

January 11, 2006

VIA EMAIL AND US MAIL

Filing Center
Oregon Public Utility Commission
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308-2148

Re: UP 229 – Idaho Power's Application for Reconsideration

Dear Sir or Madam:

Enclosed for filing in the above-named docket is the original of Idaho Power Company's Application for Reconsideration. Please contact me with any questions.

Very truly yours,



Jessica A. Gorham

Enclosure

cc: Patrick Harrington (Idaho Power)
Michael Dougherty (OPUC)

1 **BEFORE THE PUBLIC UTILITY COMMISSION**

2 **OF OREGON**

3 **UP 229**

4 In the Matter of

5 IDAHO POWER COMPANY

6 Requests Approval of the Sale of the Boise
7 Bench Transmission Substation Property and
The State Street Office Property

APPLICATION FOR RECONSIDERATION

8
9 **I. INTRODUCTION**

10 Idaho Power Company (“Idaho Power” or the “Company”), in accordance with the
11 provisions of ORS 756.561 and OAR 860-014-0095, hereby applies to the Public Utility
12 Commission of Oregon (“Commission”) for reconsideration of its Order No. 05-1233 entered on
13 November 28, 2005 (the “Order”), in which it approved and set conditions on the Company’s
14 sale of the Boise Bench Transmission Substation Property (“Boise Bench Property”) and the
15 State Street Office Property. Idaho Power requests reconsideration of the portion of the Order as
16 it pertains to the Boise Bench Property on two alternative bases:

17 First, Idaho Power erred in requesting approval of the sale of the Boise Bench Property in
18 the first place. The Boise Bench Property was never utility property and was therefore not
19 included in rate base and not necessary or useful in the performance of Idaho Power’s duties to
20 the public. Under the applicable rules, Idaho Power was not required to request approval for the
21 sale of that property. Accordingly, due to Idaho Power’s mistake, the Commission erred in
22 setting conditions on the sale of the Boise Bench Property.

23 Alternatively, even if the Boise Bench Property had been necessary or useful, and even if
24 the Idaho Power had properly submitted the sale for the Commission’s review, the Commission
25 should not have ordered that the proceeds from the sale of the property be applied to reduce the
26 existing excess power cost deferral balance for the benefit of customers, because that land was

1 unimproved and not subject to depreciation. Therefore, the gains from the sale of that property
2 should be retained by the Company’s shareholders.

3 **II. FACTUAL BACKGROUND**

4 In 2001, Idaho Power sold approximately 26 acres of unimproved land located in Idaho—
5 referred to in the filings in this case as the “Boise Bench Property.” The Boise Bench Property
6 was adjacent to Idaho Power’s existing Boise Bench Transmission Substation Site. The Boise
7 Bench Property was never utility property, never included in rate base or revenue requirement
8 and, therefore, customers did not pay to acquire or maintain the property. See Affidavit of Jim
9 Farson, dated January 6, 2006, attached hereto.

10 On October 21, 2005, Idaho Power submitted to the Commission its Application for an
11 Order Approving the Sale of the Boise Bench Transmission Substation Property and the State
12 Street Office Property (“Application for Approval”).¹ In its Application for Approval, Idaho
13 Power stated that it could sell the Boise Bench Property without affecting its operations at the
14 substation site, and that the Boise Bench Property was no longer necessary or useful in its
15 fulfillment of its duties to the public or required in the utility’s rate base.² Thus, due to the
16 Company’s own error, the Application for Approval incorrectly implied that the Boise Bench
17 Property was utility property included in Idaho Power’s rate base.

18 On November 28, 2005, the Commission issued the Order approving the sale of the Boise
19 Bench Property and the State Street Office Property, subject to certain conditions.³ Relying on
20 the Company’s incorrect suggestion that the Boise Bench Property was included in rate base, the
21 Commission ordered Idaho Power, as a condition of its approval, to record the Oregon-allocated
22 gain on the sale of two properties “as a one-time benefit applied to Idaho Power Company’s
23 excess power cost deferral”—Condition 4.⁴ The net gain on the Boise Bench Property allocated

24 ¹ *In re Application of Idaho Power Company for an Order Approving the Sale of the Boise Bench Transmission*
25 *Substation Property and the State Street Office Property*, Docket UP 229 (Oct. 21, 2005).

