



IDAHO PUBLIC UTILITIES COMMISSION

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May 7, 1997

The Honorable John D. Dingell, Ranking Member
Commerce Committee Democratic Office
564 Ford House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell:

This is the response of the Idaho Public Utilities Commission to your 15 question survey dated April 10, 1997.

Q-1 Has your Commission or State legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?

A-1 In 1996, the Idaho Public Utilities Commission conducted an investigation into changes occurring in the electric industry. (See Attachment A: *Order No. 26555, In the Matter of the Commission's Investigation into Changes Occurring in the Electric Industry.*) The Idaho Legislature is currently studying the issue.

The Idaho Public Utilities Commission has considered and approved two pilot open access programs proposed by the Washington Water Power Co.(WWP). The first program approved, *Direct Access and Delivery Service* (DADS) allows the Company's industrial customers to obtain up to one- third of their power from alternative electric suppliers. Approximately one-half of the 11 eligible customers are currently participating and are achieving savings of about 3 to 4 mills/kWh. The second program, *More Options for Power Service* (MOPS) permits 900 of the Company's randomly selected Idaho residential and commercial customers to begin purchasing energy from alternative suppliers on July 1, 1997.

Q-2 Has your State asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?

A-2 Idaho has not asked Congress to mandate retail wheeling legislation, nor has it asked for assistance from Congress. In comments to the U.S. Senate Energy and Natural Resources Committee, Commissioner Marsha Smith described what action is being taken in Idaho, and recommended that the federal government address broad principles that are of national necessity and leave the details of implementing those principles and other local and regional matters to the states.

In addition, she noted two specific areas where congressional action is needed. First, Bonneville Power Administration should be authorized to use federal transmission in an independent regional grid operation. Second, FERC has interpreted the Federal Power Act to allow it jurisdiction over facilities that have traditionally been local distribution under state jurisdiction. Congress should draw clear jurisdictional lines that leave local distribution with the states and not allow FERC to reach beyond its appropriate jurisdiction over wholesale sales. (See Attachment B: *Prepared Remarks of Idaho Public Utilities Commissioner Marsha Smith for presentation before U.S. SENATE ENERGY AND NATURAL RESOURCES COMMITTEE.*)

- Q-3. Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain? If not, what timing and other problems might ensue? What could Congress do to address any such problems?
- A-3 Should the Idaho Legislature decide to implement retail wheeling within the state of Idaho, the Public Utilities Commission has the authority to resolve stranded cost issues.
- Q-4 Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?
- A-4 The Idaho Public Utilities Commission questions whether the federal government can legally “mandate” competition among suppliers of electric energy within the state of Idaho. Nonetheless, the Commission is aware of only one area in which the Idaho Public Utilities Commission does not have the necessary authority to address issues arising from whatever legislation the United States Congress may enact including the repeal of the Public Utility Holding Company Act of 1935 or the Public Utility Regulatory Policies Act of 1978. The Idaho Public Utilities Commission does not have clear access to the books and records of utility company affiliates. Any legislation to repeal PUHCA should include access by public utility commissions to holding company and affiliate books and records.
- Q-5 Would any constitutional issues be raised by federal legislation:
- a. mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?
 - b. requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in its consumers’ best interests?
- A-5 As indicated in the Commission’s Response to Question No. 4, the Commission believes that there may be a constitutional impediment to the ability of the United States Congress to mandate retail competition among suppliers of electric energy operating within the state of Idaho. The Commission believes that industry is moving, of its own accord, toward free market ideals. Any legislation

enacted by the United States Congress should facilitate rather than attempt to mandate those ideals. The Idaho Public Utilities Commission has already conducted a proceeding to analyze issues relating to restructuring of the electric industry. The Commission has encouraged the electric utilities subject to its jurisdiction to be creative in their pricing structures and services offered to customers to better meet the demands of the market place. The Commission has recently approved several innovative and non-traditional rate setting structures for two of its regulated electric utilities. It is likely that the Commission will continue to be flexible and innovative in this regard and will not be bound to traditional monopoly/rate of return rate setting methodologies.

- Q-6 From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?
- A-6 If "prior state action" is having adopted a retail competition plan, then states would be forced to spend time and money redoing their plans to match federal legislation and possibly abandon aspects of their own plans arrived at only after much public discussion and designed to meet the particular needs of electric customers and providers in that state.
- Q-7 In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large industrial customers are able to negotiate lower rates with state utility commission, and that the incidence of such rate reductions is on the increase.
- a. Are you aware of any study or analysis relevant to your State that supports this conclusion?
- b. Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.
- A-7 a. We know of no analysis to support this conclusion. Attachment C contains the most recent orders approving new contracts for large industrial customers.
- b. See Attachment D.
- Q-8 Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer classes.
- A-8 Electric rates for Idaho investor owned utilities have been stable for the last 10 years. Only one general rate case was filed with the Idaho Public Utilities Commission by an electric utility in that time. Idaho Power Co. (IPCo) received an overall increase in base rates of 5.07%. (IPC-E-94-5; IPC-E-95-5) Base rates did not change for Washington Water Power Co.. Pacificorp, d.b.a. Utah Power and Light Co. (UP&L) reduced rates by 2.5% during that time. Idaho's two predominantly hydroelectric utilities, Idaho Power and Washington Water Power, have power cost adjustment

clauses that allow the companies to adjust rates to reflect lower costs in years with good stream flows and higher costs during periods of drought.

