

15729  
SNAKE RIVER



HYDRO POWER

# IDAHO POWER COMPANY

RECEIVED

FILED

BOX 70 • BOISE, IDAHO 83707

90 JUN 13 AM 8 31 June 12, 1990

IDAHO PUBLIC  
UTILITIES COMMISSION

*N. Walters*

Mrs. Myrna J. Walters  
Secretary  
Idaho Public Utilities Commission  
Statehouse  
Boise, Idaho 83720

Re: Case No. IPC-E-90-8

Dear Mrs. Walters:

Please find enclosed for filing an original and seven (7) copies of Idaho Power Company's Motion to Deny Petition to Intervene Filed by Afton Energy, Inc.

If you have any questions, please feel free to call me.

Sincerely,

*Larry D. Ripley*

Larry D. Ripley  
Attorney

LDR:mmb

Enclosures

RECEIVED

FILED

1990 JUN 13 AM 8 31

IDAHO PUBLIC  
UTILITIES COMMISSION

LARRY D. RIPLEY  
EVANS, KEANE, KOONTZ, BOYD, SIMKO & RIPLEY  
c/o Idaho Power Company  
1220 W. Idaho Street  
P. O. Box 70  
Boise, Idaho 83707  
(208) 383-2674

STEVEN L. HERNDON  
IDAHO POWER COMPANY  
1220 W. Idaho Street  
P. O. Box 70  
Boise, ID 83707  
(208) 383-2918

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY FOR THE RATE BASING )  
OF THE MILNER HYDROELECTRIC PROJECT )  
OR IN THE ALTERNATIVE )  
A DETERMINATION OF EXEMPT STATUS )  
FOR THE MILNER HYDROELECTRIC )  
PROJECT )

CASE NO. IPC-E-90-8

MOTION OF IDAHO POWER COMPANY  
TO DENY PETITION TO INTERVENE  
FILED BY AFTON ENERGY, INC.

COMES NOW Idaho Power Company (Idaho Power) and pursuant to RP&P 24.7(b), herewith files its Motion in opposition to the Petition for Intervention filed by Afton Energy, Inc. (Afton), upon the following grounds:

I.

Afton Energy, Inc. has also filed a Petition to Intervene in Case No. IPC-E-90-2, Idaho Power's Swan Falls Application. The Petition to Intervene Afton has filed in the Milner Application is identical to the Petition to Intervene that Afton filed in the Swan Falls Application, except that Afton

changed the reference from "Swan Falls" to "Milner Dam", and in allegation number 3, added the verbiage ". . . based on lawful avoided costs and arms length negotiations." to the last sentence in that paragraph.

II.

Afton's Petition to Intervene in the Swan Falls proceeding is attached as Attachment No. 1, and Idaho Power Company's Motion to Deny filed in the Swan Falls proceeding is attached as Attachment No. 2. Also attached as Attachment No. 3, is Commission Order No. 2300 entered in Case No. IPC-E-90-2.

III.

In Order No. 2300 the Commission permitted Afton's intervention, but limited such intervention.

IV.

Based upon Afton's Petition to Intervene filed in this proceeding and referring to Attachments 1, 2 and 3 as if set out in full herein, Idaho Power Company objects to the intervention of Afton Energy, Inc., but recognizes that the Commission may desire to permit Afton's intervention on a limited basis as provided in Order No. 2300.

W H E R E F O R E

Idaho Power respectfully moves that the Petition for Intervention filed by Afton should be denied.

DATED this 12th day of June, 1990.

  
/s/ Larry D. Ripley

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12th day of June, 1990, I mailed a true and correct copy of the within and foregoing MOTION OF IDAHO POWER COMPANY TO DENY PETITION TO INTERVENE FILED BY AFTON ENERGY, INC., postage prepaid and addressed as follows:

Afton Energy, Inc.  
c/o Owen H. Orndorff  
Orndorff & Peterson  
Suite 230  
1087 West River Street  
Boise, ID 83702

Owen H. Orndorff  
Orndorff & Peterson  
Suite 230  
1087 West River Street  
Boise, ID 83702

  
/s/ Larry D. Ripley

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION  
OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION )	
OF IDAHO POWER COMPANY )	CASE NO. IPC-E-90-2
AUTHORITY TO RATE BASE THE )	
INVESTMENT REQUIRED FOR THE )	PETITION TO INTERVENE BY
REBUILD OF THE SWAN FALLS HYDRO- )	AFTON ENERGY, INC.
ELECTRIC FACILITY. )	
_____ )	

