DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

RANDY LOBB

BEV BARKER

WAYNE HART

DAVID SCOTT

WORKING FILE

FROM:BRAD PURDY

DATE:FEBRUARY 7, 1997

RE:CASE NO.  IPC-E-96-22

PETITION OF THE INDUSTRIAL CUSTOMERS OF IDAHO POWER FOR RECONSIDERATION OF COMMISSION ORDER NO. 26753 TERMINATING IDAHO POWER’S PARTNERS IN INDUSTRIAL EFFICIENCY CONSERVA­TION PROGRAM

On February 3, 1997, the Industrial Customers of Idaho Power (ICIP) petitioned for reconsideration of Order No. 26753 terminating Idaho Power Company’s (Idaho Power; Company) Partners in Industrial Efficiency (PIE) conservation program.  This memorandum summarizes the underlying case and ICIP’s petition.

On November 1, 1996, Idaho Power filed a request for authority to terminate the PIE program for its large industrial and non industrial customers in Idaho taking service under Schedules 18 and 19 (Schedule 18 customers have since been consolidated with Schedule 19) and its special contract customers.  In support of its request, Idaho Power notes that since the implementation of the PIE program, several large industrial and non industrial customers have commented that programs of this type should be discontinued because they add to deferred costs and increase the cost of power over time.  Idaho Power contends that industrial customers are primarily interested in the lowest possible rates and that any costs included in those rates should be examined in light of events which are occurring on the national level, i.e., the trend toward deregulation and increased competition.

Moreover, the Company notes that the PIE program involved the payment of grants to partially cover the costs of installing energy efficient equipment with recovery of the grant costs occurring over an extended period of time.  These payments, which have been deferred for future recovery, would constitute regulatory assets Idaho Power contends, and could become stranded assets if deregulation of the generation function of regulated electric utilities were to occur in Idaho.  Finally, Idaho Power asserts that several of the technologies funded through the PIE program are now becoming commonly used by the Company’s industrial customers including efficient lighting measures, variable speed drives and more efficient refrigeration technologies.

Comments were submitted by the Commission Staff, the Industrial Customers of Idaho Power (ICIP) and several Idaho Power customers interested in funding projects through the PIE program.  The Staff generally supported the Company’s request to terminate the program noting that the Company’s current resource position and the prevailing prices for alternate supplies make it difficult to economically justify any expenditures for near term, electrical energy savings.  Staff recommended that the program be terminated in a manner that accommodated those customers who had already invested time and money in the preparation of an application for funding through the program.  Similarly, Weight Watchers Food Company, the College of Southern Idaho and One Capitol Center/Simplot all asked that their applications or pending applications for funding through the PIE program be processed.

The ICIP shared Idaho Power’s concern that “uneconomic investments on Idaho Power’s part will contribute to stranded costs and that such investments must cease in order to prepare the utility for competition in the future.  To that extent, the ICIP endorses Idaho Power’s efforts.”  ICIP Comments at p. 2.

The ICIP goes on, however, to object to several aspects of the Company’s Application including the fact that Idaho Power reportedly fails to quantify its stranded costs.  In comparison to its earlier comment regarding the need for Idaho Power to avoid stranded costs, the ICIP states that “terminating the PIE program based on the assertion that its costs contribute to stranded investment with no quantification or definition of stranded investment would be arbitrary.  The ICIP urges that the termination of any conservation program should be “based on a documented record supporting the Company’s proposal—not on vague references to ‘comments from the Company’s large customers.’” ICIP Comments at p. 2.  The ICIP argued that the Commission should require Idaho Power to document its alleged stranded costs for examination by all interested parties.

Next, the ICIP contended that to eliminate the PIE program, while maintaining other conservation programs, constitutes discrimination against large industrial customers.  The ICIP argued that the “elimination of the industrial program without the concurrent elimination of the Company’s other programs means that the industrial class will be in the position of paying for conservation programs for the Company’s other classes (which also presumably contribute to stranded costs) without being able to directly benefit from those programs.”  ICIP Comments at p. 3. The ICIP argued that the Commission should either eliminate all of Idaho Power’s conservation programs or to establish a “wall” insulating industrial customers from responsibility for any future  conservation and weatherization costs.

In response comments, Idaho Power argued that it is not necessary to identify the dollar amount of potentially stranded assets at this time.  Rather, it is only necessary to recognize that terminating the deferral of costs reduces the size of the regulatory asset, which in turn reduces the amount of any potential stranded costs.

Furthermore, Idaho Power challenges the ICIP’s contention that industrial customers are  being discriminated against by singling out the PIE program for termination.  The Company notes that in prior proceedings it has discontinued particular conservation programs relating to particular classes; most notably, the Good Cents program terminated in Case No. IPC-E-89-16, Order No. 25295, providing conservation measures for residential customers.  The Company argues that the Commission has always considered each conservation program on its own merits with the reduction of the consumption of power and the costs incurred to reduce that consumption dictating the reasonableness of the program.

