DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

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FROM:BRAD PURDY

DATE:AUGUST 26, 1998

RE:CASE NO. IPC-E-97-12; PETITIONS FOR RECONSIDERATION/ CLARIFICA­TION OF ORDER NO. 27660

On August 20, 1998, the Idaho Power Company (Idaho Power; Company) filed a Petition for Reconsideration and/or Clarification of Order No. 27660 issued by the Commission in this case on July 31, 1998.  On August 21, 1998, the Industrial Customers of Idaho Power (ICIP) and Micron Technology, Inc. (Micron) filed a Joint Petition for Reconsideration of Order No. 27660.  On August 26, 1998, the Commission Staff filed an Answer to the foregoing Petitions.

Idaho Power’s Petition

Idaho Power contends that Order No. 27660 establishes the dollar amount increase in annual revenue requirement resulting from the accelerated amortization of the Company’s DSM authorized by the Commission in that Order but fails to confirm the total deferred DSM balance or the required monthly amortization of that balance.  The Company has calculated the deferred DSM balance to be $37,842,230 as of July 1, 1998.  The Company states that if it has incorrectly quantified the new DSM deferred balance established by the Commission, then it petitions for reconsideration on the grounds that (1) the deferred balance is not stated by the Commission, and (2) since the deferred balance is not stated by the Commission, the Company is unable to state and quantify the errors made in arriving at its calculated amount.  If, however, the Company is correct in its calculation of the deferred balance, then it requests that the Commission issue an Order on Clarification confirming the amount.

Idaho Power also asks that the Commission confirm that a 12 year amortization of the deferred balance stated above would result in a monthly amortization expense of $262,793.  Again, if the Company is incorrect in its calculation, then it seeks reconsideration on the grounds stated above.

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Staff Response

Staff has confirmed the calculations made by Idaho Power and agrees that they are correct.  The deferred balance of approved DSM deferrals as of July 1, 1998, is $37,842,230 and the monthly amortization expense is $262,793.  Staff recommends that the Commission issue an Order of Clarification confirming these amounts.

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The next issue raised by Idaho Power in its Petition pertains to the Commission’s (1) utilization of a carrying charge of 7.25%, (2) the lack of a tax gross-up on the carrying charge amount, and (3) the disallowance of future DSM expenses except for $212,534 attributable to the low income weatherization program.

Idaho Power states that if, in its next general rate case, the carrying charge rate, taxes and ongoing DSM expenses and their impacts on revenue requirement will be redetermined just as all other revenues, expenses and rate base issues are determined, then the Company does not petition for reconsideration as to any of these issues.  If, on the other hand, it was the Commission’s intent in Order No. 27660 to set a carrying charge that would be independent from any determination of an overall rate of return in any future rate proceeding, then the Company petitions for reconsideration on the grounds that it should not be required to accept a carrying charge, resulting tax considerations and expense levels which would remain separate and independent of the determinations that would be made as to the Company’s required overall rate of return and revenue requirement in the next general rate case.  The Company can accept the Commission’s ruling in Order No. 27660, however, if the Order is intended to be an interim determination as to revenue requirement and that these issues will be revisited in the Company’s next general rate case.

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Staff Response

The Commission Staff does not oppose revisiting these issues in Idaho Power’s next general rate case and recommends that the Commission’s Order of Clarification recognize that opportunity for Idaho Power.  Staff is opposed, however, to an automatic change in rate making treatment by Idaho Power in the next rate case.  The issue should be raised with Idaho Power’s recommended changes presented at that time.

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Idaho Power petitions for reconsideration of that portion of Order No. 27660 wherein the Commission ruled that the Company should have commenced amortization of the 1994 deferred DSM balance on January 1, 1998.  Idaho Power argues that the Company did satisfy the spirit and intent of Order No. 25880 requiring the Company to commence amortization on January 1, 1998, of the 1994 deferred DSM balance.  Idaho Power notes that it made its filing at the end of November proposing rates to be effective January 1, 1998.  It was the Commission that suspended those rates and, thus, prevented the commencement of amortization.  Idaho Power argues that the Commission “by its action prevented the commencement of the amortization as well as the rate increase which Idaho Power proposed to amortize and fund the 1994 deferred balance.”  Idaho Power argues that because it was required to begin amortizing the DSM balance on January 1, 1998, the Commission would have suspended the proposed rate for 30 days plus five months by virtue of Idaho Code § 61-622 from that date regardless of when the Company filed its application.  It is the proposed effective date of the rate, Idaho Power contends, that triggers Idaho Code § 61-622, not the filing date of the proposed rate, the Company contends.

