 10 moratorium. We opposed that based upon the fact

 11 that we felt those costs were not reasonable and

 12 prudent, and that there needed to be certain things

 13 done before -- administratively before those types

 14 of costs should be passed through; and even though

 15 the Commission didn't follow our issue word for

 16 word, in essence we got what we wanted in that case,

 17 a postponement to see if they're reasonable or

 18 prudent.

 19 And with respect to these costs, if

 20 the Commission determines that it is not a single

 21 rate case or it's not a problem, that we do ask that

 22 under the courts or the NEA funding case and in the

 23 stipulation that you look at all of these costs.

 24 Again, in that stipulation, we don't disagree that

 25 it was agreed to by Micron, but we do point to the

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 1 fact that in that case, the Commission made it clear

 2 that if Idaho Power is going to use one of the

 3 exceptions to raise rates, it's going to be

 4 rigorously scrutinized; and that's all we're asking

 5 for here is a rigorous scrutiny of these costs to be

 6 looked at. Are they reasonable? Has Idaho Power

 7 been put to the test and meet their burden to show

 8 that these need to be accelerated? And we hold this

 9 time that they don't from what we've seen in the

 10 filing.

 11 Again on the aspect of those post-1993

 12 DSM costs, all we ask is you follow consistently

 13 with your Order in the NEA funding case, and that is

 14 that they need to be prudent and reasonable costs,

 15 and they need to show that, and we just haven't seen

 16 that in their filing. So I don't know that our

 17 position is inconsistent with what we did in NEA.

 18 We're ready to take a little different twist to

 19 distinguish that. We think this is a little

 20 different case than a new cost that they are

 21 potentially going to incur.

 22 The last issue, and again, it's on the

 23 issue of should we wait for the Legislature or not.

 24 Again, there's no question that the Commission has

 25 the ability, the jurisdiction, to decide this; and

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 1 in all honesty, it's probably going to be the

 2 Legislature will probably kick this back to the

 3 Commission to rule on because you have the expertise

 4 and, you know, the staffing to do this and do the

 5 best job of it; but I don't know that this is the

 6 time to do that.

 7 It seems to us that in all of these

 8 proceedings, the underlying factor in any proceeding

 9 is fairness: Fairness to Idaho Power, fairness to

 10 the ratepayers, fairness to everyone; and is it fair

 11 to decide this now or should we hold up and see

 12 what's actually going to be fair in the end. It's

 13 not a matter, in my view, of what Idaho Power's

 14 motivation is. It may be that they're motivated to

 15 get these costs off the books. It may be that

 16 they're strictly motivated and feel this is the

 17 right thing to do for the Company and that these

 18 costs need to be accelerated. But I think in the

 19 end result, what's going to be fair to the

 20 ratepayers, and I think the fair thing to do is the

 21 equitable thing, is to step back and look at all

 22 these it toto to the effect is what's going to be

 23 controlling in the end.

 24 And again, the last thing I'll leave

 25 you with is that as been said by Mr. Ward and

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 1 Mr. Richardson, if these costs truly are not

 2 stranded, there is no increased risk that we see to

 3 Idaho Power at this time for time recovery, so --

 4 COMMISSIONER SMITH: Mr. Jauregui, do

 5 you feel the need to say anything further?

 6 MR. JAUREGUI: Madam Chairman, the

 7 concern we have is kind of like, "Where's the beef?"

 8 Where's their direct case? We shouldn't have to

 9 guess as to what they're going to put on rebuttal to

 10 try and present a direct case and the Intervenors'

 11 direct case, and so we believe the Application is

 12 inadequate as to what's wrong with the current

 13 status and the testimony as to not only why it

 14 should be changed but what it should be changed to,

 15 the rationale that the Commission needs to enter any

 16 Order.

 17 That's all I have. Thank you very

 18 much.

 19 COMMISSIONER SMITH: Do we have any

 20 questions, Commissioners?

 21 No. Okay, then we thank you for your

 22 arguments on the Motions to Dismiss.

