DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

LYNN ANDERSON

KEITH HESSING

DAVID SCOTT

WORKING FILE

FROM:BRAD PURDY

DATE:AUGUST 21, 1997

RE:CASE NO. IPC-E-96-26 (IDAHO POWER’S APPLICATION FOR A PUBLIC PURPOSES CHARGE)—IDAHO POWER COMPANY’S PETITION FOR CLARI­FI­CA­TION OF ORDER NO. 27045; THE INDUSTRIAL CUSTO­MERS OF IDAHO POWER’S PETITION FOR RECONSIDERATION OF ORDER NO. 27045, AND; IDAHO POWER’S CROSS PETITION FOR RECONSIDERATION

On July 16, 1997, the 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 Commission offered Idaho Power the assurance that it would provide for some rate recovery of any DSM program costs.  Order No. 27045 at pp. 5-6.

Idaho Power’s Petition for Clarification

On August 5, 1997, Idaho Power filed a Petition for Clarification of Order No. 27045.  The Company notes that the Commission did not specifically authorize Idaho Power 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 interests 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 demand side management deferrals for the year 1996.  See Order No. 26925.  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.

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 the Commission hold 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 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 unsupported by the record, arbitrary and inconsistent with recent Commission? Orders.

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. 20745, 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 ICIP’s Petition for Reconsideration

On August 13, 1997, Idaho Power filed an Answer to 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 Company 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 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 a future proceeding, however, 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 issued 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 violated 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 violated 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’s Cross-Petition for Reconsideration

Idaho Power has cross-petitioned the Commission for Reconsideration on the ground 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.

Commission Decision

Does the Commission wish to grant Idaho Power’s Petition for Clarification regarding the accruing of interest and the deduction of interest on NEEA balances for the year 1997 and any future years during the pendency of the settlement agreement for purposes of the rate sharing agreement?  Does the Commission wish to grant the ICIP’s Petition for Reconsideration?  If so, on what basis?  If on the basis that deferred accounting for NEEA expenditures is not in the public interest, should Idaho Power’s Cross Petition be granted?

Brad Purdy

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