26 ² *Id.* at 6–7.

³ *In re Idaho Power Company*, Docket UP 229, Order No. 05-1233 (Nov. 28, 2005).

⁴ *Id.* at 2.

1 to Oregon was \$27,689.⁵ Because the gain on the sale of the Boise Bench Property should not be
2 ordered to the customers' account, Idaho Power now brings this application for reconsideration.

3 **II. ARGUMENT**

4 **A. Applications for Reconsideration Under OAR 860-014-0095**

5 The Commission may grant an application for reconsideration if the applicant shows
6 “[g]ood cause for further examination of a matter essential to the decision.”⁶ The Commission
7 may also grant an application for reconsideration if its order contained an error of law that was
8 essential to the decision.⁷ For the reasons described below, the Commission should reconsider
9 the Order because good cause exists to do so or, in the alternative, because the Order contains an
10 error of law.

11 **B. Grounds for Granting Idaho Power’s Application for Reconsideration**

- 12 1. The Commission Should Reconsider Its Order for Good Cause, Because The
13 Boise Bench Property Was Not Necessary or Useful to Idaho Power’s Duties to
14 the Public, Was Never in Rate Base, and Idaho Power Was Therefore Not
Required to Obtain Commission Approval of the Sale

15 ORS 757.480(1)(a) requires public utilities doing business in Oregon to obtain
16 Commission approval to sell utility property that is “necessary or useful in the performance of its
17 duties to the public.” Because the statute does not prohibit the sale of utility property without
18 Commission approval if the property “is not necessary or useful in the performance of its duties
19 to the public,”⁸ a determination of whether the property is necessary or useful is essential to
20 determining whether Idaho Power must obtain the Commission’s approval prior to selling the
21 property. Due to an administrative error, Idaho Power included the Boise Bench Property in its
22 Application for an Order Approving Sale of Property even though it was not required to do so.
23 Idaho Power regrets this oversight and asks the Commission to rectify the present situation by:

24
25 ⁵ *Id.* at Appendix A.

⁶ OAR 860-014-0095(3)(d).

⁷ OAR 860-014-0095(3)(c).

⁸ ORS 757.480(1)(a).

1 (1) finding that the Boise Bench Property was not necessary or useful to Idaho Power’s duties to
2 the public; and (2) revoking all conditions on the sale of the Boise Bench Property imposed in
3 the Order.

4 2. The Commission Should Reconsider its Order, Because It Improperly Required
5 Idaho Power to Apply the Net Gain on a Sale of Non-Utility Real Property as a
6 Benefit to Its Excess Power Cost Deferral

7 In the alternative, if the Commission determines that its approval of Idaho Power’s sale
8 of the Boise Bench Property was required, Idaho Power requests that the Commission reconsider
9 its Order because it contains an error of law. Specifically, Condition 4 of the Order improperly
10 requires Idaho Power to record the Oregon-allocated gain on the Boise Bench Property sale as a
11 reduction to its existing excess power cost deferral balance. Reducing the deferral balance
12 attributes the value of the gain on the sale to customers. The Commission erred in imposing
13 Condition 4 with respect to the Boise Bench Property, because customers never contributed to
14 the property financially. In cases such as this one, where real property has been maintained
15 using shareholder funds, was never in the utility’s rate base, and the risk of loss on the property
16 is borne solely by a utility’s shareholders, the gain realized on the sale of the property should be
17 returned to shareholders.⁹ This view is supported by the courts as well as strong legal and policy
18 arguments.