 23 I think we also now will go to -- we

 24 have a Motion on the discovery. Idaho Power has a

 25 Motion for an Order compelling the Industrial

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 1 Customers to respond to Idaho Power's First

 2 Production Request. Is that some Motion that needs

 3 to be heard today, Mr. Ripley?

 4 MR. RIPLEY: Well, yeah.

 5 COMMISSIONER SMITH: It's still in

 6 dispute?

 7 MR. RIPLEY: Oh, yes. Oh, yes.

 8 COMMISSIONER SMITH: Okay, let's go to

 9 that one.

 10 MR. RIPLEY: If I can have just a

 11 moment to gather my papers. I thought we were going

 12 to argue the earnings sharing, but --

 13 I'm ready.

 14 COMMISSIONER SMITH: Okay. I'm ready

 15 too.

 16 MR. RIPLEY: Idaho Power Company filed

 17 four Requests for Admission, and the Industrial

 18 Customers answered in the first one and refused to

 19 answer the remaining questions, apparently believing

 20 that Idaho Power Company was somehow harassing them.

 21 The purpose of the discovery requests

 22 are very simple, and that is if you will recall, it

 23 was the Industrial Customers that put up a very

 24 strenuous objection that Idaho Power Company oblige

 25 to discontinue product. And also throughout these

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 1 proceedings we have had the argument that those that

 2 benefit should be those that pay. Obviously, part

 3 of the information that we desire to seek is how

 4 have the Industrial Customers of Idaho Power, the

 5 main parties that the Industrial Customers

 6 represent, benefitted directly from the programs.

 7 Now we cannot determine from our

 8 records who the subsidiaries are and who the

 9 affiliates are. I think probably a good example of

 10 that was just a couple of weeks ago when we had the

 11 Idaho Power/FMC contract and Monsanto came forward

 12 and said, Oh, wait a minute, we have a plant or

 13 we've got a factory or we've got a warehouse out

 14 here in Boise; which Idaho Power Company knew

 15 nothing about. And so we look to the customers to

 16 tell us how have they participated in and received

 17 benefits under the programs. They're the only ones

 18 that can tell us that. We cannot go through our

 19 records and make that determination, because we

 20 don't know for certain who the affiliates are, who

 21 the subsidiaries are, who their assumed business

 22 names are. That's for the Industrial Customers to

 23 tell us.

 24 Now, I was somewhat amused, I guess

 25 you would say, when I looked at the Answer of the

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 1 Industrial Customers to the Production Request. We

 2 asked for service locations. Now, we meant that to

 3 be Where are we serving you in the various locations

 4 throughout Idaho Power Company's service territory,

 5 and what programs have you participated in?

 6 Now, they start out talking about

 7 "service locations," but on the third page is a

 8 demonstration I believe of the Industrial Customers'

 9 bad faith. They switch to "service entrances." Now

 10 that's a word of art. Now either Counsel for the

 11 Industrial Customers should have known what service

 12 entrance means, or whoever was assisting him in

 13 responding should have known what service entrances

 14 are. But that's a word of art. That is exactly

 15 where is the point of delivery at which we serve

 16 you. And indeed had we asked for service entrances,

 17 then some of their arguments might have had some

 18 validity, but we didn't ask that. What we asked was

 19 very simple: Where are your service locations in

 20 the state of Idaho, what programs have you

 21 participated under, and how much money have you

 22 received from Idaho Power Company's demand side

 23 management programs? Which goes to the issue quite

 24 frankly of how should they be required to pay for

 25 some of these demand side management programs if

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 1 it's the Commission's determination to change the

 2 method.

 3 So I think it's a very valid

 4 information request. The only one that can provide

 5 an answer are the Industrial Customers, and they

 6 refuse to provide it. So I think they should be

 7 compelled to provide that answer. I don't think

 8 it's that burdensome. I think they are the only

 9 ones that know who their entities are that have

 10 received payments under the various demand side

 11 management programs. I think we're entitled to know

 12 that.

 13 Thank you.

 14 COMMISSIONER SMITH: Mr. Richardson.

 15 MR. RICHARDSON: Thank you, Madam

 16 Chairman.

 17 Idaho Power's Production Request never

 18 asked for who the subsidiaries or the affiliates or

 19 assumed business name entities related to any of the

 20 ICIP members are. Idaho Power's Production Request

 21 asked for specific service location. I don't see

 22 where that's defined anywhere, but it's very

 23 reasonable to interpret that to mean, Where are your

 24 service entrances, specific service locations.