COMES NOW, Afton Energy Inc., herein called "this Intervenor" and pursuant to this Commission's Rule 5, by this Petition requests leave to intervene herein and to appear and participate as a party herein, and as grounds therefor states as follows:

1. The name and address of this Intervenor is:

Afton Energy, Inc.  
% Owen H. Orndorff  
Orndorff & Peterson  
1087 West River Street  
Suite 230  
Boise, Idaho 83702

This Intervenor will be represented by:

Owen H. Orndorff  
Orndorff & Peterson  
1087 West River Street  
Suite 230  
Boise, Idaho 83702

Copies of all pleadings, testimony, exhibits, production requests, Commission Orders and other documents should be provided to the parties identified above.

2. Afton Energy, Inc. ("Afton") has built a Qualified Facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA") in Afton, Wyoming. Although the facility experienced temporary operating problems in the early contract years, it has now been rebuilt and is presently delivering approximately 50% more Dispatchable Capacity to Idaho Power than required under its contract. Afton's contract specifically allows Afton to make additional sales to Idaho Power and existing avoided costs from time to time. The filing by the Company for setting its proposed rate based costs may specifically impact the equivalent value of new resources such as the Afton rebuilt plant. To the extent Idaho Power's filing for rate based costs for Swan Falls are greater than its PURPA avoid cost rates, such discrimination against Qualified Facilities is prohibited under federal law. Without an opportunity to intervene in this case, Afton and similarly situated Qualified Facilities are without any means to challenge Idaho Power's claims that new resources such as Swan Falls are "non deferrable."

3. Intervenor believes that any rate based cost above existing avoided costs should be disallowed as a expense properly changed to shareholders. In the alternative, Afton should be

allowed to provide Idaho Power capacity and energy at whatever rate is set for Swan Falls for which ratepayers will be charged.

4. This Intervenor intends to participate herein as a party, and if necessary to introduce evidence, cross-examine witnesses, call and examine witnesses, and be heard in argument. The nature and quality of evidence which this Intervenor will introduce is dependent upon the nature and effect of other evidence in this proceeding.

5. Without the opportunity to intervene herein, this Intervenor will be without any means of participation in the determination of the public interest with respect to the avoided cost rates and the rated Idaho Power proposes charging ratepayers for an unnecessary new generating resource. Unless allowed to Intervene, this Intervenor would be unable to participate in proceedings which may have a material impact on future electric production.

WHEREFORE, Afton Energy, Inc. requests that this Commission grant this Petition to Intervene in these proceedings and to appear and participate in all matters as may be necessary and appropriate; and to present evidence, call and examine witnesses, present argument and to otherwise fully participate in these proceedings.

Dated at Boise, Idaho this 6<sup>th</sup> day of March, 1990.

Respectfully Submitted,

By:

  
OWEN H. ORNDORFF  
Attorney for Afton Energy, Inc.

CERTIFICATE OF MAILING

I hereby certify that I have served a true and correct copy of the foregoing document upon the following parties in this proceeding by:

Larry Ripley  
Evans, Keane, Koontz, Boyd,  
Simko & Ripley  
c/o Idaho Power Company  
1220 West Idaho Street  
P.O. Box 70  
Boise, ID 83707

<input type="checkbox"/>	Hand Delivery
<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Facsimile Transmission
<input type="checkbox"/>	Certified Mail
<input type="checkbox"/>	Federal Express

Steven L. Herndon  
Idaho Power Company  
1220 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707

DATED this 6th day of March, 1990.