Idaho Power noted, that with the exception of the manufactured home acquisition program, which is winding down, there is “no current ongoing residential program managed by Idaho Power which involves the deferral of expenditures.”  Idaho Power Response Comments at p. 5.  The Company stated that while it is reviewing all of its conservation programs, particularly those involving the deferral of expenditures, each program is separate and distinct.  Idaho Power contended that the ICIP failed to recognize that the PIE program, since its implementation, has provided selective treatment to Idaho Power’s industrial customers.  To now argue that discontinuance of that very program is somehow selective or discriminatory treatment is neither logical nor accurate.

On January 13, 1997, the Commission issued Order No. 25753 granting Idaho Power’s Application to terminate the PIE program.  Noting that the electric industry is in the midst of fundamental change, the Commission found that the furtherance of social objectives such as DSM programs must be reexamined and structured in a competitively neutral manner.  The Commission ruled:

While it questions the existence and/or magnitude of Idaho Power’s supposed estranged costs, and though it seeks special consideration for select customers within its group, we consider it significant that the ICIP supports the Company’s efforts to terminate the PIE program.

Order No. 26753 at p. 9.

The Commission concluded that this is not an opportune time for Idaho Power to be creating regulatory assets and that it would be reasonable to allow the Company to terminate the PIE program.  The Commission directed Idaho Power to accept and process all applications for PIE funding received within two weeks of the date of the Order.

PETITION FOR RECONSIDERATION

On February 3, 1997, the ICIP filed a Petition for Reconsideration of Order No. 26753 on three grounds.  First, the ICIP contends that “termination of PIE on the basis that it contributes to stranded assets is not supported in the record.  There is no finding and no evidence offered that would permit the Commission to conclude that PIE costs are stranded.”  Petition at p. 4.  The ICIP concludes that a comprehensive review of stranded costs and regulatory assets, including their identification and quantification, must be concluded before the Commission can make a finding that the PIE program is contributing to the problem.

Second, the ICIP reiterates its argument that the Commission’s decision to terminate the PIE program without somehow insulating industrial customers from cost responsibility for the Company’s other conservation programs constitutes discrimination.  The ICIP notes that while Idaho Power may have terminated other conservation programs in the past, those programs were terminated “based upon a record supporting termination.”  Petition at p. 5.  ICIP concludes that there is no evidence in this case suggesting that the PIE program is not cost effective based on the standards that are used by the Commission in evaluating all of the Company’s other conservation programs.  The ICIP contends that “absent such a finding, termination of the PIE program without also terminating the Company’s other conservation programs is obviously discriminatory.”  Petition at p. 5.  The ICIP proposes that this discrimination could be avoided if the industrial class is not allocated any of the costs of the Company’s other conservation programs.  The ICIP goes on to point out that the PIE program was the second lowest cost program in Idaho Power’s conservation portfolio.  Terminating the PIE program despite its proven effectiveness as a conservation program, the ICIP argues, harms all ratepayers to the extent that cost effective resources are not acquired by the utility.  Furthermore, it has the added impact on the industrial class of the loss of its access to this conservation program.

The ICIP’s third argument appears to be a restatement of the first two.  It argues that there is “no factual basis in the record of this proceeding supporting termination of the PIE program.”  Petition at p. 6.

ANALYSIS

Rule 331(01) of the Commission’s Rules of Procedure provides that any interested person may file a Petition for Reconsideration of a Commission Order within 21 days of the date of the Order.  (The ICIP’s Petition was timely filed.)  The Petition must “set forth specifically the ground or grounds why the petitioner contends that the order or rule is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.”  Rule 331(03) states that the Petition must state whether the petitioner requests reconsideration by evidentiary hearing, written briefs, comments, or interrogatories.  Rule 332 provides that when the Commission’s Order for Reconsideration finds that the grounds upon which the Petition is granted present only issues of law and not of fact or issues of fact not requiring hearings, the Commission direct that these grounds be considered on reconsideration by submission of briefs, memoranda, written interrogatories or written statements and not by the further submission of evidence at hearing.

Commission Decision

Does the Commission find that the ICIP’s Petition specifically states the ground or grounds why the Order is allegedly unreasonable, unlawful, erroneous or not in conformity of the law?  Does the ICIP Petition adequately provide a statement of the nature and quantity of evidence or argument that the petitioner will offer if reconsideration is granted?  Does the Commission wish to grant the ICIP’s Petition for Reconsideration?  If so, should the reconsideration be handled through a formal hearing or through the submission of legal briefing and/or written comments?

Brad Purdy

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