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

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| IN THE MATTER OF THE IDAHO POWER COMPANY’S APPLICATION FOR AUTHOR­ITY TO IMPLEMENT A PUBLIC PURPOSES CHARGE TO FUND THE COM­PANY’S PAR­TICIPATION IN THE NORTHWEST ENERGY EFFICIENCY ALLIANCE. | ))))))) | CASE NO. IPC-E-96-26ORDER NO.  27124 |

On July 16, 1997, this Commission issued final Order No. 27045 denying Idaho Power Company’s (Idaho Power; Company) Application for the immediate implementation of a public purposes charge but approving the Company’s participation in the Northwest Energy Efficiency Alliance (NEEA) and authorizing the Company to capitalize and defer the recovery of its investment in NEEA until additional data regarding the prudency of the various NEEA programs is available.  The Order offered Idaho Power the assurance that the Commission would provide for some rate recovery of any prudent DSM expenditures.

Idaho Power’s Petition for Clarification

On August 5, 1997, Idaho Power filed a Petition for Clarification of Order No. 27045 on the basis that the Commission did not specifically authorize the Company to accrue interest on the deferred balance of NEEA expenditures.  Idaho Power notes that currently, interest is accrued on deferred expenditures for past and existing DSM programs using the currently approved interest rate of 9.199%.  The Company requests clarification that it will be entitled to accrue similar interest on its NEEA expenditures as they are capitalized.

Moreover, Idaho Power notes that in its 1996 earnings compliance filings it was authorized by the Commission to deduct, from the revenue attributable to refund, the interest attributable to DSM deferrals for the year 1996.  In the event that the Company earns more than 11.75% return on year-end equity, Idaho Power, in making its 1997 earnings compliance filing, proposes to deduct the interest accrued from the 1997 deferred NEEA balance and would intend to make a similar calculation for future earnings compliance years.  Consequently, the Company requests further clarification in Order No. 27045 that it will be permitted to make a similar deduction for any interest accrued on NEEA balances for the year 1997 and any future years during the pendency of the Settlement Agreement.

The ICIP’s Petition for Reconsideration

On August 6, 1997, the Industrial Customers of Idaho Power (ICIP) filed a Petition for  Reconsideration of Order No. 27045.  The ICIP requests reconsideration of the Commission’s Order based on the following allegations of error:

1. Due process requires that the Commission hold formal hearings;

2.Deferred accounting of NEEA expenditures is not in the public interest and is unsupported by the record;

3.The Commission’s finding that the deferral and capitalization of NEEA expenditures would not violate the rate moratorium imposed in Case No. IPC-E-95-11, is in error.

1.  Did the Commission err in failing to hold a formal hearing in this matter?

The ICIP notes that the Notice of Prehearing Conference issued by the Commission in this case states:

In light of those comments, and pursuant to Rule 204 of the Commission’s Rules of Procedure, IDAPA 31.01.01, the Commission has determined to set this matter for hearing.  The Commission has decided, therefore, to conduct a prehearing conference in this case. . . .

In light of the language of the Commission’s Notice, the ICIP contends that it was “operating under the Commission induced assumption that it would have an opportunity, beyond the prehearing conference, to introduce evidence, examine witnesses, and engage in discovery.”  The ICIP argues that because of its assumption, it did not bring witnesses to the hearing unlike some of those parties in attendance.  The ICIP suggests that the only parties to bring witnesses were those who were in favor of the Company’s Application “because none of the parties who oppose the Application were notified in advance that testimony would be taken.”

The ICIP relies upon Rule 204 of the Commission’s Rules of Procedure which provides:

ACTION BY THE COMMISSION.  If no protests, supports or comments are received within the deadline, the Commission may consider the matter and enter its Order without a hearing.  If protests, supports or comments are filed within the deadline, the Commission will consider them and may set the matter for hearing and may decide the matter and issue its Order on the basis of the written positions before it.

The ICIP argues that Rule 204 gives the Commission two options under Modified Procedure: it may decide the case based on the “written positions before it” or it may “set the matter for hearing.”  The ICIP contends that the Commission decided the case not based on the written positions before it and not based on a hearing but, rather, based on oral testimony taken at a prehearing conference after having declared that a hearing would be conducted.

The ICIP notes that the Commission’s Notice of Prehearing Conference was sent only to those entities who had intervened as parties to the case and not to the entire list of interested persons.  Rule 211 of the Commission’s Rules of Procedure states:

PURPOSES OF PREHEARING CONFERENCES.  The Commission may by order or notice issue to all parties and to all interested persons as defined in Rule 39 convene a prehearing conference for the purposes of formulating or simplifying the issues, obtaining concessions of fact or by identification documents to avoid unnecessary proof, scheduling discovery, arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, scheduling hearings, establishing procedure at the hearings, discussing settlement offers or making settlement offers, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

Finally, the ICIP argues that the foregoing Rule 211 does not identify the calling and examination of witnesses as one of the allowed purposes of a prehearing conference.

2.  Is the Commission’s decision relative to deferred accounting treatment for Idaho Power’s NEEA expenses supported by the record and in the public interest?