Idaho Power further argues that, in preparing a financial filing, it must select a cut-off date through which the accounting data is gathered so that the financial data can be scrutinized by Staff and intervening parties and presented to the Commission.  In this case, the Company selected August 31, 1997, in order to physically file its Application by November 28, 1997.  Assuming for the purposes of argument, that Idaho Power should have filed soon enough to permit a suspension of 30 days plus six months and still have rates in effect on January 1, 1998, a filing date of May 31, 1997, would have been required.  In order to file May 31, 1997, Idaho Power notes, it would have had to cease compiling financial data in February 1997.  Idaho Power contends that this is not reasonable nor should the Commission “impose such an onerous and capricious requirement.”

In summary, Idaho Power states that it filed its Application in a timely manner and that the disallowance of $516,730 should be corrected resulting in a deferred DSM balance of $38,358,960.  This would change the rate increase from a 0.660% increase to a 0.674% increase.

In the alternative, even though the Company believes that no part of the 1994 deferred DSM balance should be disallowed, the quantification of the disallowed $516,730 amount is erroneous the Company contends.  Using the Commission’s rationale, the disallowance would be $192,797, not $516,730.  This amount is computed by taking the 1994 DSM balance of $9,988,847.55 minus 1997 carrying charges for a total of $9,254,259.61.  Dividing this amount by 288 months (24 years) would yield an amount of $32,132.85 per month or $192,797.08 for six months.

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Staff Response

Staff believes that a filing deadline of May 31, 1997, is not “onerous and capricious” as suggested by Idaho Power considering that the Company was put on notice by the Commission when Order No. 25880 was issued on January 31, 1995 wherein the Commission ruled:

We find it reasonable to require that commencement of amortization begin after no more than three years.  In the future, IPCO must begin amortization of accumulated DSM costs after a three year period.

Order No.25880 at p.18.

Consequently, Staff contends that the Company had ample time and opportunity to collect the data needed to make its filing in time to ensure that the Commission and all interested parties would have the opportunity to fully review the Company’s Application.

Regarding Idaho Power’s contention that the disallowance should be $192,797 rather than $516,732, Staff does not dispute this amount.  Staff notes, however, that the Company failed to challenge Staff’s calculations in the underlying case either through rebuttal testimony or cross-examination.  The Company’s Petition for Reconsideration is the first time that Idaho Power has raised an issue concerning the proper amount of the disallowance.

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Idaho Power also petitions for clarification/reconsideration to ensure that it is entitled to revisit the Commission’s disallowance of the Company’s expenditures made in the Commercial Lighting Program (CLP) after 1995.  In that regard, the deferred DSM balances that the Commission determined in Order No. 27660 were through August 1997.  The Company anticipates filing in September or October 1998 an Application that will present the additional DSM expenditures that have been made since August 1997, together with a proposal as to how this deferred balance should be funded.

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Staff Response

Staff never alleged that the Company’s expenditures made in the CLP were not prudent.  Staff simply contended, and the Commission agreed, that the Company had failed to cooperate with Staff in its analysis of the program and had failed to provide the evidence necessary to determine whether the CLP was prudent.  Consequently, Staff does not object to Idaho Power’s request to provide the information initially sought by Staff at a later time.

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Finally, Idaho Power states that it does not question the amount of the intervenor funding awards issued in this case but does request reconsideration of the rate of recovery of those awards.  Idaho Power contends that the Commission has increased the Company’s rates to particular classes for a 24-month period to fund the intervenor funding award.  No carrying charge is provided for in the rates.  Idaho Power suggests that the $25,000 award be funded out of the 1997 revenue sharing amount.  No carrying charge or tax effect computation is required nor does the Company have to adjust rates in two years.  If, however, the Commission chooses not to utilize the 1997 revenue sharing amount, the rates to fund intervenor funding must include a carrying charge of 9.199% and the tax effects of this carrying charge.

