DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

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WORKING FILE

FROM:BRAD PURDY

DATE:MAY 5, 1997

RE:CASE NO.  IPC-E-96-26; APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF A PUBLIC PURPOSES CHARGE TO FUND THE COMPANY’S PARTICIPATION IN THE NORTHWEST ENERGY EFFICIENCY ALLIANCE

On December 31, 1996, the Idaho Power Company (Idaho Power; Company) filed an Application for an Order approving the implementation of a “public purposes charge” to allow for recovery of the Company’s participation in the Northwest Energy Efficiency Alliance, Inc. (NEEA), an organization formed for the purpose of transforming markets for selected electricity efficiency improvement products and services on a regional basis.  The details of the Company’s Application are set forth in the decision memorandum submitted to the Commission on January 10, 1997, as well as the Commission’s Notice of Application/Modified Procedure issued on January 21, 1997, and will not be repeated here.

In the aforementioned Notice of Application/Modified Procedure, the Commission solicited comments regarding the Company’s Application.  A substantial number of motions, protests, petitions and comments were subsequently filed with the Commission.  This memorandum will first discuss the unresolved procedural issues raised by the motions, protests and petitions and will then provide a summary of the substantive comments received.

Petition for Intervention

Industrial Customers of Idaho Power (ICIP)

On April 4, 1997, the ICIP filed a Petition to Intervene in this proceeding.  On April 9, 1997, Idaho Power filed a limited Motion in Opposition to that Petition arguing that before the ICIP is permitted to intervene, “more information should be supplied as to the customers who are represented by this Association.”  Motion at p. 1.  Idaho Power moves that the Petition to Intervene be granted only after the Company has been supplied the names and service locations of ICIP’s members.

On April 14, 1997, the ICIP filed an Answer to Idaho Power’s Motion.  The ICIP notes that Idaho Power does not assert that the ICIP’s Petition fails to satisfy the technical requirements of Rule 72 of the Commission’s Rules of Procedure pertaining to Petitions to Intervene.  Rather, the ICIP argues, Idaho Power’s Motion is nothing more than a “curiosity” and “an unfortunate waste of the Commission’s and the ICIP’s time and resources.”  Answer at p. 4.  The ICIP contends that Idaho Power’s request has nothing to do whether the ICIP has alleged a direct and substantial interest in the outcome of this proceeding or whether the granting of the ICIP’s Petition to Intervene would unduly broaden the issues.  The ICIP notes that the number, identity and location of its membership is information that is easily discoverable and “will likely be produced without objection to a properly filed data request on Idaho Power’s part.”

 Moreover, the ICIP contends that Idaho Power’s Motion violates basic due process because it seeks to compel a non-party to this proceeding to disclose information that Idaho Power would otherwise have no right to obtain.  The ICIP contends that until it is granted status as a party, the Company has no legal ability to compel the ICIP to disclose any information about its members or their locations.

On April 16, 1997, Idaho Power filed a Response to the ICIP’s Answer.  Idaho Power notes that Rule 74 of the Commission’s Rules of Procedure provides that “the Commission or the presiding officer will grant intervention, subject to reasonable conditions.”  Idaho Power contends that it is not possible to determine whether the ICIP’s members have a direct and substantial interest in this proceeding without knowing who those members are.  Idaho Power concludes that without knowledge of the ICIP’s membership prior to granting intervention, the Commission cannot ascertain whether granting the Petition would reduce multiple representation.

Legal Analysis

Rule 71 of the Commission’s Rules of Procedure states that any person who “claim[s]” a “direct and substantial interest in the proceeding may” file a petition to intervene.  Rule 72 of the Rules of Procedure provides that “[t]he petition must set forth the name and address of the petitioner and clearly and concisely state the direct and substantial interest of the petitioner in the proceeding.”  The Rule does not specifically state whether, in cases where the named petitioner is a group or association, the names of the petitioner’s individual members must be disclosed in the petition.  I believe that it is a judgement call as to whether it is necessary to identify a petitioning group’s members in order to determine whether the group has a direct and substantial interest in the proceeding.

Commission Decision:

Should the ICIP be required to identify its individual members before intervention is granted?

