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BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER OF IDAHO POWER COMPANY APPLICATION FOR GENERAL RATE INCREASE IN THE COMPANY'S OREGON ANNUAL REVENUES OF $4,418,908, OR 17.52 PERCENT OVERALL	CASE NO. UE-167 OPENING BRIEF OF THE OREGON INDUSTRIAL CUSTOMERS

COMES NOW, The Oregon Industrial Customers of Idaho Power, hereinafter referred to as "OICIP," and pursuant to the Order of Judge Smith in this matter, and pursuant to this Commission's Rules of Procedure, Rule OAR 860-014-0090 and hereby lodges its opening brief and states as follows:

DANSKIN MUST NOT BE INCLUDED IN IDAHO POWER'S RATES

Idaho Power Company ("Idaho Power" or the "Company") seeks to include in its rates the costs associated with the Danskin Power plant. Those costs include not only the actual running costs but also a return of and a return on its investment in Danskin. The Danskin plant is a generating plant consisting of two natural gas-fired combustion turbines rated at approximately

45 MW each (Unit #2 ad Unit #3). It is located approximately two miles from Mountain Home, Idaho, and first produced power in September 2001. It is supplied with natural gas from the Williams Northwest Pipeline that is located near the plant. Due to air quality standards, the plant is limited in operations to just 5,140 hours a year. See Reading Direct Testimony at p. 4, also Said Direct Testimony at p. 7 – 8.

The legal standard for excluding plant from a utility's rate base is set forth in the Oregon Revised Statues at Section 757.355 which provides:

> (1) Except as provided in subsection (2) of this section,[1] a public utility may not, directly or indirectly, by any device, charge, demand, collect or receive from any customer rates that include the costs of construction, building, installation or real or personal property not presently used or providing utility service to the customer.
>
> ORS 759.355

Although ORS 757.355 was only enacted [2] in 1978, the prohibition against including plant that is not presently used to provide service in a utility's rate base has long been well established in Oregon law:

> We are well satisfied that the company cannot include within its valuations property which it neither used nor was useful to the public service. Property which was not reasonably necessary to the adequate furnishing of the phone service must be excluded from the rate base.

Pacific Tel. & Tel. Co. v. Wallace 158 Or. 210, 231, 75 P.2d 942 (1938). *See also* Citizens' Utility Board v. PUC 154 Or. Ap. 702, 709, 962 P.2d 744 (1998).

There is no question that the Danskin plant is operating. The question before this Commission is whether it, as the Court in Wallace ruled, is "reasonably necessary to the

[1] Subsection (2) addresses capital improvements for water utilities and is hence irrelevant for purposes of the question of Danksin's ratebase treatment.
[2] Via an initiative measure.

adequate furnishing" of, in this instance, electric service. We respectfully submit that Danskin is decidedly not reasonably necessary by any reading of the term "reasonable".

Dr. Reading testified that Danskin's operating costs (including capital costs) exceeded 29 cents per kwh in 2003 and exceeded 34 cents in 2003! Reading Direct Testimony at p. 4. These costs significantly exceed the Company's own estimate for running the plant. Dr. Reading observed that the Company described its expected operating costs for Danskin in its application for a certificate of public convenience and necessity from the Idaho Public Utilities Commission as follows:

> The preliminary estimate of the levelized cost per megawatt hour (MWH) would range from an upper level of $223 per MWh . . . to a lower range cost of $77 per MWh…

Reading Direct Testimony at p. 5. As Dr. Reading observed, the actual running cost for Danskin exceeded even the company's highest estimated cost by 33 percent and it exceeded the lowest estimated cost for this facility by an incredible 445 percent. Reading Direct Testimony p 6. Even by the Company's own estimate of the ultimate cost of Danskin, it cannot be viewed as a reasonable investment on which rates should be set.

Idaho Power attempts to justify the extraordinarily high costs of the Danskin plant by noting that it is a peaking unit and that therefore the high running costs should not be used to disallow this plant from rate base. Idaho Power's witness, Mr. Said, testified that he would expect a peaking unit to sit idle in excess of 70% of the time. Said Surrebuttal Testimony p. 12. However, according to the Company's own power supply model, Daskin is expected to run fewer than ten hours a year. Ten hours is equal to slightly more than one tenth of one percent of a year. Danskin fails even under the Company's own definition of a peaking unit. Unlike a true peaking facility that is expected to sit idle 70 percent of the time, Danskin is expected to sit idle 99.9 percent of the time, assuming the Company' own modeling is to be believed. Danskin is

simply not "reasonably necessary" to furnish utility service. The OICIP respectfully submit that it is not reasonable to ask the ratepayers to pay for Danskin because it fails both as a peaking unit and it fails to meet the Company's own cost estimates for its construction.

Idaho Power would like this Commission to believe that Danskin was constructed pursuant to its Integrated Resource Plan ("IRP"). Company witness Said testified regarding the nexus between the Company's IRP and Danskin as follows:

> Q Has the Company kept the Commission and the public advised of its need to construct peaking generation facilities?
> A. Yes. The Idaho and Oregon Commissions acknowledge and accepted both the 2000 and 2002 Integrated Resource Plans in which Idaho Power Company identified simple-cycle natural gas-fired combustion turbines as the most cost-effective generation to meet the summer peak. In accordance with Idaho law, the Idaho Commission has also granted Idaho Power Certificates of Public Convenience and Necessity for both the Danskin Plant as well as the Bennett Mountain Plant that is currently under construction. Both the IRPs and the Certificate cases were public processes with significant opportunity for public comment.

