(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| WILLIAM ARKOOSH AND FAULKNER BROTHERS HYDRO,  Complainants,  vs.   IDAHO POWER COMPANY,  Respondent. | )  )  )  )  )  )  )  )  )  )  ) | CASE NO. IPC-E-95-17  ORDER NO.  26685 |

On November 17, 1995, a Complaint in Case No. IPC-E-95-17 was filed at the Idaho Public Utilities Commission (Commission) by William Arkoosh (Arkoosh) and Faulkner Brothers Hydro (Faulkner) against Idaho Power Company (Idaho Power; Company).

Arkoosh and Faulkner are qualifying small power producers (QFs) as defined under Sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and related rules and regulations of the Federal Energy Regulatory Commission (FERC).  Ref.  18 C.F.R. Part 292.  Arkoosh and Faulkner sell electric power to Idaho Power Company pursuant to separate Firm Energy Sales Agreements executed in 1985 and 1986.

The nature of the controversy is the methodology for calculating the adjustable portion of the avoided cost rate paid to Complainants.  Paragraph 7.1.2 in the underlying Agreements provides that the adjustable payment shall be subject to change pursuant to Commission Order.  The procedure for calculating the adjustable portion of the avoided cost rate for the Faulkner and Arkoosh contracts was established in 1983 in Idaho Power Case No. U-1006-200, Order No. 18190.  In its Order the Commission stated:

. . . We therefore choose the average system production cost--as calculated in rate cases under normalized weather and water conditions--as a surrogate for variable energy costs in payments to CSPPs.  In the Company's most recent general rate case, Case No. U-1006-185, this number came to approximately 7 mills per kilowatt hour (kWh).

The entire avoided cost payment—both in its firm and variable energy components—should be subject to seasonal varia-tion in value.  Idaho Power is directed to file avoided cost rate schedules that reflect this seasonal variation.

Variable energy costs will be updated at the end of each general rate case, based upon system average costs of produc­­tion.  We will adhere to this method so long as the existing mix of resources reasonably reflects the Company's avoidable plant mix.

In 1986 in Idaho Power general rate case U-1006-265, Order No. 20924, the Commission changed the adjustable payment stating as follows:

The revision of average system fuel costs constituting the variable component of avoided cost rates set in Order No. 18190 and in subsequent Orders is 4.34 mills/kWh, which represents the average variable costs of all the company's generation plant, both hydroelectric and thermal. . . .This calculation is based upon the power supply run that underlies Appendix A.  The Company's annual power supply expenses of its own generation $62,279,300 and its total average annual generation is 14,346.4 gigawatt hours yielding a ration of 4.34 mills/kWh.  This figure has fallen substantially from that previously used for several reasons, the principal one being the use of streamflow conditions for 1966-1985 for normalization of water conditions.

On January 31, 1995 the Commission in Idaho Power general rate Case No. IPC-E-94-5, Order No. 25880 addressed Arkoosh and Faulkner concerns in the following manner:

Pursuant to their contracts and prior Commission orders, the adjustable portion of the rate paid to Arkoosh and Faulkner Brothers is based on the operating costs of Valmy I and is to be adjusted during the course of every IPCo general rate proceeding.  Accordingly, the Company is instructed to recalculate the adjustable payments of the Arkoosh and Faulkner contracts, consistent with the terms of the contracts and prior Commission orders, based upon the revised power supply costs approved by this Order.  In the event Arkoosh and Faulkner believe that the Company has inappropriately calculated the rate or that there are issues yet to be resolved, they are free to either file for reconsideration of this Order or to file a subsequent pleading in another case for the purpose of resolving those issues.

The number provided to Arkoosh and Faulkner by Idaho Power for the adjustable portion as a consequence of Order No. 25880 was 4.73 mills/kWh.

On September 24, 1996, the Commission in Order No. 26620 requested Complainants to prepare and file a “memorandum outlining the results of their analysis and research, outlining their arguments, and preparing a resolution or recommendation as to prospective variable rate methodology and requested change in the variable rate, if any.”  The Commission established an October 15, 1996 filing deadline.

On October 15 (21), 1996, Complainants submitted a memorandum and final report.  See final report—David Eberle consulting .

Complainants contend that they seek not a change in methodology, but enforcement of the contract.  The issue as framed by Complainants is “whether in the existing contract between the parties, average system production costs comprising the variable portion of the rate encompass more costs than only average system fuel costs.”  Complainants contend that average system fuel costs are only a subset of average system production costs, and that the sum of all average system production costs is greater than the value of just one component.

Complainants request that the Commission enter an Order declaring that the variable rate in their respective QF contracts is linked to all of the average system production costs, not merely the average system fuel costs, and directing Idaho Power to pay the appropriate rate as set out in the contract.

