BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|  |  |  |
| --- | --- | --- |
| IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR ELECTRIC SERVICE TO CUSTOMERS IN THE STATE OF IDAHO BY INCLUSION OF THE TWIN FALLS PROJECT INVESTMENT AND THE ADDITIONAL SWAN FALLS PROJECT INVESTMENT IN REVENUE REQUIREMENT. | )))))))))) | CASE NO. IPC-E-95-5ORDER NO.  26264 |

BACKGROUND

On November 14, 1995, this Commission issued a final Order in this proceeding, Order No. 26236, which affirms and expands upon interim Order No. 26119 issued on August 15, 1995. In these Orders, the Commission recognized Idaho Power Company’s (Idaho Power; Company) investment in the upgrade of the Twin Falls hydroelectric project and increases the Company’s annual revenue requirement by $6,309,116 to allow for recovery of that investment.  Order No. 26236 is the second phase of a process commenced in 1991 with Case No. IPC-E-91-4 in which Idaho Power requested and received from this Commission the assurance that, in the ordinary course of events, the Company’s investment in the Twin Falls upgrade would be recognized in Idaho Power’s revenue requirement.  Claiming that the assurance offered to Idaho Power constitutes discrimination against a generating plant that it is proposing to build, Rosebud Enterprises, Inc., (Rosebud) appealed the final Orders issued in IPC-E-91-4 (Order Nos. 25021 and 25160).  That appeal is pending before the Idaho Supreme Court in Docket No. 20910.

On November 21, 1995, Rosebud petitioned for reconsideration of Order No. 26236.  We hereby deny Rosebud’s Petition and, for the reasons set forth below, affirm our ruling set forth in Order No. 26236.

ROSEBUD’S PETITION

Rosebud bases its Petition on five enumerated points; two of which overlap.  First, Rosebud contends that the Commission violated 16 USC § 824a-3, a provision of the Public Utility Regulatory Policies Act of 1978 (PURPA) “by allowing IPC’s recovery of Twin Falls costs based on the avoided cost methodology set forth in IPUC Order No. 23576 while the IPUC has denied in IPUC Order No. 25706 Rosebud similar avoided costs based on the same methodology applicable to Twin Falls in IPUC Order No. 23576.” Petition for Reconsideration at pp. 1-2.

In its second and third points, Rosebud contends that the Commission acted unlawfully and erroneously by allowing Idaho Power to commence the upgrade of the Twin Falls facility and to increase rates to recover the associated investment, when the Company had failed to first seek and obtain a Certificate of Public Convenience and Necessity pursuant to Idaho Code § 61-526.

Fourth, Rosebud alleges that the Commission acted arbitrarily and capriciously by allowing Idaho Power rate recovery for its Twin Falls investment when there was no evidence presented in the record to support a finding that the upgrade was in the public convenience and necessity given Idaho Power’s forecasted period of prolonged surplus until the year 2006.

Finally, Rosebud asserts that the Commission acted unlawfully, arbitrarily and capriciously by allowing Idaho Power to benefit from “manipulating and delaying the revision of avoided costs in effect under IPUC Order No. 23576 until after the issuance of IPUC Order No. 25160.” Petition for Reconsideration at p. 2.

On November 28, 1995, Idaho Power filed an answer to Rosebud’s Petition for Reconsideration.  Idaho Power contends that Rosebud’s petition is defective for failing, as required by the Commission’s Rules of Procedure, to identify the evidence or arguments Rosebud would offer if reconsideration were granted.  The Company further notes that Rosebud makes allegations that are unsupported by the record in this case and that Rosebud has failed to appreciate the difference between the methodology by which avoided costs are calculated and that by which rates for regulated electric utilities are set.

FINDINGS

Initially, we note that Rule 331(01) of the Commission’s Rules of Procedure, IDAPA 31.01.01, requires that all petitions for reconsideration provide “a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.”  Rosebud has failed to offer any new evidence or arguments in support of its petition in violation of Rule 331.  Moreover, Rule 331(03) states that “[t]he petition or cross-petition must state whether the petitioner or cross-petitioner requests reconsideration by evidentiary hearing, written briefs, comments or interrogatories.”  We find that Rosebud’s Petition was further deficient in its failure to specify the procedure sought on reconsideration.

In spite of the Petition’s failure to conform to the Commission’s Rules of Procedure, we will proceed to discuss each point raised in Rosebud’s Petition.

This case involves issues that are, admittedly, complex.  What is perfectly clear, however, is that Rosebud has consistently and continuously demonstrated a lack of understanding of the methodology by which utility constructed projects are ratebased.  Contrary to Rosebud’s assertions, we did not allow Idaho Power’s “recovery of Twin Falls costs based on the avoided costs methodology.” Petition for Reconsideration at p. 1.  The revenue requirement for Twin Falls was calculated under the conventional “rate of return” methodology, i.e., the Company’s rates were increased to allow Idaho Power a return on its actual investment in Twin Falls plus an additional amount for operating expenses, which includes depreciation.

Rosebud has never challenged the validity of this methodology or the actual amount of the investment Idaho Power made in Twin Falls.  Instead, Rosebud continues to assert that Idaho Power has somehow been paid avoided costs for the Twin Falls project.  The only relevance that avoided costs have to this proceeding is the fact that the Commission has, in the past, chosen to use comparable avoided cost rates as one factor in assessing the cost effectiveness of a utility-proposed project.