The ICIP contends that the Commission’s decision to allow the deferral of Idaho Power’s NEEA expenses is “well outside the limited record in this proceeding.”  The ICIP seems to base its entire argument on the fact that no party to this proceeding actually recommended deferral of NEEA expenses as opposed to immediate recovery and that the Commission is somehow limited to the recommendations made by the parties to the case and cannot fashion its own remedy.

The ICIP also notes that in Case No. IPC-E-96-22, Order No. 26957, the Commission expressed a lack of support for the creation of regulatory assets in allowing Idaho Power to terminate its Partners in Industrial Efficiency program.  In light of this, the ICIP concludes, that the Commission’s decision in this case is arbitrary.

3.  Does the Commission’s Order violate the rate moratorium?

In Order No. 27045, the Commission ruled that Idaho Power’s public purposes charge did not violate the rate moratorium approved by the Commission in Case No. IPC-E-95-11.  In this case, the Commission stated:

We view the Company’s participation in NEEA as a continuation of its overall commitment to DSM and not as some new program not envisioned at the time of the settlement agreement.  We find, therefore, that Idaho Power’s participation in NEEA and request for a public purposes charge does not violate the rate settlement agreement approved by the Commission in Order No. 26216.

Order No. 27045 at 4.

The ICIP argues that, contrary to the Commission’s findings, the Company’s investment in NEEA constitutes a “new” program.  NEEA is a region-wide conservation program that is not targeted solely at Idaho Power’s ratepayers.  It is managed and implemented from out-of-state offices with a board of directors who are not directly responsible to Idaho ratepayers or the Commission, the ICIP contends.  The ICIP asserts that the rate moratorium is rendered meaningless if the Commission unilaterally interprets it in such a restrictive manner.

Idaho Power’s Answer to the ICIP’s Petition for Reconsideration

On August 13, 1997, Idaho Power filed an Answer to the ICIP’s Petition.  Idaho Power notes that Rule 331.01 of the Commission’s Rules of Procedure states that a Petition for Reconsideration  “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.”  Idaho Power argues that the ICIP has failed to set forth any statement of the nature and quantity of evidence or argument it would present if the Petition were granted.  Consequently, the Company argues, the Commission is left with no idea as to the type or quantity of evidence or arguments that the ICIP would propose to submit if reconsideration is granted.

Regarding the ICIP’s claim that the Commission erred in failing to conduct a formal hearing in this matter, Idaho Power notes that it has long been the practice of the Commission to process certain applications under Modified Procedure, which does not involve an evidentiary hearing.  Nonetheless, the Commission has on countless occasions held a hearing for the purpose of affording various parties an opportunity to present their views and positions concerning the issue under consideration.  As such, those proceedings were hearings in the sense that they afforded parties an opportunity to be heard but they were not evidentiary proceedings affording the parties an opportunity to present evidence they believed necessary in order for the Commission to make appropriate findings of fact.  Idaho Power asserts that in this case, the ICIP has confused the conducting of a hearing in order to afford the Commission an opportunity to obtain the views of the various parties with the conducting of an evidentiary proceeding.  Idaho Power believes that it is clear under the Order issued in this proceeding that the Commission determined an evidentiary proceeding was not necessary.  The Commission simply found that the Company’s request to participate in NEEA should be permitted and that deferral of the expenditures for participation in NEEA was authorized.  The Commission left for determination in a future proceeding, however, whether and how to allow the collection in the Company’s rates of those deferred expenditures.  Idaho Power asserts that all that was addressed by the Commission in Order No. 27045 were issues which did not require an evidentiary proceeding.

In its Petition for Reconsideration, the ICIP acknowledged that the Commission could determine without an evidentiary hearing whether Idaho Power’s Application violates the rate moratorium agreement.  Idaho Power notes that no party to this case desired to present any further evidence or arguments as to the issues of whether Idaho Power’s Application violates the rate moratorium.

Regarding the ICIP’s contention that the Commission’s decision to allow the deferral of NEEA expenditures is not in the public interest is not supported by any argument as to the nature and quantity of evidence or arguments the ICIP would offer if reconsideration were granted on this issue.  Idaho Power suggests that little would appear to be gained by simply granting the ICIP’s Petition without some proposal as to how the Petition would be processed if granted.

Finally, regarding the ICIP’s contention that the Commission’s Order violated the rate moratorium agreement, Idaho Power notes that all parties to this case, including the ICIP, agreed that this matter was a legal issue and had been thoroughly briefed and argued to the Commission.  Idaho Power argues that the ICIP has presented nothing new and simply reasserts the same arguments it set forth earlier in this proceeding.  The ICIP does not even make a pretense that there is any new evidence or arguments that would be submitted if reconsideration were granted on this issue, Idaho Power contends.

Idaho Power’s Cross-Petition for Reconsideration

Idaho Power has cross-petitioned the Commission for reconsideration on the basis that “the Commission’s determination to authorize the utilization of deferred accounting as opposed to a pay as you go/or ongoing basis to allow for Idaho Power’s participation in NEEA is erroneous.”  The Company submits that if the Commission grants the ICIP’s Petition for Reconsideration as to the utilization of the deferred accounting, then Idaho Power’s cross-petition should be granted so that the Commission can determine that ongoing recovery of the NEEA expenditures as opposed to deferral of those expenditures is in the public interest.

