

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF IDAHO POWER</b>	)	
<b>COMPANY’S APPLICATION TO</b>	)	<b>CASE NO. IPC-E-15-26</b>
<b>APPROVE THE TRANSFER AND SALE OF</b>	)	
<b>CERTAIN ASSETS TO THE UNITED</b>	)	
<b>STATES DEPARTMENT OF JUSTICE,</b>	)	<b>ORDER NO. 33470</b>
<b>FEDERAL BUREAU OF INVESTIGATION</b>	)	

On November 25, 2015, Idaho Power Company filed an Application with the Commission for an Order approving the transfer and sale of certain assets to the United States Department of Justice, Federal Bureau of Investigation (FBI), under *Idaho Code* § 61-328. The Commission now approves Idaho Power’s Application.

**PROCEDURAL HISTORY**

On December 15, 2015, the Commission issued a Notice of Application and Notice of Modified Procedure. Order No. 33433. The Industrial Customers of Idaho Power (ICIP) filed a Petition to Intervene and Motion to Extend Comment Deadline which the Commission granted, extending the comment deadline to January 26, 2016, and the reply deadline to February 2, 2016. Order No. 33443. The Commission received timely comments from Staff and ICIP, and timely reply comments from the Company. The Commission also received comments from the FBI on February 2, 2016.

On February 8, 2016, the Commission set a public technical hearing, as required by *Idaho Code* § 61-328(2). At the hearing held on Monday, February 22, 2016, representatives from Idaho Power, ICIP, and Commission Staff appeared and gave additional comments. At the conclusion of the hearing, the matter became fully submitted.

**BACKGROUND**

Idaho Power provides electric service to an FBI facility in the Company’s service territory pursuant to Idaho Power’s Schedule 19 concerning Large Power Service. Application at 2. Idaho Power owns and operates transformers and other facilities (hereafter, the “Assets”) beyond the Point of Delivery (POD),<sup>1</sup> to meet the FBI’s service requirements under Idaho

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<sup>1</sup> The Point of Delivery or POD is the point at which the customer’s power usage is measured. Facilities “beyond the POD” are the facilities on the customer side, rather than the utility side, of the POD.

Power's Rule M "Facilities Charge Service" in the Company's Tariff No. 101. *Id.*<sup>2</sup> The FBI pays a monthly facilities charge to Idaho Power for this optional service. *Id.* at 2.

At the FBI's request, Idaho Power entered into an Asset Sale Agreement, to transfer and convey the Assets to the FBI for a purchase price of \$79,373. *Id.*; Agreement (Redacted) at 3. Under the Agreement, the FBI agrees to obtain title to and assume ownership, operation, maintenance, and all liabilities associated with the Assets. Application at 2. Also, "the FBI will own all facilities installed beyond the POD upon sale and transfer of the Assets." *Id.*

### THE APPLICATION

Idaho Power's Application seeks approval of its proposed Asset Sale Agreement with the FBI, under *Idaho Code* § 61-328, and Idaho Power's Rule M. Idaho Power asserts that it satisfies all the statutory and regulatory requirements. *Id.* In support, the Company outlines its current facility charge arrangement with the FBI, as well as its methodology for determining the sale price for Company-owned facilities beyond the POD under Rule M Section 3. According to Idaho Power, this methodology "ensures that the Company and its other customers are not negatively impacted by the transaction." *Id.* at 4-6.

The Commission has authority to approve or reject the proposed Agreement under *Idaho Code* § 61-328. That provision requires the Company to show that the proposed transaction is consistent with the public interest, that the cost and rates for supplying service will not be increased because of the transaction, and that the FBI has the bona fide intent and financial ability to operate and maintain the Assets in the public service. *Idaho Code* § 61-328(3). Also, under Rule M Section 3, governing the sale of Company-owned facilities beyond the POD, the FBI must: purchase all facilities listed on the Distribution Facilities Investment Report for that POD; provide operation and maintenance of all facilities beyond the POD after the sale is complete; and prepay engineering costs for sales determinations taking more than 16 estimated hours of preparation. Rule M § 3. Rule M Section 3 further provides that sales determinations equal to or less than 16 estimated hours of preparation will be billed to the FBI as part of the sales agreement, or after the engineering is completed in instances where the sale is not finalized. *Id.*

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<sup>2</sup> Tariffs are rules governing a particular utility, adopted by Commission order under *Idaho Code* § 61-622. Idaho Power Company's Rule M Facilities Charge Service can be found on the Commission's website, <http://www.puc.idaho.gov>, by clicking "Approved Tariffs & Price Lists" under Laws & Rules, then "Electric Tariffs," then "Rules & Regulations & Rate Schedules" for Idaho Power Company.