- Q-9 Some proponents of retail competition hold the view that all electricity resources should be sold at a market price and that state authority to regulate retail rates should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In a restructured electric industry, who should receive the benefits of these low-cost resources -- utility ratepayers, utility shareholders or the highest bidder?
- A-9 Idaho electric customers pay the lowest rates in the nation. We believe that a move to market prices and the elimination of regulation may result in higher prices to many Idaho customers and higher returns to utility shareholders. In Idaho and the Northwest, electric issues are inextricably linked to water use, environmental, and river governance issues. It is premature to identify mechanisms to manage these highly complex issues. (See Attachment E, *Deregulation of the Electric Utility Industry: Some Basic Water Related Issues.*) At least some people in Idaho believe that utility customers and shareholders should share in benefits from low-cost hydro resources.
- Q-10 Of those states which have adopted retail competition, how many have addressed the issue of "reciprocity", (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to its retail markets)? Whose interests does a reciprocity requirement affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?
- A-10 Reciprocity protects the interests of the utility whose service territory is opened to competition in an area that is otherwise characterized by exclusive service franchises. Reciprocity protects the open utility only from head-to-head competition from other utilities that are protected from competition in their own distribution territories. It does not eliminate indirect competition from other utilities through third party marketers or brokers. The Idaho Public Utilities Commission approved a reciprocity requirement when it approved the WWP MOPS pilot program. Because WWP still has under Idaho law an exclusive right to serve customers in its service territory and has chosen voluntarily to allow some customers to choose alternative energy suppliers the Commission accepted this condition.. The Idaho Public Utilities Commission has not issued a formal finding or come to any ultimate conclusions regarding the issue of reciprocity. Conceivably, a reciprocity requirement could be the basis of a constitutional challenge.
- Q-11 If Congress were to require "unbundling" of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators?
- A-11 The Idaho Public Utilities Commission questions whether the federal government can legally mandate retail competition within Idaho and highly recommends that Congress leave the details of any retail restructuring to the states. In fact, the Idaho legislature has already enacted a law requiring that Idaho utilities unbundle costs. The Idaho Public Utilities Commission will begin cases to

undertake that process this summer. A federal requirement to unbundle services is not necessary; however, if not overly prescriptive, it could be accomplished without undue problems.

- Q-12 Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?
- A-12 A number of western utilities are currently in the process of forming an independent grid operator (IndeGo). The Bonneville Power Administration (BPA) controls a significant portion of transmission in the West, and yet because of reservations about its ability to fully participate in IndeGo without congressional action allowing federal transmission resources to be a part of this effort, BPA has withdrawn from discussions.
- Q-13 How would federal legislation mandating competition by a near-term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?
- A-13 The Idaho Public Utilities Commission current workload in all areas of regulation is at an all-time high. This comes at a time when the State of Idaho is experiencing revenue shortfalls. Pay increases for state employees were not funded for FY 1998, all agency budgets were reduced and one Idaho Public Utilities Commission technical staff position was eliminated. If legislation mandating competition in the near term were to be enacted, additional funding needed would equal or exceed \$750,000 and might very well not be available from State sources. The problem that would arise would be that some customers' interests would not be adequately represented as the industry was restructured.
- Q-14 Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets? What risks are inherent in this approach, and who bears them?
- A-14 The Idaho Public Utilities Commission has not considered securitization for recovery of utility stranded assets.
- Q-15 There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.
- a. Do you believe PUHCA impedes competition, at the wholesale or retail level? Can "effective competition" be achieved regardless of whether Congress enacts changes to PUHCA?
 - b. Do you believe Congress should modify or repeal PUHCA? If so, why, and under what if any conditions?

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- c. Should Congress enact legislation to modify the holding in *Ohio Power Co. v. FERC*, 954 F.2d 779 (D.C. Cir. 1992)?
- A-15 a. From the Idaho Public Utilities Commission's perspective, PUHCA does not impede competition should the state of Idaho desire to implement competition within the state. None of the electric utilities regulated by the Idaho Public Utilities Commission are, at this time, subject to PU HCA.
- b. Any modification or repeal of PUHCA should provide state regulatory agencies the right of access to holding company and affiliate books and records.
- c. No Response.

Sincerely,


Dennis S. Hansen
President
Idaho Public Utilities Commission

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Enclosures: Attachment A: *Order No. 26555, In the Matter of the Commission's Investigation into Changes Occurring in the Electric Industry*
Attachment B: *Prepared Remarks of Idaho Public Utilities Commissioner Marsha Smith for presentation before U.S. SENATE ENERGY AND NATURAL RESOURCES COMMITTEE*
Attachment C—IPUC Orders approving new contracts for large industrial customers
Attachment D—Cost of Service schedules from last UP&L and IPCo rate cases
Attachment E—*Deregulation of the Electric Utility Industry: Some Basic Water Related Issues*