19 First, the Boise Bench Property was never included in Idaho Power’s rate base, and as
20 such, Idaho Power’s customers did not pay the costs of purchasing the property. Because Idaho
21 Power’s shareholders, not its customers, bore the financial burden of purchasing the property, it
22 is reasonable that they receive any gain realized on the property.¹⁰ In addition, because the Boise
23 Bench Property was not included in the Company’s revenue requirement, customers never
24 contributed to the maintenance of the property after it was purchased. As the United States

25 ⁹ See, e.g., *Me. Water Co. v. Pub. Util. Comm’n*, 482 A.2d 443 (Me. 1984); *Wash. Pub. Interest Org. v. Pub. Serv.*
Comm’n, 446 A.2d 28 (D.C. App. 1982); *Phila. Suburban Water Co. v. Penn. Pub. Util. Comm’n*, 427 A.2d 1244
26 (Pa. Cmwlth. 1981); *Boise Water Corp. v. Idaho Pub. Util. Comm’n*, 578 P.2d 1089 (Idaho 1978); *Lexington v.*
Lexington Water Co., 458 S.W.2d 778, (Ky. App. 1970).

¹⁰ *Boise Water Corp.*, 578 P.2d at 1092.

1 Supreme Court has noted, customers pay for the service they receive from a utility, not for the
2 property used to provide the service.¹¹ By paying for utility service, customers “do not acquire
3 any interest, legal or equitable, in the property used for their convenience or in the funds of the
4 company.”¹² In addition, because real property does not depreciate, the customers did not gain
5 any interest in the property by paying the utility’s depreciation allowance.¹³ In Idaho Power’s
6 case, the customers made no financial contribution to this property at any time and should not
7 reap the rewards of the investment made by the shareholders.¹⁴

8 Second, Idaho Power’s customers never bore the risk that Idaho Power could lose money
9 on the sale of the property. The property was never in Idaho Power’s rate base, so customers
10 would not have experienced higher rates in the event that Idaho Power lost money on the sale of
11 the property.¹⁵ Because the Commission would not require customers to pay for Idaho Power’s
12 loss on property that was not included in the rate base, it should treat gains in the same manner
13 and not allocate gains on such property to customers.

14 Finally, failing to allow shareholders to recoup financial investments in utilities would
15 eventually harm customers. By requiring Idaho Power to allocate the gain on this property to
16 reduce its excess power cost deferral balance, the Commission would deny compensation to
17 shareholders for the financial benefits they contributed to the Company and the risks they
18 accepted in doing so. Adopting such a policy would harm a utility’s ability to attract capital and
19 increase investors’ perceived risk of utility investments.¹⁶ As a result, utilities would be less able
20 to maintain and update their operations and equipment, and implement more efficient and cost-
21 saving technology. Therefore, customers would pay higher rates than they would if the
22

23 ¹¹ *Bd. of Pub. Util. Comm’rs v. N.Y. Tel. Co.*, 271 U.S. 23, 32 (1926).

24 ¹² *Id.*

25 ¹³ *Phila. Suburban Water Co.*, 427 A.2d at 1247.

26 ¹⁴ *Boise Water Corp.*, 578 P.2d at 1093.

¹⁵ Although real property has generally risen in price in the past, a failure to recognize the possibility of loss on the sale of a utility’s real property would result in a “myopic view of the market system and the realities of life.” *Phila. Suburban Water Co.*, 427 A.2d at 1247 n.6.

¹⁶ *Wash. Pub. Interest Org.*, 446 A.2d at 32.

1 Commission allowed shareholders to reap the benefit of financial risks they take when they
2 invest capital in a utility.¹⁷ These higher rates would negate any benefit customers receive by
3 virtue of gains on the sale of real property.¹⁸

4 Customers have no reasonable claim to gains realized by a utility when it sells real
5 property that was never in the utility's rate base and was maintained using shareholder money.¹⁹
6 Therefore, the Commission should eliminate Condition 4 of the Order as it applies to the Boise
7 Bench Property, and instead require Idaho Power to record the gain on the sale of the Boise
8 Bench Property for the benefit of its shareholders.