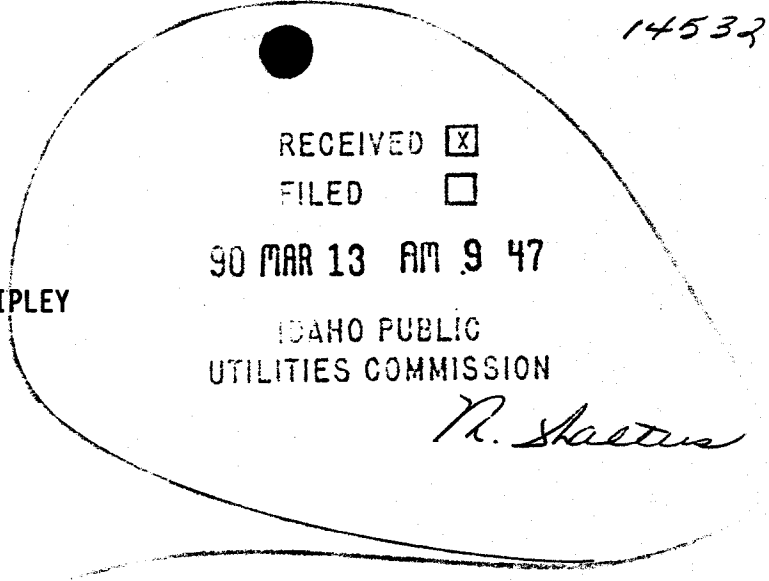
  
Owen H. Orndorff



LARRY D. RIPLEY  
EVANS, KEANE, KOONTZ, BOYD, SIMKO & RIPLEY  
c/o Idaho Power Company  
1220 W. Idaho Street  
P. O. Box 70  
Boise, Idaho 83707  
(208) 383-2674

STEVEN L. HERNDON  
IDAHO POWER COMPANY  
1220 W. Idaho Street  
P. O. Box 70  
Boise, ID 83707  
(208) 383-2918

Attorneys for Idaho Power Company



BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )  
IDAHO POWER COMPANY AUTHORITY TO )  
RATE BASE THE INVESTMENT REQUIRED FOR )  
THE REBUILD OF THE SWAN FALLS )  
HYDROELECTRIC FACILITY )

CASE NO. IPC-E-90-2  
MOTION OF IDAHO POWER  
COMPANY TO DENY PETITION  
TO INTERVENE FILED BY  
AFTON ENERGY, INC.

COMES NOW Idaho Power Company (Idaho Power) and pursuant to RP&P 24.7(b), herewith files its Motion in opposition to the Petition for Intervention filed by Afton Energy, Inc. (Afton), upon the following grounds:

I.

That Afton is not a customer of Idaho Power.

II.

That Afton does have a contract with Idaho Power, but the terms and conditions of that contract are not an issue in this proceeding. Expanding these proceedings to include an interpretation of the rights and obligations of the parties under the Afton contract, whether Afton has the right to sell additional

power to Idaho Power, whether Afton has any "new" capacity to sell to Idaho Power, and the impact of the rate basing of Swan Falls on the Afton facility are all issues which are irrelevant and immaterial to Idaho Power's application in this proceeding and will unduly broaden the issues in this application.

III.

Afton, which is not a customer of Idaho Power, has no standing to request the disallowance of any expenses as legitimate rate making items.

IV.

That there is presently pending before the Idaho Public Utilities Commission, Case No. IPC-E-89-11, which proceeding is for the setting of avoided cost rates and the establishment of such rates for Idaho Power.

V.

In addressing Afton's allegations set forth in paragraphs 2 and 3 to the extent that such allegations purport to set forth factual contentions, Idaho Power denies those allegations except for the fact that Afton has entered into a contract with Idaho Power and that contract is now the subject of litigation in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada. Any rights that Afton has to sell additional power to Idaho Power are set forth in its contract.

VI.

The Petition to Intervene filed by Afton does not show any direct and substantial interest in the proceeding and will unduly broaden the issues. Granting the Petition to Intervene filed by Afton is not in the public interest.

WHEREFORE

Idaho Power respectfully moves that the Petition for Intervention filed by Afton should be denied. For whatever reason, Afton has chosen not to be a participant in Case No. IPC-E-89-11.

DATED this 13th day of March, 1990.

  
/s/ Larry D. Ripley

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of March, 1990, I served a true and correct copy of the within and foregoing MOTION OF IDAHO POWER COMPANY TO DENY PETITION TO INTERVENE FILED BY AFTON ENERGY, INC., postage prepaid and addressed as follows:

Afton Energy, Inc.  
c/o Owen H. Orndorff  
Orndorff & Peterson  
1087 West River Street  
Suite 230  
Boise, ID 83702

Owen H. Orndorff  
Orndorff & Peterson  
1087 West River Street  
Suite 230  
Boise, ID 83702

  
/s/ Larry D. Ripley

APR 18 1990

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR )  
AUTHORITY TO RATE BASE THE )  
INVESTMENT REQUIRED FOR THE )  
REBUILD OF THE SWAN FALLS HYDRO- )  
ELECTRIC FACILITY. )

CASE NO. IPC-E-90-2

ORDER NO. 23000

On March 6, 1990, Afton Energy, Inc., petitioned to intervene in this proceeding in which Idaho Power Company applied for authority to rate base its investment in the rebuild of the Swan Falls hydroelectric facility. Idaho Power timely opposed Afton's Petition to Intervene. For the reasons stated in this Order we grant the Petition to Intervene.