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Staff Response

The Commission Staff does not object to the Company’s proposal to fund the intervenor funding award out of the 1997 revenue sharing amount.  The intervenor funding amount by class should be a reduction after the 1997 revenue sharing amount is spread to the classes.

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Idaho Power does not believe that an evidentiary hearing nor written briefs or comments is required to process this petition in this case.

ICIP/Micron’s Petition

The ICIP and Micron contend that Order No. 27660 is “unreasonable, unlawful, erroneous and not in conformity with the law.”  First, the ICIP and Micron assert that the record does not support the Commission’s selection of a 12 year amortization period because no party to this proceeding specifically proposed a 12 year period.  The Intervenors proposed leaving the amortization at the existing 24 years.  Idaho Power proposed, and the Staff did not object to, a 5 year amortization.  The Commission ultimately chose 12 years.

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Staff Response

Staff argues that the ICIP and Micron have attempted to create a new legal standard by which Commission decisions are to be judged.  A standard Staff characterizes as heretofore unrecognized by either the Commission itself or the Idaho Supreme Court.  In fact, the Supreme Court has ruled directly on this point numerous times and reached the opposite conclusion from that advocated by the ICIP and Micron.  For instance, in Intermountain Gas Co. v. Idaho Public Utilities Commission, 97 Idaho 113, 540 P.2d 775 (1975), the Court ruled:

The determination of reasonable rates of return by application of the “capital attraction” or “comparable earnings” tests, or by application of any other tests or considerations, is a legislative function [citations omitted].  In performing such a function within its area of expertise, the Commission may draw its own conclusions from the facts without the aid of expert testimony.

97 Idaho at 126.

In Boise Water Corp. v. Idaho Public Utilities Commission, 97 Idaho 832, 555 P.2d 163 (1976), the Court held:

We need not and do not hold that the Commission was bound by the testimony of expert witnesses.  Nor do we hold that the Commission must accept for rate-making purposes the actual capital structure of the utility if it finds, on the basis of substantial evidence, that structure is unreasonably constructed [citations omitted].  If it in its own expertise has the background from which to disagree with the conclusions of other experts, it may do so.

97 Idaho at 842.

Staff reasons that the legality of the Commission’s decision to adopt a 12 year amortization period does not necessitate that one of the parties to this proceeding made that precise proposal.  Staff argues that Order No. 27660 specifically enumerates several valid reasons supporting the Commission’s decision to reduce Idaho Power’s DSM recovery period.  The Commission Staff states, relying on its expertise and after listening to extensive testimony from seven parties whose proposals ranged from leaving the amortization at 24 years to shortening it to 5, chose a reasonable compromise of 12 years.

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The ICIP and Micron further contend that the record does not support any reduction in the amortization period of Idaho Power’s DSM investment regardless of how long.  They note that Idaho Code § 61-502 requires that before the Commission may change rates, it must make a finding that the current rates are unjust, unreasonable, discriminatory or preferential.  The ICIP and Micron argue that the record in this case does not support the Commission’s conclusion that changes are “sweeping through the electric industry.”

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Staff Response

Staff believes that the ICIP’s contention that the Commission’s decision to shorten the recovery of Idaho Power’s DSM investment because of changes affecting the electric industry is not supported by the record contradicts the very position that the ICIP has taken not only in this proceeding but in others currently pending before the Commission.  Staff suggests that the ICIP itself argues that the deregulation of the electric industry is a foregone conclusion.  For example, during oral argument conducted in this proceeding on April 7, 1998, the ICIP’s attorney, Mr. Richardson, stated in response to a question from one of the Commissioners:

Well, Mr. Commissioner, I think that probably the motive [referring to Idaho Power’s motive for seeking an accelerated DSM recovery] was in part motivated by competition three years ago, but as you know, the concept of competition in the electric industry really has gained currency over the last three or four years, and although was probably being discussed, I don’t think it was seen with the certainty that it is today.