 25 And our objection was, you know who

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 1 the Industrial Customers are. They're listed in a

 2 response to your question one. You want to know

 3 which ones of those have taken advantage of your DSM

 4 programs, look at your contracts and see what names

 5 appear on your contracts. Affiliates, assumed

 6 business names, and subsidiaries are not members,

 7 necessarily, of the Industrial Customers of

 8 Idaho Power. For example, J. R. Simplot Company has

 9 farms, has office buildings, has pumps, none of whom

 10 are Schedule 19 customers. If I went to J. R.

 11 Simplot Company and said, Where are all your

 12 specific service locations; that's a humongous task

 13 and it's totally irrelevant to what the Power

 14 Company says it really wants to know, which is did

 15 J. R. Simplot ever take advantage of the PIE

 16 program. All Idaho Power has to do is look on its

 17 contract list and look for the J. R. Simplot name.

 18 If J. R. Simplot has a farm in Eastern Idaho that

 19 took advantage of the irrigation program, that's not

 20 relevant to this issue.

 21 To suggest that the Industrial

 22 Customers' Response was in bad faith I think is

 23 highly inaccurate. Industrial Customers provided

 24 the Company with a list of who the members are,

 25 provided the Company with their addresses. The

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 1 Company is the one who keeps the records who

 2 participates in the DSM program, not the Industrial

 3 Customers of Idaho Power. So I would stand by our

 4 objection, Madam Chairman, and suggest that the

 5 Motion to Compel be denied.

 6 COMMISSIONER SMITH: Mr. Ripley.

 7 MR. RIPLEY: Just a short response:

 8 If you'll look at the Requests, it's

 9 set out customer name, incentive payments made to

 10 customer, year of payment, name of program.

 11 Obviously, we are interested in not only PIE, but

 12 DEAP, commercial lighting, ag choices, any DSM

 13 program that Idaho Power Company -- or, that the

 14 Industrial Customers' particular customers

 15 participated in. It states For each Industrial

 16 Customer identified In responses for Request No. 1

 17 and in Request No. 2, please provide the amount of

 18 any incentive payment that the Industrial Customer

 19 has received, the year, and the demand side

 20 management program under which the payment was

 21 received, i.e. the partners in industrial efficiency

 22 program, the commercial lighting program, the design

 23 excellence award program, et cetera. We tried to

 24 make it very specific. What we were looking for is

 25 for each one of these customers, how much have they

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 1 obtained from Idaho Power Company under the various

 2 grants that the Company made for these programs. We

 3 do not have that information, we can't determine

 4 from our records.

 5 J. R. Simplot is probably the most

 6 obvious. They operate under a myriad of assumed

 7 business names. We have no idea how much J. R.

 8 Simplot Company has obtained from Idaho Power

 9 Company under these programs, and we think we're

 10 entitled to that.

 11 We think the Commission would want to

 12 know that when the Industrial Customers are now

 13 claiming that this shouldn't go forward, we

 14 shouldn't change the method of collection. I think

 15 this is fairly pertinent.

 16 Now what you ultimately do with it, I

 17 agree, it's up to you, but is it information which

 18 is relevant to this record? I submit to you that it

 19 is and I think we're entitled to it, and I think the

 20 Industrial Customers are saying, Well, go look it up

 21 in your own records. If that's the ruling, then I

 22 can think of about 60 or 75 percent of the

 23 information requests that I get where I'll say, Go

 24 look it up in your own records. I don't think

 25 that's a valid objection.

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 1 Thank you.

 2 COMMISSIONER SMITH: Do we have

 3 questions from the Commission? Commissioner Nelson.

 4 COMMISSIONER NELSON: Question for

 5 Mr. Richardson:

 6 Would it be the position of the

 7 Industrial Customers that -- or your position,

 8 perhaps -- that your clients are only those

 9 Schedule 19 customers of Idaho Power who have -- who

 10 have joined your organization, and that any

 11 subsidiaries -- take the J. R. Simplot for example,

 12 who owns a farm who takes under a different

 13 schedule -- is not part of your client base?