Motion to Dismiss Application

On March 18, 1997, the RFG filed a Motion to Dismiss Idaho Power’s Application contending that the Company’s filing is, in essence, a general rate increase in violation of the rate stability agreement entered into between Idaho Power and the Commission in Case No. IPC-E-95-11 (Order No. 26216) and is in violation of the Commission’s Rules requiring Notice of a General Rate Filing.  According to the RFG, Idaho Code §§ 61-307, 502 and 503 require that the utility provide notice to all of its customers of the filing of a general rate case.  Second, the RFG contends that Idaho Power failed to file a Notice of Intent to File a General Rate Case as provided by the Commission’s Rules of Procedure.  Third, the RFG asserts that the Company has failed to comply with the general administrative requirements of Rules 122, et seq., of the Commission’s Rules of Procedure requiring the Company to file a “complete justification of the proposed increase in the form of testimony and exhibits, financial statements, cost of capital and appropriate cost of service studies.”  The RFG notes that pursuant to Rule 121.03, the “failure of [Idaho Power] to comply with paragraphs 01 and 02 of this rule is grounds to return or dismiss an Application under Rule 65.”  Motion at p. 2.

Finally, the RFG notes that in Order No. 26216, the Commission established a rate moratorium for Idaho Power freezing the Company’s rates until January 1, 2000.  The rate moratorium provides for three exceptions, the second of which relates to changes in the manner in which demand side management charges are recovered.  The RFG contends, however, that Idaho Power’s request for an increase in rates to pay for DSM is a change in the amount of recovery for DSM rather than a change in the manner of collection of DSM costs.

On April 7, 1997, Idaho Power filed a consolidated Response to a number of comments and motions including the RFG’s Motion to Dismiss.  Idaho Power argues that its proposed public purposes charge meets the definition of the exception to the rate moratorium created by the Commission for changes in the manner in which DSM charges are recovered.  Idaho Power notes that at the time of the rate moratorium proceeding, the Company deferred conservation payments it made to third parties and then recovered those deferrals in rates over a 24-year period of time.  Idaho Power argues that if the Company is prohibited from changing its conservation programs or changing how expenditures for new conservation programs are recovered, this would literally make the exception created by the Commission in the rate moratorium case a nullity.  The Company contends that all parties to the stipulation in that case agreed that Idaho Power would be permitted to propose changes to the way DSM costs would be recognized in base rates.  The Company contends that the reference to changes in the “manner” was to enable the Company to request that expenditures for DSM programs be recovered at the time the expenditures were made.  Idaho Power asserts that the exception is not limited to existing DSM programs.

Regarding the RFG’s contention that the Company’s Application in this case constitutes a general rate case, Idaho Power argues that a pass through of an increase in an identifiable expense does not constitute a general rate case (citing J.R. Simplot Co. v. Intermountain Gas Co., 102 Idaho 341, 630 P.2d 133 (1981)).  Moreover, Idaho Power notes that Rule 124 of the Commission’s Rules of Procedure provides that in a general rate case, the utility’s revenue requirement and every component of it are at issue.  This is not the case concerning Idaho Power’s request for a public purposes charge.

Legal Analysis

In Order No. 26216, the Commission approved a settlement stipulation entered into between Idaho Power, the Commission Staff and several large Idaho Power customers.  Subsection (D) of the settlement stipulation provides:

Furthermore, the moratorium does not apply to the following three exceptions: (1) a legislatively imposed surcharge for hydro relicensing, (2) Application by Idaho Power, or any other party, requesting changes in which demand side management charges are recovered and, (3) the recovery by Idaho Power of costs related to catastrophic events which are outside the control of the Company.

Stipulation at p. 4.

The only discussion in the Order itself relating to the exceptions to the rate moratorium is found on page 6 where the Commission states:

Next, we hereby inform the Company that any attempts by Idaho Power to increase base rates through one of the exceptions provided in Section IV(D) of the settlement stipulation shall be rigorously scrutinized.  As stated, the primary benefits of the stipulation, from the viewpoint of ratepayers, are low rates and rate stability.  We intend to hold the Company to the assurances provided in the stipulation in this regard.  A review of the transcript of the hearing conducted in this case provides very little insight into the understanding of the various parties regarding exception No. 2 to the rate moratorium.  All of the testimony provided relates to exceptions 1 and 3; the exception for a hydro relicensing surcharge and an exception for catastrophic events, respectively.  Only the Commission can interpret this provision of Order No. 26216.  As discussed below, the ICIP and FMC both support the RFG’s argument that the proposed public purposes charge violates the rate moratorium.

Commission Decision

Does the Commission have enough information at this juncture to rule on the RFG’s Motion to Dismiss Idaho Power’s Application, or should a hearing be conducted?  If the former, how does the Commission wish to rule on the Motion to Dismiss?

