DECISION MEMORANDUM

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COMMISSIONER HANSEN

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FROM:SCOTT WOODBURY

DATE:September 13, 1996

RE:CASE NO. IPC-E-95-17

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 provide that the adjustable payment shall be subject to change pursuant to Commission Order.  The underlying 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 payment to CSPPs (cogenerators and small power producers).  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 variation and 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 Idaho Power 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.

Arkoosh and Faulkner contend that there appears no reasonable explanation for the initial methodology used in Order No. 18190, any subsequent change in methodology, and the drop in rates between Order No. 18190 and Order No. 20924.  Arkoosh and Faulkner request a Commission Order determining and declaring the proper methodology to be used for the adjustable portion of the contracts, and changing the same if appropriate under the circumstances.  Also requested is a Commission Order declaring and setting the adjustable portion in the contracts.

Idaho Power in an Answer filed with the Commission on December 8, 1995, recites that Arkoosh has from the inception of its contract through October 1995 been paid an average rate of 69.046 mills per kWh.  Faulkner from the inception of its contract through October 1995 has been paid an average rate of 71.815 mills per kWh.  Idaho Power contends that the Commission in 1986, in Order No. 20924 explained the methodology for determining the adjustable payments under Complainant’s contracts.  Neither Complainant, the Company states, appealed the Commission’s Findings of Fact or Conclusions of Law establishing the methodology for determining the adjustable payments.  Idaho Power contends that Complainant’s have been provided with work papers and other information demonstrating that the current 4.37 mill per kWh adjustable rate was computed in accordance with the Commission’s approved methodology.  Idaho Power contends that if the Commission determines that it is appropriate to revisit and revise avoided cost rates for the Arkoosh and Faulkner contracts, that the total rate in the contracts must be reviewed to determine whether the purchase price received by the Complainants represents the rate Idaho Power should pay for the output of the Complainant’s projects.  Idaho Power contends that the Commission has previously determined and declared the proper methodology.  The Complainants, Idaho Power contends, have the burden of proving that the Order and approved rate methodology is no longer fair, just and reasonable and is inconsistent with the federal law.  It is not the obligation of Idaho Power or the Commission Staff, the Company contends to demonstrate that the approved methodology is “proper.”  Idaho Power requests that the Commission issue an Order dismissing the Complaint with prejudice.

A prehearing conference in Case No. IPC-E-95-17 was held on February 20, 1996.  The purpose of the prehearing conference was to review the status of the case, identify issues and to establish appropriate further procedure including scheduling.  At the prehearing conference, Mr. Arkoosh requested an additional 60 days to do a little independent research.  The subsequent correspondence of the parties is attached.  Idaho Power on September 10 filed a Motion for entry of an Order denying relief for failure to prosecute.  A review of the preceding and subsequent correspondence reveals that Mr Arkoosh desires to prosecute this matter further.  Mr. Arkoosh by letter dated September 10 requests an additional prehearing conference.

Staff Comments

Staff has discussed this matter with Idaho Power and Mr. Arkoosh.  Mr. Arkoosh believes that the Commission’s Order language in 1983 wherein the Commission states “variable energy costs will be updated at the end of each general rate case, based upon system average costs of production.”  (Order No. 18190) must be reconciled with the Commission’s Order language in 1986 when the Commission stated “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.”  (Order No. 20924)  In the earlier Order No. 18190, the Commission stated that the variable rate was approximately 7 mills per kWh, which number it attributed to the Company’s then most recent general rate case, Case No. U-1006-185.  It is unclear from a review of the -185 record, transcript and Orders where or how the 7 mill figure was calculated.  Idaho Power believes that it is incumbent upon Mr. Arkoosh to frame the issue by making a recommendation as to prospective methodology and appropriate change in rates, if any.  Staff has provided assistance to Mr. Arkoosh in his investigation and believes it can do nothing more.

Commission Decision

Should this matter be set for prehearing conference?  If not, what is the Commission’s procedural preference?

Scott Woodbury

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