DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

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WORKING FILE

FROM:SCOTT WOODBURY

DATE:NOVEMBER 8, 1996

RE:CASE NO. IPC-E-95-17

ARKOOSH/FAULKNER V. IDAHO POWER COMPANY

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 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 (attached).

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 (attached).  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.  It is not the obligation, United Water contends, of Idaho Power or the Commission Staff or the Commission to demonstrate that the approved methodology is correct.

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 Decision

Arkoosh and Faulkner contend, that the variable rate that they are receiving under their Power Purchase Agreements has been incorrectly calculated.  The Complainants contend that, if the Commission believes there are issues of law to address that a briefing schedule should be established; and that if there are facts to be developed that a hearing should be scheduled.  Complainants contend that they seek only to enforce their contract.  Idaho Power contends that the variable rate has been correctly calculated and represents the Company's avoided cost.  Idaho Power contends, that Complainants have failed in their burden of demonstrating that the rate received is anything other than fair, just and reasonable.  Idaho Power requests that the Complaint be dismissed without prejudice.

Staff has not filed comments.  Staff has worked with the parties and agrees that the initial contract rate cannot be replicated.  It is also doubtful that the Commission’s intent in using the language it did can be ascertained.  Subsequent general rate case adjustments have been calculated in an otherwise consistent manner.  How does the Commission wish to proceed in this matter?

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Scott Woodbury

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