

represents a calculated amount of revenue the Company might have received from the sale of power to irrigation customers had the Program not been in operation. In Order No. 28699 the Commission authorized Idaho Power to record the direct costs and any calculated lost revenue in separate purchased power subaccounts. Order No. 28699 at 12.

After conclusion of the Program at the end of September 2001, the Company filed an Application on October 18, 2001, starting Case No. IPC-E-01-34. It sought, amongst other things, Commission authorization to recover the direct costs and lost revenue it alleged occurred as a result of the Program. The Company requested authorization to recover these amounts through the 2002/2003 Power Cost Adjustment ("PCA"). *Id.* at 5-6.

On April 15, 2002, the Commission issued Order No. 28992 granting Idaho Power's request to recover the Program's direct costs from all ratepayers, which at its conclusion totaled nearly \$74 million in payments made to irrigators for reducing their electrical consumption.¹ However, the Commission denied the Company's request to recover approximately \$12 million of lost revenue (\$11,587,179.08 plus \$428,008.18 in carrying charges).

Idaho Power filed a timely Petition for Reconsideration requesting that the Commission reconsider its decision in Order No. 28992 regarding lost revenue. The Company did not request a hearing to submit additional evidence and asked the Commission merely to reconsider its decision based upon the existing record. On May 30, 2002, the Commission granted reconsideration so that it could "thoroughly review the record . . . and render our decision." Order No. 29040 at 2.

On August 29, 2002, the Commission issued Order No. 29103 that reaffirmed its decision in Order No. 28992 to deny Idaho Power authorization to recover lost revenue. Following the issuance of this Order the Company filed its Motion for Stay of Commission Order Nos. 28992 and 29103 on October 1, 2002. On October 2, 2002, the Company filed its Notice of Appeal from these two Commission Orders.

THE MOTION FOR STAY

On October 1, 2002, Idaho Power, pursuant to Commission Rule 324, filed a Motion for Stay of Commission Order Nos. 28992 and 29103 as they pertain to lost revenues. IDAPA 31.01.01.324. Because of its uncertainty as to the applicability of the Supreme Court's opinion in *Utah Power & Light Co. v. Idaho Public Utilities Commission*, 107 Idaho 47, 685 P.2d 276

¹ This amount includes a carrying charge.

(1984) to this case, Idaho Power requests that the Commission enter an Order staying those portions of Order Nos. 28992 and 29103 concerning lost revenues during the pendency of the appeal. Motion at 1-2. The Company does not seek to recover the lost revenue at this time. Rather, it would seek recovery of lost revenues at a later date should it prevail on appeal. In addition to its request for a stay, Idaho Power also requests the Commission approve an accounting methodology to allow for the potential recovery of the lost revenues in the event it is successful on appeal. The Company proposes to record the disputed amount (\$12,015,187.26) in Account 186 (Miscellaneous Deferred Debits). *Id.* at 2-3.

Idaho Power expressed concern that without staying these Orders, it might be prohibited from later recovering the disputed amount through March 31, 2002 even were it successful on appeal. The Company further states it has ceased accruing any carrying charges on the lost revenue amounts as of March 31, 2002. Motion at 3. Furthermore, the Company does not propose to accumulate any additional carrying charges during the pendency of the appeal. *Id.* However, Idaho Power acknowledges that if the Commission or the Court were to determine that additional carrying charges, if any, would be appropriate it would gladly accept them. *Id.*

No party in this case filed a response to the Company's Motion to Stay.

DISCUSSION AND FINDINGS

The Public Utilities Law contemplates that filing an appeal "shall not of itself stay or suspend the operation of the order of the commission." *Idaho Code* § 61-635. Pursuant to Commission Rule 324 the Commission in the first instance may issue a stay of the enforcement of an order it issued. Rule 324 states:

Any person may petition the Commission to stay any order, whether interlocutory or final. Orders may be stayed by the judiciary according to statute. The Commission may stay any order on its own motion.

IDAPA 31.01.01.324.

Under the Public Utilities Law, a stay "shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the commission (or approved on review by the court)[.]" *Idaho Code* § 61-637. Use of a bond assumes that if the utility is not successful on an appeal, that ratepayers will "be promptly paid . . . in a manner and through such methods of distribution as may be prescribed by the commission." *Idaho Code* § 61-638.

A. The Utah Power Case

Idaho Power is “uncertain” whether a stay is necessary to preserve its ability to recover the disputed amount if it is successful on appeal. Motion at 1. The Company “does not desire to put itself at peril” if it is later determined that the holding of *Utah Power* is applicable to the disputed amount in this case. *Id.* at 2. The Company claims that it will suffer irreparable injury if it would lose the ability to recover the disputed amount. *Id.* at 3.

The Idaho Supreme Court has addressed the stay provisions contained in *Idaho Code* § 61-633 *et seq.* in several cases. *See Utah Power & Light Company v. Idaho P.U.C.*, 107 Idaho 47, 685 P.2d 276 (1984); *Mountain States Tele. & Tele. Company v. Jones*, 76 Idaho 241, 280 P.2d 1067 (1955); *Joy v. Winstead*, 70 Idaho 232, 215 P.2d 291 (1950). The Company assumes that the *Utah Power* case may be controlling.

The *Utah Power* case was a general rate case. In that case, the Commission granted a rate increase that was less than the amount proposed by the Company. The utility appealed seeking to recover the difference between the amount granted by the Commission and the proposed amount. However, Utah Power did not request a stay on appeal. On appeal the utility argued that it should be granted a surcharge to recover past losses when the PUC Order was later set aside by the Court on appeal. *Utah Power*, 107 Idaho at 48, 685 P.2d at 277.

