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HYDRO POWER

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# IDAHO POWER COMPANY

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IDAHO PUBLIC  
UTILITIES COMMISSION

September 12, 1990

*M. Walters*

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

**RE: Case No. IPC-E-90-8  
Response of Idaho Power Company**

Dear Mrs. Walters:

Please find enclosed for filing an original and seven (7) copies of Idaho Power Company's Response to Staff and Parties in the above entitled matter.

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

Sincerely,

Larry D. Ripley  
Attorney

LDR:mka

Enclosures

LARRY D. RIPLEY  
c/o Idaho Power Company  
1220 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707  
(208) 383-2674

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IDAHO PUBLIC  
UTILITIES COMMISSION

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

Attorneys for Idaho Power Company

FAX (208) 282-2336

**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

RESPONSE OF IDAHO POWER  
COMPANY TO COMMENTS OF  
STAFF AND PARTIES IN THE  
MILNER PROCEEDING

At the prehearing conference held on August 22, 1990, it was agreed that the Commission Staff (Staff) and interested Parties (Parties) would be permitted to file statements of position concerning Idaho Power's Application in this proceeding. The Commission Staff (Staff), Industrial Customers of Idaho Power (ICIP), Afton Energy, Inc. (Afton), and Idaho Consumer Affairs, Inc. (ICA), have filed such statements.

The statements of Staff, ICIP, and Afton all raise legal issues which must be addressed by the Commission if the Commission determines that it will not permit the ratebasing of the Milner Hydroelectric Project upon completion of that project. It is the position of Idaho Power Company (Idaho Power) that the

issuance of a certificate of public convenience and necessity for a generation facility is a determination by the Commission that the facility, upon construction, will be included in the ratebase of the utility when determining the revenue requirement of that utility. Under Idaho law if a utility has reasonably and prudently invested funds in a facility which is dedicated to the public use, that investment must be included in the utility's ratebase for purposes of determining the utility's revenue requirement. The issuance of a certificate of public convenience and necessity is a determination that the facility should be constructed and is dedicated to the public use. If a Certificate of Exemption is issued, the investment in Milner will not be recognized for revenue requirement purposes by the Commission. Since the facility will not be recognized for rate making purposes in the State of Idaho it should be exempt from the jurisdiction of the Commission insofar as the sale of power from that facility is concerned. As counsel for Idaho Power pointed out at the prehearing conference, the difficulty with hydro projects is that there are two jurisdictions which claim authority. The Federal Energy Regulatory Commission (FERC) determines if a hydro facility can be constructed on the navigable waters of the United States and determines many of the construction requirements of the project. The State Regulatory Commission, in this instance, the Idaho Commission, also has jurisdiction over the facility as far as the issuance of a state certificate of public convenience and necessity is concerned. If the Idaho Commission determines that it will not issue a certificate of public convenience and necessity, Idaho Power has proposed that the facility be declared exempt from state regulation for a period of time in order to meet the requirements of the FERC as well as the Commission. This period of exemption must be for a reasonable period of time (20 years) to permit Idaho Power to enter

into a long term sale of the power from the Milner facility.

If the Commission determines that Idaho Power should be issued a certificate of public convenience and necessity and therefore, Idaho Power's reasonable investment in the Milner facility should be ratebased; it is the position of Idaho Power that the amount to be included in ratebase, upon completion of the construction of Milner, should be the plant costs reasonably incurred in constructing Milner limited only by the cap on ratebase that Idaho Power is willing to voluntarily impose.

The amount of investment included in a utility's ratebase are the costs reasonably incurred by the utility. It is not appropriate to utilize some type of avoided cost calculation to determine ratebase investment.

The Company does agree that the actual amount of investment to be included in ratebase can only be determined after construction of Milner is completed. If the amount, however, is below the cap proposed by Idaho Power and has been reasonably incurred, it is the position of Idaho Power that this amount must be recognized in Idaho Power's ratebase for revenue requirement purposes.

The ICIP is perhaps confused as to the effect of Idaho Power's Application on the rates to be charged Idaho Power's customers. The "ratebasing" of a generation facility does not change the rates charged by Idaho Power. Admittedly, the inclusion of a generation facility will increase a utility's ratebase but it may not change the revenue requirement of that utility. The revenue requirement of the utility can only be determined in a proceeding where the utility's rates are subject to revision.

#### CONCLUSION & RECOMMENDATION

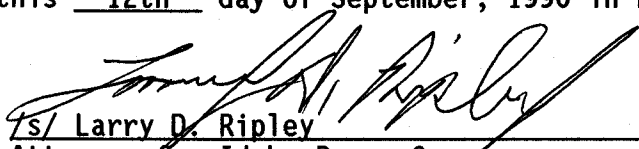
Idaho Power, in responding to the statements of Staff and the Parties, recognizes that all parties will be given additional time to fully brief

the issues that have been raised before the Commission makes a final decision.

Concurrently with the evidentiary proceeding that is to be held in regard to the Company's Application for the Milner Hydroelectric Project, the Commission should set a briefing schedule on the legal issues that have been raised by the Staff and Parties.

If Staff and Parties desire to contend that the Commission's Avoided Cost Determinations for Idaho Power can be utilized to calculate Idaho Power's investment for ratebase purposes, they should be required to file specific proposals as to how that calculation would be made by a date to be set by the Commission. Idaho Power would then be able to respond to such a contention.

Dated this 12th day of September, 1990 in Boise, Idaho

  
/s/ Larry D. Ripley  
Attorney for Idaho Power Company

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of September, 1990, served the foregoing **RESPONSE OF IDAHO POWER COMPANY TO COMMENTS OF STAFF AND PARTIES**, to all parties of record by hand delivering a copy thereof, to the following:

Afton Energy, Inc.  
c/o Owen H. Orndorff  
Orndorff & Peterson  
1087 West River Street - Ste. 230  
Boise, Idaho 83707-0027

David H. Hawk, Director  
Energy Natural Resources  
J. R. Simplot Company  
P.O. Box 27  
Boise, Idaho 83707-0027

R. Scott Pasley  
Assistant General Counsel  
J. R. Simplot Company  
P.O. Box 27  
Boise, Idaho 83707-0027

Peter Richardson  
DAVIS, WRIGHT, TREMAINE  
350 North Ninth Street  
Suite 400  
Boise, Idaho 83702

R. Michael Southcombe, Esq.  
CLEMONS, COSHO & HUMPHREY  
815 West Washington  
Boise, Idaho 83702-5590

Michael S. Gilmore (2)  
Brad M. Purdy  
Idaho Public Utilities Commission  
472 West Washington  
Boise, Idaho 83720


and by causing a copy thereof to be delivered by Federal Express to:

James N. Roethe, Esq.  
PILLSBURY, MADISON, SUTRO  
225 Bush Street  
San Francisco, CA 94140

Grant E. Tanner  
DAVIS, WRIGHT, TREMAINE  
2300 First Interstate Bank Tower  
1300 SW Fifth Avenue - Ste. 2300  
Portland, Oregon 97201

and due to the fact Mr. Miles had another commitment I have caused the copy to be mailed to Mr. Miles at the following address:

Harold C. Miles, Chairman  
Idaho Consumer Affairs, Inc.  
316 15th Avenue South  
Nampa, Idaho 83651

  
By /s/ Larry D. Ripley  
Attorney for Idaho Power Company