 14 MR. RICHARDSON: Commissioner Nelson,

 15 that's exactly right. I do not represent the

 16 interests of nonSchedule 19 entities who may be

 17 related to or affiliated with the list of who are

 18 members of the Industrial Customers of Idaho Power.

 19 In fact, some of these companies have interests that

 20 are self -- that are at odds with each other, and if

 21 you go to a general rate case and you're advocating

 22 for a costs of service proceeding, you're advocating

 23 for the best rates available for the Schedule 19

 24 customers, some of the Industrial Customer members

 25 have office buildings or have irrigation pumps or

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 1 small commercial load; and all of them live in homes

 2 who probably buy electricity from Idaho Power.

 3 There's got to be a line beyond which this discovery

 4 does not go.

 5 The Industrial Customers of

 6 Idaho Power do not represent the interests of

 7 nonSchedule 19 affiliates, DBAs, subsidiaries of

 8 Schedule 19 of the ICIP members. And if that's the

 9 case, then clearly Idaho Power has at its finger

 10 tips who the members of the ICIP are and has at its

 11 finger tips the list of who's taken advantage of any

 12 DSM program.

 13 COMMISSIONER NELSON: As a follow-up,

 14 do you have an idea of how many billing locations

 15 there are of your Schedule 19 customers?

 16 MR. RICHARDSON: How many building

 17 locations?

 18 COMMISSIONER NELSON: Billing.

 19 MR. RICHARDSON: Billing. No, I

 20 don't, but I understand there's a lot. I don't know

 21 how many there are, I have no idea.

 22 COMMISSIONER NELSON: Okay. I would

 23 assume it's quite a few more than the number of

 24 clients that you represent.

 25 MR. RICHARDSON: I would assume that's

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 1 correct.

 2 COMMISSIONER NELSON: Thank you,

 3 Mr. Richardson.

 4 I think I have more questions; I just

 5 don't know how to ask them.

 6 MR. RICHARDSON: I probably wouldn't

 7 know how to answer them.

 8 COMMISSIONER SMITH: I guess I had a

 9 question, Mr. Ripley:

 10 Idaho Power Request No. 2 states

 11 Please provide the specific service locations of the

 12 customers in Idaho Power Company's service territory

 13 in the state of Idaho that the Intervenor

 14 represents.

 15 When you said "specific service

 16 locations," were you intending street addresses; or

 17 were you intending, for example, Council, Idaho, as

 18 a city and state, a street? I mean, how specific is

 19 a specific service location?

 20 MR. RIPLEY: What we were looking for

 21 is any information where we could identify where

 22 that particular customer was taking service from

 23 Idaho Power Company independent from other

 24 locations. That's all we were looking for. If it's

 25 a street address, that's fine; if it's Council,

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 1 Idaho, that's fine.

 2 COMMISSIONER SMITH: Southwest Ada

 3 County?

 4 MR. RIPLEY: You get into a problem of

 5 simply attempting to identify where that particular

 6 location is so that we could cross-check in our

 7 books, quite frankly, to see if, hey, have they

 8 participated in demand side management programs.

 9 That's what we're looking for. I think that's

 10 relevant information that we're entitled to is how

 11 much have they gained from Idaho Power Company from

 12 their demand side management program, so that's what

 13 we were looking for. We were not asking for service

 14 entrances; I think that's clear. We were trying to

 15 find out where the location was. If it's best by a

 16 street address, fine. If it's best by a geographic

 17 location such as Council, Idaho, which is fairly

 18 small, we could find that. We weren't trying to be

 19 overly burdensome, other than the fact that we

 20 wanted this information.

 21 COMMISSIONER SMITH: Mr. Richardson,

 22 Idaho Power Request No. 3 states For each Industrial

 23 Customer identified in Responses to Request No. 1

 24 and 2; and what I understand is you've given a list

 25 of customers in response to question one?