Afton sells electricity to Idaho Power under the Public Utility Regulatory Policies Act of 1978 (PURPA). It has one of the oldest agreements with Idaho Power, and its output under the agreement qualifies for sales rates that are more favorable than current rates. However, according to Afton's Petition, it is now delivering 50% more dispatchable capacity to Idaho Power than required under its agreement, and these additional sales are priced at subsequent, lower rates. Afton contends that there is a relationship between Idaho Power's cost of the Swan Falls rebuild and the Company's current or future avoided costs upon which the rates for sale of Afton's additional output are based.

Idaho Power opposes Afton's Petition to Intervene, contending that the issues Afton has identified are irrelevant and immaterial to this proceeding and would unduly broaden the issues in the Application. Idaho Power contends that Afton, which is not a customer, has no standing to request disallowance of any of Idaho Power's expenditures as legitimate ratemaking items. Idaho Power further

ORDER NO. 23000

argues that there is another proceeding--Case No. IPC-E-89-11--in which the setting of avoided cost is at issue and that Afton should properly be channeled into that proceeding.

Idaho Power and Afton have been at loggerheads in regulatory and judicial forums for a number of years. *See, e.g., Afton Energy, Inc. v. Idaho Power Company*, 114 Idaho 852, 761 P.2d 1204 (1988); *Afton Energy, Inc. v. Idaho Power Company*, 111 Idaho 925, 729 P.2d 400 (1986); *Afton Energy, Inc. v. Idaho Power Company*, 107 Idaho 781, 693 P.2d 427 (1984). Idaho Power successfully opposed Afton's intervention in its drought surcharge rate proceeding. See Order Nos. 21869 and 21913, Case No. IPC-E-88-2 (1988). Much of the history of their disagreements is set forth in those decisions.

In Case No. IPC-E-88-2, in which Idaho Power sought a temporary surcharge unrelated to capital investment or expected long-term operating costs, we denied Afton's Petition to Intervene because we found that the issues related to the temporary surcharge did not affect Afton's relationship to Idaho Power as a qualifying seller of electricity under PURPA. It is not certain that the same can be said of this proceeding.

Ordinarily, there is a relationship between avoided costs and the rate basing of new generation. And, when there is such a relationship, any qualifying producer under PURPA would ordinarily have standing to participate in a proceeding considering the rate basing of the project. However, Idaho Power may well show in this proceeding that there is no connection between the expense of the Swan Falls rebuild and its avoided costs. If that will be the case, then the substance of Afton's arguments will fail. And, Idaho Power will not be prejudiced by Afton's status as a party in this case if Idaho Power's substantive arguments prevail.

On the other hand, if Afton's arguments should prevail, Afton would be prejudiced by denying its Petition to Intervene. The parties' rights can best be accommodated in this instance by allowing Afton to intervene. We do, however, agree with Idaho Power that Afton's intervention, if not properly limited, has the potential for unduly broadening the issues in this proceeding. Accordingly, we will not permit the interpretation of the rights and obligations of the parties under the Afton contract to become an issue in this case. This is not the appropriate forum or proceeding for relitigating the disagreements associated with that agreement. The intervention of Afton is strictly limited to the question of whether and to what extent the investment in the rebuild of the Swan Falls facility should be included in the rate base of the of the Company.

#### ORDER

IT IS THEREFORE ORDERED that the Petition to Intervene filed by Afton Energy, Inc. is hereby granted, limited in scope as set forth in the text of this Order.

IT IS FURTHER ORDERED that all parties in this proceeding serve all papers hereafter filed in this matter on all other parties of record. This Intervenor is represented by the following for purposes of service:

Afton Energy, Inc.  
c/o Owen H. Orndorff  
Orndorff & Peterson  
Suite 230  
1087 West River Street  
Boise, ID 83702

////  
////  
////  
////  
////  
////

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho,  
this 17<sup>th</sup> day of April 1990.

  
DEAN J. MILLER, PRESIDENT

  
PERRY SWISHER, COMMISSIONER

  
RALPH NELSON, COMMISSIONER

ATTEST:

  
MYRNA J. WALTERS, SECRETARY

MG:dc/O-919