The Supreme Court held that the Company was not entitled to a surcharge. The Court ruled that the Public Utilities Law has an intricate statutory scheme for obtaining monetary relief from confiscatory Orders of the Commission. The majority of the Court observed that the stay and bond procedures represent the exclusive remedy to preserve a utility’s right to be compensated for a confiscatory general rate order. Because Utah Power did not seek a stay and post a bond, the lower, Commission-approved rates set forth in the Order were final in all respects so long as such Order continued in effect. *Utah Power*, 107 Idaho at 49, 685 P.2d at 278. Had the Company obtained a stay of the Commission’s Order and posted the necessary bond, it would have been allowed to collect the higher proposed rates pending issuance of the Court’s opinion on appeal. In other words, if no stay is sought and the Order is later set aside by the Court, the Commission cannot authorize a surcharge to collect the rate hike between the issuance of the Order and the decision on appeal. Rates may only be set prospectively.

Issuance of a stay and posting a bond is the statutory mechanism for preserving a disputed general rate increase issue on appeal. The majority of the Court explained that the

Public Utilities Law (Title 61) only permits prospective relief, (i.e., no retroactive ratemaking), and in the absence of a stay, the Commission is not authorized to “allow utilities to obtain a [subsequent] surcharge to make up past rate deficiencies.” 107 Idaho at 55, 685 P.2d at 284. Posting a bond allows the utility to collect the disputed amount while the appeal is pending. If the appeal is successful, the bond is dissolved. If the Commission is affirmed, then the bond amount is dispensed to ratepayers. Further, any order approving the stay and bond would also require the Company “to keep such accounts verified by oath, as may in the judgment of the commission suffice to show the amounts being charged or received by such public utility, pending the review in excess of the charges allowed by the order or decision of the commission[.]” *Idaho Code* § 61-638. We now turn to the facts of this case.

B. This Case is Materially Different than the Utah Power Case

1. No Stay is Necessary in this Case. The Commission finds that there are several important differences between the *Utah Power* case and the present matter. First, the lost revenue case now on appeal is not a general rate case like that in *Utah Power* or those authorities cited above. The disputed amount here is a finite one-time amount. Rates to recover this amount are not long-term rates. Second, in this case Idaho Power is not seeking to collect the disputed amount while the appeal is pending. Thus, ratepayers are not disadvantaged by paying higher rates for recovery of the “lost revenue” while the appeal is pending. Even if the Commission would have authorized the recovery of lost revenue, the rates for such recovery would not have begun until May 1, 2003 to coincide with the 2003/2004 PCA mechanism.

Third, and most importantly, the dispute here is over a deferred account that contains a finite amount of dollars. In this case Idaho Power was required to record the direct costs paid to irrigators over the five-month irrigation season and any calculated lost revenue in separate purchased power subaccounts. Order No. 28699 at 12. The Commission provided for a deferral mechanism for the accounting of costs and lost revenues (and resulting carrying charges) that accrued through March 31, 2002. Total costs were not determined until the end of the Program. Once the costs were audited and verified, the Company proposed to recover the cost over a 12-month period as part of the annual PCA mechanism. The Commission has typically allowed the use of deferral accounts to accumulate costs for future examination when they are not yet known. The amounts usually accrue over time and are “trued up” prior to collection. No such deferral mechanism was established in the *Utah Power* case because it was a permanent rate increase not

a short-term, annualized adjustment like the PCA. Furthermore, unlike the *Utah Power* decision, because of the deferred account Idaho Power seeks only to recover a finite amount during a single year as opposed to a prospective, multi-year general rate increase. Based upon these distinctions the Commission finds that issuance of a stay and bond is unnecessary in this case.

2. Accounting Order. Idaho Power has also requested that the Commission approve the accounting methodology it has proposed in order to allow for the potential recovery of lost revenues in the future. The Commission through Order Nos. 28992 and 29103 denied the Company the recovery of lost revenues that may have resulted from the operation of the Irrigation Buy-Back Program. Issuance of an accounting order in this matter is not necessary. Generally Accepted Accounting Principles (GAAP) govern accounting entries that Idaho Power is required to make in this instance. Since the accounting will follow GAAP and does not require any extraordinary treatment, an accounting order is not required.

3. Carrying Charges. We next address the issue of carrying charges. Idaho Power states in its Motion that it does “not propose to accumulate any additional carrying charges during the pendency of the appeal. . . .” Motion at 3. Based upon these assertions, the Commission finds that there is no need for a stay because the Company does not seek to recover carrying charges while the appeal is pending. The Company also states that it has ceased applying any carrying charges to its lost revenue balance as of March 31, 2002. *Id.* at 3.

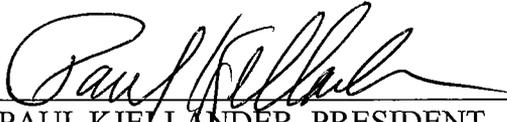
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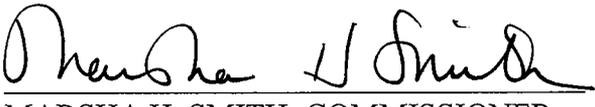
IT IS HEREBY ORDERED that Idaho Power Company’s Motion for a Stay of Order Nos. 28992 and 29103 is denied because a stay is not necessary to preserve the amount in dispute. Furthermore, a stay is not necessary because Idaho Power Company does not seek to accumulate any additional carrying charges (after March 31, 2002) during the pendency of the appeal.

IT IS FURTHER ORDERED that Idaho Power’s request that the Commission approve its accounting methodology described in its Motion is denied because it is not necessary.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 5th
day of November 2002.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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