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 1 MR. RICHARDSON: I have, Madam

 2 Chairman, along with their business address for each

 3 Industrial Customer.

 4 COMMISSIONER SMITH: So then Please

 5 provide the amount of any incentive payment that the

 6 Industrial Customer has received, the year it was

 7 received, and the program that it was received.

 8 Now what is your argument why the list

 9 of people you provided in Request No. 1 can't give

 10 this information?

 11 MR. RICHARDSON: I didn't say we

 12 couldn't give this information. I said that

 13 Idaho Power already has this information and that

 14 they're the keeper of the record who takes under

 15 their DSM program.

 16 I can give them a list of the

 17 Industrial Customers. I can ask each Industrial

 18 Customer, Have you taken part in any DSM program?

 19 And I can go through and do that for them, where

 20 Idaho Power can look at its list and know the

 21 answer. That would be duplicating what's already in

 22 its records.

 23 COMMISSIONER SMITH: Mr. Ripley, is

 24 that the case?

 25 MR. RIPLEY: No, because then

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 1 obviously we get into a question of fact. I say

 2 there's ten. He says, No, no, there's only nine;

 3 when we get to the proceeding. So that's the

 4 purpose of discovery, is to obtain the information

 5 from the opposing side to remove potential

 6 controversy. That's why we want it.

 7 And we want to demonstrate that after

 8 the Company had applied to shut down some of these

 9 programs, some of the Industrial Customers then

 10 applied for participation in those programs. I

 11 think that goes to the element that we're trying to

 12 establish here.

 13 So we need this information. We need

 14 it from them. I don't want to get to the hearing

 15 and have them say, Oh, we disagree totally; you've

 16 got 12 there and it should only be six.

 17 COMMISSIONER SMITH: Anything else?

 18 Okay, I think we'll take this Motion

 19 under advisement and issue our Order as promptly as

 20 possible.

 21 The final Motion that we had to talk

 22 about today was Idaho Power's Motion on utilization

 23 of the net 1997 revenue sharing amount as a

 24 reduction to the demand side management balance.

 25 Mr. Ripley.

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 1 MR. RIPLEY: Yes, very briefly. As

 2 the Commission will recall, last year when Idaho

 3 Power Company filed its earning settlement amount

 4 that would be attributable to the customers, it

 5 deducted the interest that was attributable to the

 6 1997 DSM program.

 7 This year what we are saying is, Well,

 8 okay, last year we deducted the interest and that

 9 reduces the amount. It makes sense for us to take

 10 the amount of the earnings settlement that would be

 11 paid over to the ratepayers for the same PCA year,

 12 if you will, and take that amount of money and

 13 deduct it from the outstanding DSM balance.

 14 Now that accomplishes right off the

 15 bat one thing, and that is that we are accruing

 16 interest on the DSM balances as the Commission has

 17 authorized. If you reduce that amount down, then

 18 that reduces the amount of the interest. And we

 19 thought that was a good idea.

 20 Staff came up in its Response and said

 21 Well, could you not use the earnings moneys once the

 22 Commission determined what the amount of the

 23 additional surcharge should be as a prepayment, a

 24 balance to be used over a period of time.

 25 We think that's a good suggestion that

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 1 should be explored. We're not -- by this Motion, we

 2 are not attempting to say how the earnings

 3 settlement money should be made for purposes of the

 4 DSM case, but only that in that proceeding, the

 5 Commission would determine how that earnings

 6 settlement money should be made. If you don't rule

 7 on this Motion, we're obligated on April 15th at the

 8 time we file our PCA to also file our earnings

 9 settlement number; and if you have not ruled on this

 10 Motion, then we will propose to flow that through to

 11 the customers just as we did last year. So we have

 12 to have an answer simply to know how you desire to

 13 use that earnings settlement money. That was the

 14 purpose of the Motion, and that's the sole purpose,

 15 is do you want to take the earnings settlement money

 16 and use that in some way in the DSM case, or do you

 17 want the earnings settlement money to be flowed

 18 through as it was last year after you deducted the

 19 interest. That's the purpose of the Motion.

 20 COMMISSIONER SMITH: Okay. I believe

 21 the Staff had filed a Response to this Motion.