Said Direct Testimony p. 11.

Danskin, however, was constructed outside of the parameters of Idaho Power's Integrated Resource Plan as it was never contemplated in that document. The resource plan, which is on file with this Commission, identified a peaking resource as not being needed by Idaho Power until 2004. Tr. 52 The Company ordered the generating turbines for Danskin in February of 2001. Said Rebuttal Testimony p. 22. The IRP identified a 250 MW plant while Danskin is only 90 MW. Tr. 52 The IRP stated that construction and permitting of a combustion turbine would take 34 months – Danskin was constructed and permitted in less than ten months. Tr. 48-49. The IRP identified a combustion turbine with a 30 percent capacity factor. Tr. 52 Danskin has a normalized capacity factor of less than one tenth of one percent. In addition, there was no public

involvement in the decision to construct Danskin which may have revealed some other, possibly less costly alternative. Tr. 45.

The Company cannot credibly claim that Danskin was contemplated or even imagined by its IRP. The plant contemplated in the IRP was to be constructed through a thoughtful process that even included the issuance of a request for proposals. In fact, the Idaho Commission found that Danskin was not constructed through a RFP process and had to therefore conclude that it had no idea whether the Danskin plant was the least cost alternative. Tr. 54. Idaho Power's witness's claims to the contrary (Said Rebuttal p. 12), the Idaho Commission did not conclude that Danskin was reasonably priced when compared with other peaking facilities. Tr. 64-68.

There can be no doubt that the Danskin Plant was conceived, and construction initiated, as a direct response to the energy crisis facing the West in the winter of 2000-2001. As noted above, the Company ordered turbines in February of 2001. However, it did not seek the necessary certificate of public convenience and necessity from the Idaho Commission until April of 2001. The accelerated date for beginning construction of Danskin was driven by the market crisis that was occurring at the time the turbines were ordered. Because Idaho Power did not conduct a competitive RFP process, this Commission is faced with the same dilemma as the Idaho Commission in determining whether Danskin was least cost, and hence, a reasonable response to that energy crisis.

The Danskin plant was initiated, not as a peaking unit in conformance with Idaho Power's IRP, but as a 100% load factor base load plant for purposes of capturing the high wholesale markets envisioned at the time. The following questions of Mr. Said and his responses illustrates the fact that Danskin was not built to meet peak, but rather to capture high wholesale market prices:

> Q.- - if you were looking at the $400 market you referenced in your testimony, Danskin wouldn't be a true peaking facility because it would be running pretty much all the time?
> A. Yes, it was estimated to, at higher market prices, return much higher than 30 percent capacity factor.
> Q. What was it estimate to run at?
> A. I believe it was about 5,000 out of the 8,760 hours. So maybe 60 percent.
> Q. And 5,000 hours sounds like, you know, 60 percent of the year. But isn't that a hundred-percent capacity factor for what it's allowed to operate under your air quality permit?
> A. It does have limited hours of operation. So, yes, <u>it would have operated at a nearly hundred percent capacity factor</u> during the times it would be allowed to run.

Tr. pp. 62-63. Emphasis provided.

Idaho Power embarked on building a peaking plant that would normally take 34 months to construct in a mere ten months with the goal of running it 100 percent of the time. By definition, peaking plants do not run 100 percent of the time. Just because the Company is calling it a peaking plant, doesn't make it true. In fact, Idaho Power's own witness, Mr. Said, testified that the plant was not a "true peaking plant" in his rebuttal testimony:

> Given these actual market conditions and Idaho Power's potential inability to import sufficient energy due to transmission constraints, a down payment on the turbines was made in early February 2001 and the purchase was completed by mid-March 2001. The wholesale markets subsequently moved lower, <u>but the project was continued based on the need for a true peaking resource to increase system reliability</u>.

Said Rebuttal Testimony p. 22. Emphasis provided.

It cannot be questioned that Danskin was not conceived as a plant designed to provide system reliability. It was designed to take advantage of wholesale markets that were out of control. When "wholesale markets subsequently moved lower" then, and only then, did Idaho Power conveniently decide that Danskin is a "true peaking resource". This plant is simply not "reasonably necessary" to provide utility service.

OTHER OUTSTANDING ISSUES

The parties waived cross examination of the OICIP's witness relating to the following issues:

1. The OICIP's position that time-of-use rates are inappropriate and do not achieve the Company's stated goals.
2. The OICIP's position that Idaho Power should be actively considering a distributed generation program utilizing existing emergency generators that are already installed in many of is customers' commercial office buildings and hospitals.
3. The OICIP's position that Idaho Power is neglecting quality of service issues in its Ontario service area.
4. The Company's AURORA model is flawed and should therefore not be relied upon for ratemaking purpose.

While these outstanding issues remain important to the OCIP, there are no legal disputes that we are aware of surrounding their resolution.

DATED this 13th day of June, 2005.

Richardson & O'Leary, LLP

By _____
Peter J. Richardson
Attorney for the Oregon Industrial Customers
of Idaho Power

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of June 2005, a true and correct copy of the within and foregoing OPENING BRIEF of the Oregon Industrial Customer of Idaho Power, Case No. UE 167, was served by electronic copy and overnight mail, postage prepaid, to the parties of record.

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Peter Richardson
Administrative Assistant