DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

RANDY LOBB

GARY RICHARDSON

WORKING FILE

FROM:SCOTT WOODBURY

DATE:SEPTEMBER 13, 1996

RE:CASE NO. IPC-E-96-16

ROSEBUD/MOUNTAIN HOME

ENFORCEABILITY OF COMMISSION ORDERS

On August 20, 1996, Rosebud made a filing with the Commission seeking enforcement of IPUC Order Nos.  25454, 25706 and 25787 consistent with Idaho Supreme Court Opinion No. 61 dated May 31, 1996.  Rosebud desires a 20-year contract with an on-line date of January 1, 1999, at rates approved by the Commission in 1994 and affirmed by the Court in 1996.

Rosebud filed its Notice of Appeal from the Commission’s Orders on December 12, 1994.  Rosebud continued, however, to negotiate.  Idaho Power contends that it provided Rosebud with an ultimatum on January 6, 1996, interpreting Rosebud’s subsequent negotiations as a counter offer and rejection of the Company’s Commission approved October 7, 1994, offer.  The Company states that it offered to extend its October 7 purchase offer until January 13, 1995, to allow Rosebud time to reconsider its rejection, after which date the offer would be withdrawn.  Formal notice of withdrawal was provided by letter dated January 23, 1995.

Idaho Power notes that the Commission on January 21, 1995, in Order No. 25884 in Case No. IPC-E-93-28 determined that the avoided costs that had formed the basis for Idaho Power’s October 7, 1994, purchase offer were no longer fair, just and reasonable.  The Commission moved to an IRP based methodology for projects greater than 1 MW.  In recent Order No. 26576 in Case No. IPC-E-95-9, the Commission reduced the standard contract term to five years.

Idaho Power contends that the Supreme Court in its decision did no more than uphold the Commission’s Orders and confirm that Idaho Power’s October 7 purchase offer had been in compliance with PURPA and Commission Orders.  The Supreme Court decision, the Company states, reconfirms that Idaho Power’s October 7, 1994 rate offer represented Idaho Power’s avoided costs as of the dates that the purchase offer was made and rejected.

Idaho Power contends that the Commission is precluded under federal law from requiring that it contract at purchase rates higher than its avoided costs.  Citing Connecticut Light & Power Company, 70 FERC ¶ 61, 012 (January 11, 1995), So Cal Ed and San Diego Gas and Electric, 70 FERC ¶ 61, 215.

Idaho Power contends that Rosebud’s failure to obtain a stay prohibits enforcement of the superseded Orders.  Reference Idaho Code 61-636.  Citing UP&L v. IPUC, 107 Idaho 47, 685 P.2d 276 (Idaho 1984) and Idaho Supreme Court Decision No. 60—Rosebud-Twin Falls appeal.  Rosebud, Idaho Power states, “cannot have its cake and eat it too.”  As interpreted by Idaho Power, under the cited Supreme Court opinions “once a Commission Order establishes rates or a rate methodology, unless the Order is stayed during an appeal, the ordered rates and/or rate methodology remain in full force and effect.  As such the rates and/or rate methodology are subject to later review and revision by the Commission.”

The Company furhter contends that enforcement of the superseded Orders is not in the public interest.  The Company estimates that if it is required to purchase at the superseded rates,  Idaho Power and its customers will pay an additional $243 million over a 20-year contract term.

The Commission, Idaho Power contends, must also consider the issue of stranded costs.  The Company notes the Commission’s language in Order No. 26576 recognizing the need for flexibility in a time of change in the utility industry.  At least, in the near term, the Company posits, it makes no sense for the Commission to obligate utilities and ratepayers to enter into long-term obligations that are likely to result in additional stranded costs.

The Company contends that it is important to note that Idaho Power did not cross appeal the Commission’s Orders.  It was Rosebud’s decision, it states, not to accept the rates.  It was Rosebud’s decision not to seek to stay the Commission’s Orders during the appeal process.  Rosebud’s own actions, Idaho Power concludes, now preclude it from obtaining the rates it once rejected.

Both Rosebud and Idaho Power Company contend that no further hearing or briefing is required.  As to the parties, the matter is fully submitted.  Rosebud states that an expedited Order is required if it is to meet the January 1, 1999, on-line date (or a commensurate extension).

Commission Decision

Is the Commission satisfied with the established record?  Does the Commission desire additional briefing from either of the parties or the Commission’s counsel?  How does the Commission wish to proceed?

Scott Woodbury

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