  In Case No. IPC-E-91-4, Idaho Power voluntarily proposed, prior to commencing construction, to limit rate recovery for Twin Falls to a maximum investment of $50,839,000.  The Commission found that this was approximately 93% of the applicable avoided cost rates, not including the existing 9 Megawatts (MW) of existing generation.  This was considered the “worst case scenario” and constituted the amount of investment beyond which Idaho Power would not seek to include in rates.  It was because of this and other factors that we declared Twin Falls to be a prudent resource acquisition. See Order Nos. 25021 and 25160 for a more thorough discussion.  In reality, the Company’s actual investment in Twin Falls totals only $38,288,324; roughly 59% of comparable avoided costs, not including the existing 9 MW of generation. See Order No. 25021 pp. 7-8.  If the existing 9 MW are factored into the calculation, the investment totals approximately 44% of comparable avoided costs. Id.  In hindsight, therefore, the project proved to be even more cost-effective than originally estimated.  Thus, contrary to Rosebud’s repeated assertions, rate recovery for Twin Falls was not based on the avoided cost methodology.  Furthermore, the actual amount of investment that Idaho Power was allowed to recover in rates fell far below comparable avoided costs.

Rosebud does not offer in its Petition to introduce new evidence proving that Twin Falls is not a cost effective resource.  To the contrary, as we noted in Case No. IPC-E-91-4, Twin Falls compared at roughly 65% of comparable avoided cost rates assuming the original construction estimate of approximately $42,000,000 and including the original 9 MW of generation.  The actual cost was only approximately $38 million.  Because of this fact, and other reasons specified in Order No. 26236 and in the final Orders in Case No. IPC-E-91-4, we found that Twin Falls was a cost-effective and prudent resource and that the Company should be allowed to recover its investment in that project under the conventional methodology historically used by this Commission for calculating revenue requirement for utility constructed projects, i.e., the rate of return methodology.

Regarding Rosebud’s contention that Idaho Power was obligated to obtain a Certificate of Public Convenience and Necessity, Idaho Code § 61-526 states, in pertinent part:

61-526.  Certificate of convenience and necessity.—No . . . electrical corporation . . . shall henceforth begin the construction of a . . . plant . . . or of any extension of such . . . plant . . . without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction:. . . provided, that power companies may, without such certificate, increase the capacity of their existing generating plants.

Rosebud apparently considers the Twin Falls upgrade to be a new generating plant requiring the issuance of a Certificate of Public Convenience and Necessity.  Rosebud offers no evidence in support of this contention.

 Regardless, we find that the evidence presented during the course of Case No. IPC-E-91-4, when Rosebud should have first raised this issue, establishes that Twin Falls is clearly an upgrade of an existing generating plant.  In that case, evidence was presented that Twin Falls was first licensed by the Federal Energy Regulatory Commission (FERC) in 1934.  Furthermore, there has been a hydroelectric facility operating at that site since that time.  The Company’s FERC license for Twin Falls expired in 1984.  Idaho Power operated the plant under annual renewals from the FERC until January 18, 1991, when a new license was issued.  As part of the FERC relicensing process, utilities are often required to upgrade existing facilities to incorporate improved technologies so that the potential energy output of the site is maximized.  This is precisely what Idaho Power did.  The fact that a new powerhouse was constructed at the site does not render this a new generating plant as envisioned by the Legislature in Idaho Code § 61-526.  According to the unrefuted evidence, the Twin Falls project is an upgrade to an existing plant that has been in operation since the early 1930's.

Even assuming, arguendo, that the Twin Falls project is a new generating plant for purposes of I.C. § 61-526, it is our opinion that the purpose of that statute is to ensure that a prudence review is conducted prior to the construction by a utility of a new plant.  This Commission has, in fact, reviewed the prudence of Twin Falls during the course of the present proceeding and in Case No. IPC-E-91-4, prior to construction.  After carefully reviewing the evidence concerning the operational characteristics and the costs of Twin Falls, we found that construction of the project was prudent.  Thus, the regulatory review provided for by Idaho Code § 61-526 has been conducted and the intent of the statute has been satisfied.

Rosebud’s argument that this Commission acted arbitrarily and capriciously by allowing rate recovery for Twin Falls “given IPC’s forecasted period of prolonged surplus until the year 2006" demonstrates a further lack of understanding by Rosebud of electric utility regulation.  As we noted in Order No. 26236, it is the exclusive authority of this Commission to calculate the avoided costs for its electric utilities and the assumptions upon which those avoided costs are based.  Regardless of what Idaho Power may have believed its first deficit year to be, we are the sole authority for making that determination for avoided cost purposes.  In Order No. 26236, we noted that in Order No. 25884, issued in Case No. IPC-E-93-28 , we adopted a first deficit year of 1998 for Idaho Power, contrary to the Company’s calculated date of 2006.  Until we changed Idaho Power’s avoided cost rates and the assumptions upon which those rates are based, however, the Company was entitled to rely upon them regardless of what its independent beliefs may have been.

Finally, Rosebud’s contention that this Commission somehow allowed Idaho Power “to benefit from manipulating and delaying the revision of avoided costs in effect under IPUC Order No. 23576 until after the issuance of IPUC Order No. 25160" is equally without merit.  Again, this Commission is vested with the exclusive authority for establishing the avoided costs of its electric utilities.  Furthermore, this Commission has control over the processing of cases before it.  There was simply no evidence presented, nor is there evidence now being offered, to support the contention that Idaho Power somehow “delayed” or that the Commission “allowed” Idaho Power to delay the revision of avoided costs.

O R D E R

IT IS HEREBY ORDERED that Rosebud Enterprises, Inc’s. Petition for Reconsideration of Order No. 26236 is denied for the reasons set forth above.

THIS IS A FINAL ORDER ON RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. IPC-E-95-5 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of  November 1995.

                                                             RALPH NELSON, PRESIDENT

                  MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:IPC-E-95-5.bp6