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IDAHO PUBLIC  
UTILITIES COMMISSION

PETER J. RICHARDSON

September 19, 1990

Ms. Myrna J. Walters  
Commission Secretary  
Idaho Public Utilities Commission  
472 W. Washington  
Boise, ID 83702

Re: Reply Statement of the Industrial Customers of Idaho  
Power to Idaho Power Company's Response  
Case No. IPC-E-90-8

Dear Ms. Walters:

Enclosed is the original and seven copies of the above  
referenced Reply Statement of the Industrial Customers of Idaho  
Power. Would you please file the same?

If you have any questions concerning this filing, please do  
not hesitate to contact Peter Richardson.

Sincerely,



Nancy Pfeifer  
Secretary to Peter Richardson

np

Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICA- )  
TION OF IDAHO POWER COMPANY )  
FOR CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY FOR )  
THE RATE BASING OF THE MILNER )  
HYDROELECTRIC PROJECT, OR IN )  
THE ALTERNATIVE, A DETERMINA- )  
TION OF THE EXEMPT STATUS FOR )  
THE MILNER HYDROELECTRIC )  
PROJECT )

CASE NO. IPC-E-90-8

REPLY STATEMENT OF THE  
INDUSTRIAL CUSTOMERS OF  
IDAHO POWER TO IDAHO POWER  
COMPANY'S RESPONSE

COMES NOW, the Industrial Customers of Idaho Power (ICIP) pursuant to the Notice of Scheduling and Notice of Hearing issued by the Commission Secretary on August 24, 1990, in the above entitled matter, and provide herein their Reply to Idaho Power Company's (Idaho Power or Company) Response.

I.

IDAHO POWER ATTEMPTS TO  
IMPROPERLY BIND FUTURE COMMISSIONS

Idaho Power's Application and its response to the Statement of Position of the ICIP demonstrates a fundamental misunderstanding of rate making principals. Idaho Power seeks not only a certificate of public convenience and necessity for the construction associated with the Milner project, but it asks this Commission to bind some future Commission to include in the Company's rate base predetermined construction costs. The ICIP therefore respectfully requests that the Company's Application be dismissed in its entirety. Dismissal would not be warranted if the power company were merely seeking a certificate of convenience and necessity for construction work on the proposed Milner hydroelectric facility. Dismissal is warranted because Idaho Power has conditioned the issuance of its certificate of convenience and necessity on receiving a favorable ruling on rate making treatment for its future investment in that facility.

The Company's Response provides:

It is the position of Idaho Power Company . . . 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 rate base of the utility when determining the revenue requirement of that utility.

Idaho Power Response to Comments at pages 1-2.

Idaho Power's argument is irreconcilably inconsistent. The inconsistency in Idaho Power's argument is highlighted in the next

two sentences of its Response. First, Idaho Power accurately observes:

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 rate base for purposes of determining that utility's revenue requirement.

Idaho Power Response to Comments at page 2.

The phrase, "facility which is dedicated" is appropriately written in the past tense. A utility may recover its construction and other costs from its rate payers after the facility has been dedicated to the public use and after the utility has invested funds for the construction of that facility. It is absurd on its face to argue that the utility has made a prudent investment for rate making purposes before the facility has actually been put in service and "dedicated to the public use." Idaho Power goes on to argue, however, that:

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.

Idaho Power Response to Comments at page 2. (Emphasis provided.)

It is impossible to simultaneously make a determination that a facility both ought to be constructed at some time in the future and that the very same facility has already been dedicated to the public use. Idaho Power can not have it both ways.

II.

THE COMPANY'S ATTEMPT TO LIMIT THE  
METHODOLOGY BY WHICH FUTURE COMMISSIONS  
REVIEW INVESTMENTS MUST BE REJECTED

In its Statement of Position the Industrial Customers of Idaho Power (as well as the Commission Staff) suggested alternative methodologies for limiting the dollar amount that may be included in Idaho Power's rate base once construction of the Milner hydroelectric facility is completed. For example, the ICIP offered the following alternative:

Idaho Power's avoided costs still provides a benchmark as to the reasonable cost for Swan Falls. The ICIP submits that, as with Milner, the Company's avoided cost should constitute the ceiling for any rate making recognition of Swan Falls.

Statement of Position and Issues of the ICIP at page 9.