## THE COMMENTS

### A. ICIP

ICIP stated it does not object to approval of Idaho Power's contract with the FBI. ICIP Comments at 1. However, ICIP did not "endorse the methodology underlying the price calculated by Idaho Power for the sale of facilities on the FBI-side of the POD." *Id.* at 2. ICIP noted that various utilities under the Commission's jurisdiction "take different approaches" to the issue of how to price facilities being sold to customers. *Id.* ICIP asked the Commission to "disclaim that this docket has any precedential value in establishing any controlling rule (explicitly or implicitly) for governing future sales" of facilities owned by Idaho Power beyond a customer's POD. *Id.* at 2-3. Finally, ICIP recommended that "the Commission open a docket [to set] clear, transparent, ratepayer neutral and fair rules for valuing the purchase price of utility-owned facilities that are dedicated to, and serve only a single customer, on the customer side of the POD." *Id.* at 3.

### B. Commission Staff

Staff believes that Idaho Power's asset transfer agreement with the FBI complies with Rule M and *Idaho Code* § 61-328. Staff Comments at 7. In reaching this conclusion, Staff analyzed five aspects of Idaho Power's sales price methodology: (1) net book value; (2) true-up of past levelized rate of return; (3) near-term rate of return impact resulting from the sale of assets; (4) near-term operational impact resulting from sale of assets; and (5) net tax gross-up. *Id.* at 3-6. Staff disagreed with the Company about including the near-term operational impacts associated with Operations & Maintenance and Administrative & General expenses, in the Assets' sales price. *Id.* at 5-7. However, Staff believes the Company's treatment of the remaining four aspects of its sales price methodology "are appropriate and protect ratepayers as required" by the statute. *Id.* at 6.

In sum, Staff noted that "the sales price [was] mutually agreed to by the parties [and] will not harm other ratepayers or cause rates to increase." *Id.* at 7. Thus, although Staff's recommended sales price methodology would result in a lower price for the Assets, Staff concluded that both Rule M and *Idaho Code* § 61-328 are nonetheless satisfied. Accordingly, Staff recommended that the Commission approve Idaho Power's Application. Staff further recommended that the Commission "not endorse the Company's pricing methodology as

precedent going forward,” noting, “[d]ifferent circumstances may warrant different pricing methods or contract terms.” *Id.* at 7.

### ***C. FBI***

The FBI – a party to the Agreement for which Idaho Power seeks approval – filed comments on the deadline for Idaho Power’s reply. In its comments, the FBI recommended that the Commission approve Idaho Power’s Application without modification. FBI Comments. “The FBI worked with Idaho Power to understand the purchase price calculation and the methodology used to determine the same.” *Id.* The FBI asserted it “is confident Idaho Power carefully considered all the necessary elements for completing an equitable asset sale.” *Id.* The FBI concluded it “supports Idaho Power’s Application and accepts the purchase price as fair, reasonable and representative of a mutually agreed upon amount between Idaho Power and the FBI.” *Id.* The FBI asked the Commission to approve the Agreement as filed and issue a decision on or before February 25, 2016 “to ensure the FBI’s planned expansion is not unnecessarily delayed.” *Id.*

### ***D. Idaho Power’s Reply***

Idaho Power cited Staff’s and ICIP’s recommendations to approve the Company’s Application. Reply at 2. Idaho Power agreed with Staff that each proposed sale of assets is unique, thus “different circumstances may warrant different pricing methods or contract terms.” *Id.* For this reason, the Company believes the Commission should reject ICIP’s recommendation to initiate a docket to “set rules for valuing the purchase price of utility-owned facilities on the customer side of the point of delivery.” *Id.* at 2 (citing ICIP Comments at 3).

Idaho Power asserted, “It is not necessary to open a docket that will set rules for valuing property if a uniform methodology could result in amounts for which the utilities are not willing to sell their assets.” In support, the Company cited the Commission’s finding in a prior case (No. IPC-E-13-17) that its valuation of a property “is meaningless if the Company is unwilling to sell at anything less than its stated price.” *Id.* at 2, *quoting* Order No. 32940 at 6. Idaho Power argued the Commission should “retain flexibility to value purchase amounts of property transactions on a case-by-case basis contingent on the factual circumstances.” *Id.* at 3, *citing* Order No. 32426 at 33 (“[W]e envision that the sale of facilities will occur on a case-by-case basis and that the purchasing price will be based upon the value of the facilities to be transferred to the customers.”).