Frankly, Commissioner, if I were in Idaho Power’s shoes, I would be making the same attempt here today that they are making; that is, to clear the books so that when competition comes, that they are poised to reap great rewards.

Oral Argument, Tr. Vol. II, at p. 17.

Similarly, Micron’s attorney, Mr. Alan Richey, predicted changes in the electric industry within 12 to 24 months.  During the oral argument conducted on April 7, 1998, Mr. Richey stated:

But in relatively short period of time as these things go—12 to 24 months—there ought to be some resolution in the Legislature [referring to deregulation and the recovery of stranded costs], if not earlier if there is federal legislation.  And we don’t see where there’s really any problem of putting this thing [referring to Idaho Power’s Application for accelerated DSM recovery] on hold until the Legislature could decide if they are going to.

Tr. Vol. II at p. 29.

Given the foregoing statements made by the Petitioners’ attorneys, Staff characterized their argument that there is no basis in the record for the Commission’s conclusion that changes are affecting the electric industry, as “highly specious.”

Staff further points out that in Order No. 27660, the Commission identified several reasons for its decision to accelerate the amortization of Idaho Power’s DSM.  First, the Commission noted its concern about Idaho Power’s accumulating DSM balances and the need to begin amortizing them.  The Commission also found “significant the changes that are sweeping through the electric industry and the unpredictability that has resulted.”  Order No. 27660 at p. 4.

The Commission also agreed with Idaho Power that conservation measures are different, in at least one aspect, from other generating resources.  That is, they are not owned by the Company as are base-load generating plants.  Consequently, the Company is “at somewhat greater risk with respect to DSM cost recovery in the event of market and regulatory changes.”  Id.

The Commission went on to “find persuasive that by shortening the recovery period of DSM, it is more likely that those customers who reaped the benefit of cost-effective resources, will pay for them.”  Id. at p. 4.  The Commission concluded that a 24-year recovery period for Idaho Power’s DSM expenditures was too long concluding that by reducing the recovery period to 12 years will “considerably lessen risk that the Company will not recover some portion of its expenditures while, at the same time, shift more cost responsibility on those customers who benefitted from the acquisition of DSM without unduly burdening ratepayers.”  The Commission concluded that “a 12-year amortization period is a just and reasonable compromise of all interests concerned.”  Order No. 27660 at p. 5.

Based on the foregoing, Staff contends that not only are the various reasons supporting the Commission’s decision to allow accelerated recovery of Idaho Power’s DSM clearly and specifically enumerated, the actual transcripts from the record supporting those reasons are ample.  \*\*\*\*\*\*\*\*\*\*\*\*

The ICIP and Micron argue that Order No. 27660 is unreasonable due to its failure to consider the impact of a shorter recovery period on other aspects of Idaho Power’s cost of doing business.”

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Staff Response

Staff asserts that such a contention and corresponding Petition for Reconsideration should have been directed to Commission Order No. 27493 issued in this case on April 30, 1998, in which the Commission denied the ICIP and Micron’s Motion to Dismiss Idaho Power’s Application for, among other reasons, its failure to consider other issues affecting the Company’s earnings.  In that Order, the Commission held:

We find that none of these assertions have merit.  The recovery periods of Idaho Power’s DSM investments were established prior to the issuance of Order No. 26216.  In Order No. 25880, issued in Case No. IPC-E-94-5, this Commission adopted a 24-year amortization period for Idaho Power’s DSM investments.  The Company strenuously objected to that time period, arguing that it was excess.  When we adopted the settlement stipulation in Order No. 26216, this Commission was well aware of Idaho Power’s concerns regarding the length of DSM amortization.  Regardless of what the intentions of any of the signatory parties to the settlement stipulation might have been, it was the intention of this Commission to allow Idaho Power the opportunity to raise the issue of the proper DSM amortization period prior to the expiration of the rate moratorium in the year 2000.

Order No. 27493 at pp. 7-8.