Protest to Use of Modified Procedure

On March 18, 1997, the RFG filed a protest to the use of Modified Procedure in this case.  The RFG contends that Idaho Power’s Application constitutes a general rate case in violation of prior Commission Orders and that because of the nature of the case, a public hearing is necessary to give the RFG’s members on opportunity to present live testimony.  While Idaho Power takes exception to the RFG’s characterization of the Company’s Application in this case, it has not specifically responded to RFG’s request for a public hearing.

Commission Decision

Does the Commission wish to schedule this matter for hearing or issue a ruling based upon the comments received?  If the latter, those comments are summarized below.

Comments

Written comments in response to Idaho Power’s Application were filed in this case by 35 individuals, groups or entities including residential users, senior citizens, irrigation customers, conservation groups, large industrial users and the Commission Staff.  Of the 35 sets of comments filed, 32 are in opposition to Idaho Power’s Application.  The reasons for opposition are widely varied.  Primarily, those in opposition express concern about the financial effect of a rate increase, especially irrigators with relatively low electricity usage.  Some expressed concern over the lack of details regarding NEEA.  Many suggested that funding of such  a non-profit organization should come from the Company’s shareholders and not its customers.  The ICIP contend that the Company’s proposal violates the rate moratorium imposed by the Commission in Order No. 26216.  The ICIP objects to the public purposes charge on the basis that it will generate new revenues and is more than a change in the manner in which demand side charges are recovered.  Consequently, the ICIP argues, the charge does not fall within one of the three exceptions to the rate moratorium imposed by the Commission.

The ICIP also notes that NEEA is not incorporated with the Secretary of State and, consequently, is not qualified to do business in the state of Idaho.  Because of this, the ICIP questions the legitimacy of Idaho Power’s investment in NEEA and contends that it will not benefit Idaho’s ratepayers.  This is particularly true, the ICIP contends, in light of the fact that Idaho Power is terminating most or all of its at home conservation programs.

Micron Technology questions the effectiveness of any conservation program implemented by Idaho Power.  It notes that the Company’s Partners in Industrial Efficiency program (PIE) was cumbersome and slow making it impractical for Micron to utilize the program due to the speed in which technology changes in the semi conductor industry occur.  Micron is concerned that NEEA is governed by an 18 member board whose goal is consensus decision making concerned with appeasing disparate factions rather than quickly and efficiently implementing specific targeted conservation measures.

The only commentators supporting Idaho Power’s Application include the Commission Staff, Idaho Rivers United and the Northwest Conservation Act Coalition.

Staff contends that transforming markets to make the use of electricity more efficient is a worthwhile endeavor and that such market transformation can be better accomplished at the regional level rather than separately within each utility’s service area.  Staff notes that NEEA’s role in achieving greater efficiencies in the use of electricity has been advanced by the comprehensive review after a year-long public debate about the future of energy markets in the northwest.  Because of the inherent dangers in a regional organization spending Idaho ratepayer’s money, Staff qualified its support, contingent upon the following: (1) that Idaho Power’s participation in NEEA be active and effective; (2) that Idaho Power be responsible for continuing to evaluate the effectiveness of NEEA and withdrawing from the Alliance if it becomes clear that customers will not benefit; (3) that the public purposes charge tariff automatically expire when the revenue Idaho Power collects matches the Company’s total net expenses; (4) that Idaho Power’s public purposes charge be based on a uniform percent of each customer’s total bill rather than the Company’s proposed per customer flat rates, and; (5) that Idaho Power develop accounting procedures to provide a clear audit trail to track collections from customers as well as disbursements to and receipts from NEEA.

The Northwest Conservation Act Coalition (NCAC ), whose members range from environmental and consumer protection groups to energy efficiency businesses and utilities, asserts that because markets generally cut across utility, state and regional boundaries, it is important to leverage local and state efforts with a comprehensive approach at the regional level.  The NCAC   contends that NEEA will provide a cohesive and effective force in the regional implementation of conservation measures.  However, NCAC supports a charge based on a uniform percent of total bills rather than Idaho Power’s rate design.

Idaho Rivers United (IRU) supports Idaho Power’s proposal in concept.  IRU states that the Company’s participation in a regional market transformation effort is important to ensure that energy efficiency technologies and conservation will be available to Idaho residents and consumers in the future.  IRU also suggests that IPC’s costs be collected through a uniform percent increase rather than LPC’s rate design.

Commission Decision

Assuming the Commission wishes to issue a final ruling without conducting a hearing, does it grant or deny Idaho Power’s Application to implement a public purposes charge?  Assuming approval, should Staff’s proposed conditions be imposed?

Brad Purdy

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