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July 27, 2010

Paula J. Wilson  
Hearing Coordinator  
Idaho Dept. of Environmental Quality  
1410 North Hilton  
Boise, ID 83706-1255

Re: Draft Anti-degradation Negotiated Rule - Docket No. 58-0102-1001

Dear Ms. Wilson:

The Idaho Power Company (“IPC”) submits the following comments to Idaho Department of Environmental Quality’s (“DEQ”) Draft 6 of the Antidegradation Implementation Procedures. IPC agrees with and supports the comments and approach taken by the Idaho Association of Commerce and Industry (“IACI”). We write to address one specific topic of significant concern to IPC associated with the renewal of Federal Energy Regulatory Commission (FERC) licenses.

The current draft states that antidegradation review is triggered as follows:

Review of degradation potential and application of the appropriate level of protection from degradation will be triggered by an application for a new or reissued permit or license.

Draft 6 of the Antidegradation Implementation Procedures § 052.02, Pg. 2. (Emphasis added).

An application to FERC to relicense a hydropower project may be considered an application to reissue a permit or license and may also require certification under § 401 of the CWA. However, a reissued permit or license by the FERC will only degrade water quality if it provides for conditions or operations that will cause adverse downstream water quality impacts in addition to the impacts of the existing dam or discharge. In other types of permits, such as NPDES permits, there cannot be degradation where there is no increase in the pollutants discharged. DEQ agreed during the negotiated rulemaking sessions that the focus of this rule is on the increased discharge of pollutants. Hydropower facilities normally do not involve a discharge of a pollutant that is measured at the end of the pipe, as in an NPDES permit. In order to prevent an undue burden on a renewal of an existing permit or license that does not cause an increased impact to the downstream waters, the language in the rule must not only focus on an increased discharge of pollutants but also, acknowledging the concept unique to hydropower facilities, provide that the

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discharge must directly cause an increased impact to downstream water quality. IPC submits that only a new or expanded discharge which directly affects downstream water quality should trigger an antidegradation review and supports the following language previously submitted by IACI in its comments to earlier drafts, with the following clarification:

Review of degradation potential and application of the appropriate level of protection from degradation will be triggered by an application for new or expanded permits or licenses for a discharge. Renewal of an existing permit or license with no proposed increase in discharge or, in the case of a hydroelectric facility, no increase in impact to the downstream water quality, shall not be subject to any further antidegradation review process. (Underlined portion added.)

A renewed license may authorize an increase flow in one part of the year or season or even a portion of a day. An increase in flows or “discharge” alone however, which does not adversely impact downstream water quality, should not trigger antidegradation review.

Similarly, Draft 6 states that Tier II analysis will be conducted as follows:

A Tier II analysis will only be conducted for activities or discharges, subject to a permit or a license, that cause degradation.

Draft 6 of the Antidegradation Implementation Procedures, § 052.06, Pg. 4. (Emphasis added).

IPC concurs with IACI’s comments that insignificant discharges should not be subject to Tier II analysis and additionally recommends the following language be added the above § 052.06:

In the case of a hydroelectric facility, a Tier II analysis shall only be required if proposed changes in the license would cause an increase in the impact to downstream water quality.

IPC also requests clarification within the Antidegradation Rule that when a hydropower license is renewed there is no requirement to perform antidegradation review so long as the renewed license with regard to water quality is at least as restrictive as the previous license.

Thank you for the opportunity to submit these comments on the draft Antidegradation Implementation Procedures. If you have questions regarding these comments, please contact the undersigned.

Sincerely,

Executed the 27<sup>th</sup> day of July, 2010

James C. Tucker