In response, Idaho Power challenges the ICIP and Commission Staff by asserting:

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 rate base purposes, they should be required to file specific proposals as to how that calculation would be performed by a date to be set by the Commission. Idaho Power would be able to respond to such a contention.

Idaho Power Response to Comments at page 6.

Idaho Power misses the point. This Commission may not obligate future Commissions to a particular rate making methodology. Prior to rate basing a particular investment, the Commission must make a determination that the facility is used and useful and that the investment was prudent. A certificate of

public convenience and necessity does not predetermine prudence. Using the published avoided cost rates as a ceiling may be, under today's circumstances, a valid methodology by which to judge power company investment in new generating plant. It may also be a methodology that will likely produce a reasonable result at some time in the future. It is, however, just one possible measure of prudence. The Idaho Commission has the authority to find that, under today's circumstances, a particular methodology for determining the reasonableness of an investment is or is not appropriate. The Idaho Commission cannot find that a particular methodology will, by law, be reasonable at some future date. A ruling as to the appropriateness of rate basing Idaho Power Company's investment in Milner would be a premature endeavor that has no legally binding effect.

### III.

#### IDAHO POWER CANNOT ABDICATE ITS MANAGEMENT RESPONSIBILITIES

Idaho Power is attempting to have the best of both worlds. It is, in essence, seeking insurance that before it makes an investment, the Commission will allow that investment to be recovered in rate base. Idaho Power's proposal eliminates all risk to its stockholders of imprudent or untimely decision making in the board room. Idaho Power is attempting to move the entire risk of such decision making to its ratepayers, many of whom do not hold an equity interest in the power company.

The return Idaho Power recovers on its investment includes a measurement for "risk." One of the most significant risks an electric utility assumes is the commitment to construct new generating facilities. As the Company noted, Idaho law is clear that a regulated utility may only earn a return on those facilities that actually provide service to its customers. If the Milner facility proves to be an imprudent investment (for whatever reason), a future Idaho Commission will be called upon to determine the extent that investment should be disallowed for rate making purposes. Absent significant amendments to the Idaho Public Utilities Law, nothing Idaho Power can do today will change that fundamental fact.

It is true that there may be some sharing of the risks associated with new plant investment that proves to be unneeded. The Commission's decisions concerning Idaho Power's investment in the Valmy facilities demonstrated a willingness on the part of the Commission to require the ratepayers to share some of those risks. The determination as to whether the ratepayers should share the risks in an imprudent investment can only be made after the investment is made and a prudency review has been completed. Requiring the ratepayers to share the risks of an investment that has yet to be made makes the ratepayer akin to an involuntary equity investor.

IV.

DISMISSAL OF IDAHO POWER'S  
APPLICATION IS THE ONLY  
REASONABLE OPTION OPEN TO THE COMMISSION

Idaho Power's Application, as noted above, is tied to its attempt to seek preapproval of rate making treatment of its potential construction costs. Because of the conditional nature of Idaho Power's application, a new application for a certificate of public convenience and necessity to begin construction of the Milner facility would be required, leaving rate making treatment of that facility to be considered at the appropriate time.

For the reasons set forth above, Idaho Power's application must be dismissed in its entirety. In the alternative, the Commission must limit the scope of Idaho Power's Application to a determination of whether a certificate of public convenience and necessity shall be issued to Idaho Power Company for the construction of the Milner hydroelectric facility.

If the Commission desires, the ICIP is prepared to engage in detailed legal briefing on this important issue.

DATED this 19th day of September, 1990.

Respectfully submitted,

DAVIS WRIGHT TREMAINE

By   
Grant F. Tanner  
Peter J. Richardson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of September, 1990, served the foregoing REPLY STATEMENT OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER TO IDAHO POWER COMPANY'S RESPONSE, Case No. IPC-E-90-8, on all parties of record by hand delivering a copy thereof, to the following:

Michael S. Gilmore  
Brad M. Purdy  
Idaho Public Utilities Commission  
472 W. Washington  
Boise, ID 83720

and by mailing a copy thereof, postage prepaid, to the following:

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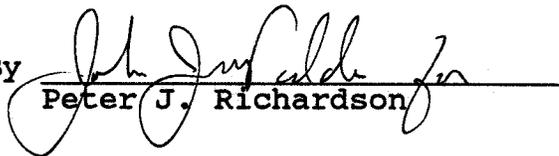
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By

  
Peter J. Richardson