The Commission concluded:

We further find the contention that it is inappropriate to segregate DSM for special consideration or to allow Idaho Power what is, in essence, a single issue rate increase to be equally without merit.  Those are arguments that should have been raised in Case No. IPC-E-95-11.  To dismiss the Company’s Application on that basis would be to entirely negate the intended result of the settlement stipulation adopted by this Commission in Order No. 26216.  In any event, in J.R. Simplot Co. v. Intermountain Gas, 630 P.2d 133, 102 Idaho 351 (1981), the Idaho Supreme Court specifically acknowledged the authority of the Commission to conduct “tracker” or “single item” cases affecting rates.

Id. at p. 8.

Staff concludes that the ICIP and Micron should have raised their “single item” argument in Case No. IPC-E-95-11 concluded in 1995.  They could also have appealed final Order No. 27493 issued in this case on April 30, 1998, Staff suggests.  Regardless, Staff agrees with the Commission’s conclusion that Idaho law clearly allows the Commission to conduct tracker or single item cases affecting rates.

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Finally, the ICIP and Micron argue that, with respect to Idaho Power’s Good Cents Program, the Manufactured Home Acquisition Program and the Low-Income Weatherization Program, the Company did not offer any evidence of prudence and that recovery of investments made in this program should not be allowed.  The ICIP and Micron contend that Staff failed to conduct an “audit” of Idaho Power’s DEAP and PIE programs.

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Staff Response

Staff asserts that the ICIP and Micron’s characterization of Staff’s analysis in this case is misleading.  Their Petition for Reconsideration gives the impression that the Staff conducted no analysis of any of Idaho Power’s DSM programs to determine whether they were cost-effective.  In fact, Staff contends, this is simply not true.  For example, the Staff recommended, and the Commission agreed to, a disallowance of a portion of Idaho Power’s investment in its Commercial Lighting Program because of a failure of the Company to cooperate with Staff and provide the documentation necessary to determine whether the program was cost-effective.  In any event, Staff asserts that it is not incumbent upon the Commission Staff to prove the prudence of a utility’s investments.  In any given proceeding, whether it be a general rate proceeding or a single item rate case, the Commission Staff devotes all of its available resources to determine whether the expenditures for which recovery is sought were prudently incurred.  Because of the shear size and complexity of a utility’s operations, Staff simply cannot conduct a prudence review of every single expenditure incurred by a given utility.  Consequently, Staff typically devotes its time and resources to the Company’s more significant expenditures and investments.  Regardless, Staff concludes that as a point of law, Staff does not have the burden to prove that the costs incurred by Idaho Power for which it sought recovery in this case were prudently incurred.  Staff was convinced, after conducting its analysis of certain aspects of Idaho Power’s DSM programs, that, with the exception of the CLP program, Idaho Power’s DSM costs on the whole were prudently incurred.

More important, Staff notes, no party offered evidence to the contrary.  Consequently, the Commission did not err in its acceptance of the prudence of Idaho Power’s DSM expenditures.

The Commission Staff believes that Order No. 27660 is not unreasonable, unlawful, erroneous or not in conformity with the law.  Staff asserts that Order No. 27660 should be affirmed and the Petition for Reconsideration of the ICIP and Mircron be denied.

Commission Decision

1.  Does the Commission wish to grant Idaho Power’s Petition and issue an Order on clarification affirming the DSM balance of $37,842,230 and monthly amortization expense of $262,793?

2.  Does the Commission wish to affirm Idaho Power the opportunity to revisit the matter of the carrying charge, tax gross-up on the carrying charge and the amount of future DSM expenses when the Company files its next general rate proceeding?

3.  Does the Commission wish to grant Idaho Power’s Petition for Reconsideration on its ruling that Idaho Power should have filed its Application in this case early enough to allow the Commission and parties to resolve the Company’s filing prior to January 1, 1998?

4.  If not, does the Commission wish to accept Idaho Power’s adjustment to the disallowed amount of amortization (the adjustment was not contested by Staff) from $516,730 to $192,797?

5.  Does the Commission wish to grant Idaho Power’s Petition for Clarification and provide the opportunity to prove the prudence of its commercial lighting program expenditures on a future date?

6.  Does the Commission accept Idaho Power’s proposal to fund the intervenor funding award previously issued in this case out of the 1997 revenue sharing amount?

7.  How does the Commission wish to rule on the ICIP and Micron’s Petition for Reconsideration?

Brad Purdy

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