9 **C. Changes to the Order Requested and How Changes Would Alter the Outcome of the**
10 **Order**

11 In a party's application for reconsideration, it must specify the change in the order that it
12 is requesting and how the requested changes will alter the outcome of the order.²⁰ Idaho Power
13 requests that the Commission remove the four conditions of the Boise Bench Property sale in the
14 Order. This change would alter the outcome of the Order by eliminating the conditions the
15 Commission applied to the sale of the Boise Bench Property, while retaining their applicability
16 to the State Street Office Property.²¹

17 In the alternative, Idaho Power requests that the Commission remove Condition 4 of the
18 Order as it applies to the Boise Bench property, which required Idaho Power to "record the
19 Oregon-allocated gain on the sale including interest... as a one-time benefit applied to Idaho

20 ¹⁷ *Id.*

21 ¹⁸ *Id.*

22 ¹⁹ *Maine Water Co.*, 482 A.2d at 449.

23 ²⁰ OAR 860-014-0095(2)(c) and (d).

24 ²¹ In cases of sales of improved real property, as a general rule, Idaho Power believes that the Commission should
25 (a) determine the value of the gains property attributed to the "bare land" portion of the property, and (b) order that
26 the gains be allocated as a benefit to the shareholders. This is the approach taken by the Idaho Public Utility
Commission, and Idaho Power believes it is consistent with the sound legal and policy considerations discussed
herein. In this particular case, Idaho Power has not asked that the Commission reconsider Condition 4 as it pertains
to the State Street Property—which is improved property—primarily because the Oregon jurisdictional amount of
the value properly attributed to the land itself is relatively insignificant. However, in a future sale of improved real
property, Idaho Power may request that the Commission separately consider the value of the gains on the land and
order that such gains will be allocated to the shareholders.

1 Power Company's excess cost deferral."²² Idaho Power requests that the Commission instead
2 acknowledge that it is appropriate for Idaho Power to record the Oregon-allocated gain on the
3 sale of the property as a benefit to Idaho Power's shareholders.

4 **III. CONCLUSION**

5 WHEREFORE, for the reasons stated above, Idaho Power respectfully requests that the
6 Commission issue an order changing its Order No. 05-1233 and closing Docket UP 229.

7 DATED this 10th day of January, 2006.

8 ATER WYNNE, LLP

9
10 /s/ Lisa F. Rackner

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²² Order No. 05-1233, at 2.

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8 the State Street Office Property

AFFIDAVIT OF JAMES W. FARSON IN
SUPPORT OF APPLICATION FOR
RECONSIDERATION

9 I, James W. Farson, do depose and say:

- 10 1. I am the Director of Financial Accounting and Reporting in the Finance Department
11 of Idaho Power Company ("Idaho Power").
- 12 2. I have reviewed the documentation related to the Boise Bench Transmission
13 Substation Property as that property is defined in the Application for Reconsideration
14 ("Boise Bench Property") and make the following statements based on my review of
15 those documents and my personal knowledge.
- 16 3. Idaho Power purchased the Boise Bench Property in 1957.
- 17 4. After purchasing the Boise Bench Property, Idaho Power assigned the value of its
18 investment in the Boise Bench Property to FERC Account 121: Non-Utility Property,
19 which is the appropriate assignment for property that is not included in Idaho Power's
20 rate base. Until the Boise Bench Property was sold in 2001, the investment in the
21 Boise Bench Property was held in FERC Account 121.
- 22 5. While Idaho Power owned it, the Boise Bench Property was unimproved, and as such,
23 Idaho Power's customer funds were not used to maintain the Boise Bench Property.
- 24 6. The Boise Bench Property was never used in the utility operations of Idaho Power
25 and a return on or a return of Idaho Power's investment in the Boise Bench Property
26 was never included in Idaho Power's revenue requirement for ratemaking purposes.

1 DATED this 6 day of January, 2006.

2
3 James W. Farson
4 James W. Farson
5 Idaho Power Company

6 SUBSCRIBED AND SWORN TO before me this 6th day of January, 2006.

7
8 Joanne M. Butler
9 Notary Public for Idaho
10 My commission expires: 10-5-07