 22 Mr. Purdy.

 23 MR. PURDY: Yeah, thank you, Madam

 24 Chairman, we did, not for the purpose of opposing

 25 the Motion, but in fact Staff supports it, but

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 1 rather as Mr. Ripley points out to propose one

 2 manner of putting together the mechanics of this

 3 that might defer for a time the effect of this rate

 4 increase caused by the acceleration of the

 5 amortization of DSM. And I think Staff -- I don't

 6 know that we've actually looked at the numbers yet.

 7 I don't think we have the data to allow us to do

 8 that, but I think we might be able to defer any

 9 increase until next spring when we go through the

 10 normal PCA process. So -- and it seems that Idaho

 11 Power doesn't have any objection to Staff's proposal

 12 in that regard.

 13 Staff points out that the Commission

 14 could grant the Motion for the time being and

 15 actually put together the mechanics of it when it

 16 issues its Final Order in this proceeding.

 17 Thank you.

 18 COMMISSIONER SMITH: Thank you.

 19 Does anyone else wish to weigh in on

 20 this Motion? Mr. Richardson.

 21 MR. RICHARDSON: Madam Chairman,

 22 Staff's reply presupposes that you have granted or

 23 approved Idaho Power's Application for acceleration

 24 of the DSM recovery, as does Idaho Power's Motion.

 25 And I think it's probably premature to even consider

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 1 this until you've decided on how you're going to

 2 respond to the Motions to Dismiss and to the case in

 3 chief of the DSM case.

 4 And just as an aside, I think it's

 5 probably pretty much a given that all customers

 6 would prefer to have their dollars in hand rather

 7 than not.

 8 COMMISSIONER SMITH: Okay. Anyone

 9 else? Mr. Ward.

 10 MR. WARD: Very briefly, Madam Chair.

 11 I said that my remarks previously would apply here

 12 and I think they do, because it raises the same

 13 bundle of issues about stranded costs and the

 14 determination, but I did want to add one additional

 15 thought, and that is it may -- this may be a

 16 distinction without a difference in terms of whether

 17 the Company recovers money or not; but speaking for

 18 my client at least, we would have a lot less

 19 objection, probably want a more wide-ranging

 20 determination on DSM programs in their entirety, but

 21 nevertheless we would have a lot less objection if

 22 these funds were used to expense out the ongoing

 23 cost rather than to recover interest for an item

 24 that's previously been ordered to be capitalized.

 25 And if that were the case, it would look a lot more

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 1 like the telephone company cases where there was no

 2 request for stranded cost recovery, just simply the

 3 argument that we now realize that we're in a new

 4 environment and we can't live with the kind of

 5 long-term depreciation lives that we have before.

 6 So I offer that as a thought. I don't

 7 know whether it's attractive to the Company or the

 8 other parties or the Commission, but I think then

 9 you would clearly not run foul of the stipulation

 10 either. That clearly would be a change in the

 11 manner of recovery DSM.

 12 So that's my only additional thought.

 13 COMMISSIONER SMITH: Anybody else?

 14 Any questions?

 15 No.

 16 Well we appreciate the time and

 17 assistance of the parties in their arguments this

 18 morning. The Commission is not in a position at

 19 this time to rule on any of these, but we will do

 20 that as quickly as possible hereafter and notify you

 21 as soon as we have done that.

 22 So thank you, and we are adjourned.

 23 (The hearing concluded at

 24 11:27 A.M.)

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 1 AUTHENTICATION

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 4 This is to certify that the foregoing

 5 proceedings held in the matter of the Application of

 6 Idaho Power Company for authority to increase its

 7 rates and charges to recover demand side

 8 management/conservation expenditures, Case No.

 9 IPC-E-97-12, commencing on Tuesday, April 7, 1998,

 10 at the Commission Hearing Room, 472 West Washington,

 11 Boise, Idaho, is a true and correct transcript of

 12 said proceedings and the original thereof for the

 13 file of the Commission.

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 WENDY J. MURRAY, Notary Public

 18 in and for the State of Idaho,

 residing at Meridian, Idaho.

 19 My Commission expires 2-5-2002.

 Idaho CSR No. 475

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