In conclusion, the Company noted the FBI agreed to the purchase price, and that no party opposed approval of the sale. *Id.* at 3. Idaho Power thus recommended the Commission approve its Application as filed. *Id.*

## **DISCUSSION AND FINDINGS**

### ***1. Timing of the FBI's Comments***

As a preliminary matter, the Commission addresses the timing of the FBI's comments, which were filed on the reply deadline. Because the FBI is a party to the Agreement, its interests in the Application align with Idaho Power's interests. The timing of the FBI's filing, submitted on the reply deadline and not the comment deadline, caused no delay in proceedings. Accordingly, we consider the FBI's comments as part of the record. *See* IDAPA 31.01.01.013.

### ***2. Idaho Power's Request to Transfer Assets to the FBI***

The Commission has thoroughly reviewed and considered Idaho Power's Application, its Agreement with the FBI, the parties' comments – including those of ICIP and the FBI, and the record from the February 22 public technical hearing. To be approved, the proposed Agreement must comply with Idaho Power's Rule M, and *Idaho Code* § 61-328.

We find that Rule M is satisfied. The Company asserted there will be no mixed ownership of facilities, that the FBI will provide operation and maintenance of all facilities beyond the POD after the sale is complete, and the FBI will prepay engineering costs. In their filings, the FBI, Staff, and ICIP raised no objections or arguments to the contrary. Given the record before us, we conclude that the Agreement complies with Rule M.

We also find the statutory requirements are satisfied. As to the public interest requirement, we note that the Assets at issue serve only the FBI, thus there is no impact to deliverability and reliability of electric service to other customers. *Idaho Code* § 61-328(3)(a). Also, there is no indication the FBI lacks the bona fide intent and financial ability to operate and maintain the Assets, thus we find this provision is also satisfied. *Idaho Code* § 61-328(3)(c). The remaining requirement is that the transaction not increase the cost of and rates for supplying service. Given the record before us, we find that the sales price methodology in the Agreement protects ratepayers and does not cause rates to increase, thus satisfying § 61-328(3)(b).

In so finding, we note that Staff disagreed with the Company's inclusion in its sales price, of near-term operational impacts associated with Operations & Maintenance, and Administrative & General expenses. Using Staff's methodology, the sales price for the Assets

would be lower. However, as acknowledged by Staff and the FBI, the Assets' sales price was mutually agreed upon by Idaho Power and the FBI after careful consideration of "all the necessary elements for completing an equitable asset sale." FBI Comments; *see also* Staff Comments at 7. The Commission received no comment asserting otherwise. Absent evidence in the record to support a conclusion to the contrary, we find that the Agreement meets all statutory requirements.

### **3. ICIP's Recommendation to Open a Separate Docket**

Finally, we consider ICIP's recommendation that we open a separate docket to address how to value the purchase price of utility-owned facilities in future cases. ICIP proposes that, in such docket, we define rules to be applied to all future sales of utility-owned facilities. We decline to do so and instead emphasize that with this Order, we do not endorse Idaho Power's price methodology in the Agreement approved here, as precedent going forward. The circumstances of any given agreement between a utility and customer for the purchase of utility-owned assets are unique. Accordingly, we find that agreements like that between Idaho Power and the FBI here, are ill-suited to, and would not benefit from, the imposition of rules for determining a purchase price.


As we have previously observed, the Commission lacks authority to force a particular sale between a utility and customer. Order No. 32940 at 5-6 ("*Idaho Code* § 61-328 does not provide the Commission with the authority to compel a utility to sell its property."). Consistent with our prior Orders, we are reluctant to prescribe precise rules dictating how parties should negotiate and agree to a purchase price. *Id.* Rather, we will evaluate applications for the sale of facilities on a case-by-case basis. *See* Order No. 32426 at 33.

## **ORDER**

IT IS HEREBY ORDERED that Idaho Power Company's Application to Approve the Transfer of Assets to the FBI is granted as set forth above.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of 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.

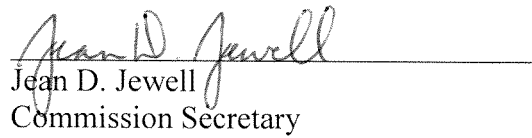
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24<sup>th</sup>  
day of February 2016.

  
PAUL KJELLANDER, PRESIDENT

  
KRISTINE RAPER, COMMISSIONER

  
ERIC ANDERSON, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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