In short, if the ICIP’s Petition for Reconsideration is granted, then Idaho Power asserts that its cross-petition should be granted as well.  If Idaho Power’s cross-petition is granted, the Company states that it would submit evidence as to rate design alternatives that could be utilized for the collection of the projected expenditures to be used to pay for the Company’s participation in NEEA.  Idaho Power would also submit recommended safeguards that the Commission could impose so that the monies collected would only be used for participation in NEEA.

FINDINGS

We hereby grant Idaho Power’s Petition for Clarification.  We note that we have historically allowed the Company to accrue interest on investments made in DSM and see no reason to depart from that practice with respect to NEEA expenditures.  Consequently, Idaho Power is authorized to calculate interest using the currently approved rate of 9.199% on all NEEA investment.   Of course, we continue to defer our determination of how and whether to allow actual recovery of the Company’s NEEA investment unless and until we issue an order on reconsideration altering our findings in Order No. 27045 or until the prudence of the investment can be ascertained; whichever comes first.

Moreover, we find that the Company’s proposal to deduct the interest accrued from its 1997 deferred NEEA balance in the event that the accrual of such interest would cause Idaho Power to earn more than 11.75% return on year end equity is reasonable and is also approved.  Furthermore, the Company is authorized to make a similar deduction for any interest accrued on NEEA balances for the year 1997 and any future years during the pendency of the rate moratorium agreement.

Regarding the ICIP’s Petition for Reconsideration, we hereby grant the Petition to the extent that we will allow the ICIP and any other interested party to file formal testimony and exhibits regarding whether allowing Idaho Power to defer for possible future recovery its investment in NEEA is in the public interest.  While we do not find that due process was violated by the manner in which the prehearing conference was conducted, we find that it would be reasonable to allow the ICIP, and any other interested party, the opportunity to present formal testimony and exhibits should they so desire and as set forth in the schedule below.  We will issue a final order on reconsideration resolving ICIP’s Petition for Reconsideration and Idaho Power’s Cross-Petition for Reconsideration after we have reviewed the filings of all parties.

We deny the ICIP’s contention that the Commission’s Order allowing Idaho Power to defer its NEEA expenditures violates the rate moratorium approved by the Commission in Case No. IPC-E-95-11.  We find that the ICIP has failed to offer any indication as to what statement, evidence or argument it will allow regarding this issue should reconsideration be granted.  We find that this issue simply requires an interpretation on our part of what our original intent was when we issued Order No. 26216 when we approved the rate moratorium in the first instance.  As we noted in Order No. 27045, we find that the Company’s participation in NEEA is a continuation of its overall commitment to DSM and does not constitute a new program, as ICIP contends, that was not envisioned at the time of the settlement agreement.  Consequently, the ICIP has offered no new evidence or arguments in support of its contention and reconsideration on this issue is denied.

Regarding Idaho Power’s Cross-Petition for Reconsideration, we find that because we are allowing the ICIP and other interested parties the opportunity to file formal testimony and exhibits regarding the propriety of deferring NEEA expenditures, we also allow the Company the opportunity to respond to any testimony or exhibits filed through a rebuttal filing should it so desire.  It is unnecessary for Idaho Power or any other party to address rate design issues at this time.  We will solicit input on rate design after we have decided to allow Idaho Power to actually begin recovering its NEEA investment from ratepayers.

NOTICE

YOU ARE HEREBY NOTIFIED that the Commission has adopted the following schedule in this case.

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| Deadline for filing testimony and exhibits for all parties other than Idaho Power  | September 24, 1997 |
| Deadline for Idaho Power’s rebuttal filing | October 1, 1997 |

O R D E R

IT IS HEREBY ORDERED that the Petition for Clarification and Cross-Petition for Reconsideration of Idaho Power Company and the Petition for Reconsideration of the Industrial Customers of Idaho Power are granted in part and denied in part as set forth above.

THIS IS A FINAL ORDER with respect to Idaho Power’s Petition for Clarification.  Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-96-26 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. IPC-E-96-26.  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

THIS IS A FINAL ORDER ON RECONSIDERATION with respect to our denial of that portion of the ICIP’s Petition for Reconsideration contending that our decision in Order No. 27045 violates the rate moratorium imposed by Order No. 26216.

 THIS IS AN INTERLOCUTORY ORDER in all other respects.  Any person interested in this Order may file a petition for review within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order.  A petition to review may request that the Commission: (1) rescind, clarify, alter, amend; (2) stay; or (3) finalize this Interlocutory Order. After any person has petitioned for review, any other person may file a cross-petition within seven (7) days.  See  Rules 321, 322, 323.03, 324, 325 (IDAPA 31.01.01.321 -325.)

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of September 1997.

                                                                                                                                       DENNIS S. HANSEN, PRESIDENT

                                                                                            RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, 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

September 4, 1997