On October 24, 1996, Idaho Power filed a Response to Complainant’sComplainants’ Memorandum.  The Company renews its Motion to Dismiss Complainant’s Complaint without prejudice.  The Company contends and states as follows:

After reviewing the Consultant’s draft report and final report, it is apparent that Complainants are still not prepared to present substantial competent evidence to support their contention that the Commission-approved avoided cost rates they currently receive in accordance with Order No. 25880 in Case No. IPC-E-94-5 are not fair, just and reasonable and are inconsistent with federal law.  In the Consultant’s report attached to the pleading entitled “Final Report”, the primary conclusion reached by Consultant is that there is an ambiguity in the ordering language describing the methodology the Commission has used to set the avoided cost rates paid to Complainants.  If the Commission concurs that such an ambiguity exists, and that such ambiguity in the order language is material, then it will be necessary to reopen the methodology for determining the total avoided costs used to set purchase prices paid to complainants.  Federal law precludes the Commission from ordering Idaho Power to purchase power from qualifying cogenerators and small power producers at prices that exceed the Company’s avoided costs.  If there is some material error in the methodology the Commission used to set avoided cost rates for Complainants, then the total purchase price, including both the fixed and variable components, must be reviewed.  Reviewing one component inevitably requires a reassessment of the other components.  If avoided costs are increased for one component, the other component may need to be reduced to ensure total payments do not exceed total avoided costs.

As stated by Idaho Power, the Consultant concludes in his Final Report that he is unable to replicate the rates approved by the commission in its prior, unappealed Orders and that he must undertake further review of various additional documents.  Idaho Power contends that Complainants have now taken nine months to analyze this issue only to come to the conclusion that more analysis is needed to finally develop their case.  The Complainants’ filings, the Company contends, do not satisfy the requirements laid down by the Commission in Order No.  26620.  Complainant’s filings, it states, do not contain facts or analyses that would support a finding that the current approved methodology does not recover all of the Company’s avoided costs.  Complainants do not state how the approved methodology should be prospectively corrected.  No revised rates have been offered by Complainants.  The Company contends that the burden of proving that the ordered and approved rates or rate methodology are no longer fair, just and reasonable and consistent with federal law rests with the Complainants.

On November 1 the Complainants filed a reply to Idaho Power’s Response.  Complainants contend that the issue to be decided by the Commission is the adjustment in Complainant’s variable cost portion of its avoided costs so that its avoided cost equals, and is not less than or exceeds, the utility’s avoided costs.  This, Complainants contend, is to be done at the end  of each rate case.  This has not yet been done, Complainants contend, at the conclusion of the Company’s last rate case.  Complainants again repeat that they are not seeking to change their contract; only to enforce it.

On November 4, 1996, Idaho Power filed a Reply.  Idaho Power contends, that Complainant’s statement that “at the conclusion of Idaho Power’s last rate case the Commission did not determine Idaho Power’s avoided costs used to set payments to be made to Complainants in other similarly situated QFs” is false.  In Order No. 25880 in Case No. IPC-E-94-5, Idaho Power contends, the Commission approved the rate currently being paid to Complainants.  Order No. 25880, the Company contends, also gave the Complainants the opportunity to demonstrate why the Commission approved avoided cost rates for their contracts are not correct and should be changed prospectively.  There should be no misunderstanding, the Company contends, that the rates that are currently being paid to Complainants and other similarly situated QFs have been approved by the Commission.

Commission Findings

The Commission has reviewed and considered the filings of record in Case No. IPC-E-95-17 including its prior Order No. 26620 and the final report of Complainants’ Consultant.  The Commission has also reviewed and considered the additional following Orders, the relevant parts of which are set forth above: Order No. 18190 in Case No. U-1006-200, Order No. 20924 in Case No. U-1006-265 and Order No.  25880 in Case No. IPC-E-94-5.

The genesis of the underlying dispute appears to be the Commission’s initial use of the term “average system production costs” (Order No. 18190, Case No. U-1006-200) and subsequent use of the term “average system fuel costs” (Order No. 20924, Case No. U-1006-265) as such relate to the calculation of the variable component of avoided cost rates.  Complainants Arkoosh and Faulkner conclude that the former term meant something different from and included costs that were not part of the latter term.

Based on the investigation of the parties as reflected in their filings, it appears that the initial variable contract rate calculated in 1983 in Case No. U-1006-200 cannot be replicated or its exact individual components ascertained.  We find, however, that subsequent general rate case adjustments have been calculated in an otherwise consistent manner that can be replicated.  The fact that the prior and subsequent orders used different wording is not material.  The Complainants have not presented the Commission with an offer of proof or evidence to demonstrate that the established variable rates are anything other than correctly calculated and representative of the Company’s avoided cost.  We therefore conclude that the variable rates received by Complainants as a component of the Company’s avoided cost rate are fair, just and reasonable.  We accordingly find it reasonable to  dismiss the Complaint in Case No. IPC-E-95-17.  Our dismissal, however, is without prejudice.  Should further investigation by Arkoosh and Faulkner reveal new information for us to consider it may be appropriate to revisit this matter.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code, and the Public Utility Regulatory Policies Act of 1978 (PURPA).

The Idaho Public Utilities Commission has authority under the PURPA and the implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations for the purchase of energy from qualified small power production facilities, and to implement FERC rules.

O R D E R

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the Complaint of William Arkoosh and Faulkner Brothers Hydro against  Idaho Power Company in Case No. IPC-E-95-17 is dismissed without prejudice.

THIS IS A FINAL ORDER.  Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order.  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of November 1996.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

November 18, 1996