IDAHO PUBLIC UTILITIES COMMISSION
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Commission asks Supreme Court to reconsider

Boise – The Idaho Public Utilities Commission is petitioning the Idaho Supreme Court for reconsideration of its March 30 decision to vacate a commission order that denied Idaho Power's bid to collect $12 million from ratepayers in "lost revenue" as the result of a 2001 irrigation buyback program.

The irrigation load reduction program was implemented during the summer of 2001 due to the drought and record-high wholesale market prices at the time. To reduce the need for Idaho Power to go to the expensive wholesale market, the utility paid irrigators to reduce their electric use. Irrigators were paid 15 cents per kWh saved. That prevented the company from having to go to the market to buy power that, at the time, was predicted to be 30 cents per kWh during peak irrigation summer months.

When the commission adopted the buyback program it told the company that the "direct costs and lost revenue impacts may (emphasis added) be treated as a purchase power expense" that the company could later recover from ratepayers.

The commission eventually allowed the company to recover from customers $74 million in direct costs paid to irrigators, but denied the company's request for $12 million in "lost revenue," money the company claimed it would have earned from irrigators had the buyback program not been in place.

At the time, the commission said the load reduction program was the prudent, if not the required, action to take in response to the 2000-01 crisis and that financial incentives to enact the program, such as recovery of lost revenue, were not needed. "To charge ratepayers for lost revenue is unreasonable in the context of the crisis that existed," the commission said. "Requiring ratepayers to pay for energy they did not consume, but avoided, due to this program is also unreasonable."

The commission further stated in an August 2002 order, "The commission finding did not guarantee that Idaho Power was entitled to recovery of alleged reduced/lost revenue that resulted from this program. Rather, the commission merely recognized that the issue of recovery of these amounts would be considered."

Idaho Power petitioned the commission for reconsideration, but was denied. The company then appealed to the Idaho Supreme Court, which ruled 4-1 last month in favor of the company, vacating the commission's order.

The commission's petition for rehearing to the Supreme Court states there is substantial evidence that the commission's use of the word "may" was not intended to be mandatory or mean "shall" or "must."

The order approving the program directed the company to record the "direct costs and lost revenue impacts," so that accounts could be reviewed later to determine if recovery from customers was proper, the petition states. "In addition, it would be inconsistent with the commission's duties if it were to issue a blank check to the company before knowing whether any cost was actually incurred by the company."

The petition states that even if the commission's use of the word "may," was imprecise, the denial of lost revenue recovery was neither confiscatory nor a violation of any constitutional right, as claimed by the company.

Unlike direct costs, which the company was allowed to recover, lost revenues were an estimate of revenue the company might have received from the sale of power to irrigators without the program. "The commission found rates should accurately reflect the actual costs to provide service and given the unique context that caused this program to be implemented, lost revenues were not an actual cost of service that should be borne by ratepayers. Thus, the commission determined it would be unreasonable to force Idaho Power's consumers to pay for power they did not purchase, consume or benefit from," the petition states.

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