DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

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DON HOWELL

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TERRI CARLOCK

DAVID SCOTT

WORKING FILE

FROM:BRAD PURDY

DATE:December 1, 1997

RE:CASE NO.  IPC -E-96-26; IDAHO POWER PUBLIC PURPOSES CASE: APPLI­CA­TION OF THE RATE FAIRNESS GROUP FOR INTERVENOR FUNDING

On May 8, 1997, the Rate Fairness Group (RFG) filed an Application for intervenor funding for its participation in this proceeding.  At the time of the RFG’s Application, however, the case was still pending.  Consequently, on August 14, 1997, the RFG filed a supplement to its Application for intervenor funding with adjustments to the amount of fees and costs claimed by the RFG.

RFG’s Application

In its initial Application, the RFG set forth a summary of its proposed findings or recommendations made during the course of this proceeding which are as follows:

1.  That Idaho Power’s Application is a request for general rate relief;

2.  That Idaho Power’s Application is not within any exception to the settlement approved in Order No. 26216 (IPC-E-95-11);

3.  That Modified Procedure is not appropriate and is inadequate in this case;

4.  That formal hearings be held on Idaho Power Company’s Application;

5.  That Idaho Power’s Application is for the recovery of costs that are the subject matter of a general rate case and that the Company has failed to file an Application for a general rate increase in compliance with the filing requirements of the Idaho Code and Rule 31.01.01 of the Commission’s Rules of Procedure, and;

6.  That Idaho Power’s Application violates the rate moratorium and Order No. 26216 of the Commission in Case No. IPC-E-95-11 and should be dismissed.

The RFG goes on to contend that its costs are reasonable and that they constitute a significant hardship for the RFG which is a voluntary, unincorporated group consisting of 13 individual customers of Idaho Power Company, most of whom are retired or of limited means and generally on a fixed income.

The RFG further contends that its recommendations differ from those proposed by the Commission Staff in this proceeding considering that Staff did not object to the use of modified procedure; Staff did not contend that the Company’s Application constitutes a general rate case; Staff did not contend that the Application violates the rate moratorium; Staff did not oppose the recovery of Idaho Power’s public purposes costs from its ratepayers, and; Staff did not request a formal hearing in this case.

The RFG contends that its involvement in this proceeding raised issues of concern to Idaho Power’s general body of ratepayers considering that all ratepayers are beneficiaries of the rate moratorium imposed by the Commission in Order No. 26216.

Finally, the RFG states that all 13 of its members are residential customers of Idaho Power and that two members are also commercial customers and one member is also an irrigation customer.  The RFG requests intervenor funding in the following amount:

|  |  |
| --- | --- |
| Legal Fees: (52.2 hrs. @ $150/hr.)  Legal Expenses:  Reproduction costs:  Mailing costs:  Secretarial Expenses: (12 hrs. @ $20/hr.)  Total | $7,830.00  17.00  4.40     240.00  $8,091.40 |

Idaho Power’s Response

On August 26, 1997, the Idaho Power Company (Company) filed a Motion in Opposition to the RFG’s Application for intervenor funding.  First, Idaho Power contends that the RFG’s initial Application for intervenor funding was premature and that its supplement was filed too late.  Idaho Power notes that the RFG did not file its supplement until August 14, 1997.  (The Commission issued its initial final Order No. 27045 on July 16, 1997).  Rule 164 of the Commission’s Rules of Procedure, the Company argues, clearly provides that an intervenor requesting funding must apply no later than 14 days after the last deadline for submitting briefs, proposed Orders or statements of position, whichever is last.  Idaho Power fails to specify, however, what it believes to be the date of that 14 day deadline.

Second, Idaho Power objects to the RFG’s Application because it fails to provide a “breakdown” or “itemization” of the work performed by the RFG’s attorney.  Consequently, Idaho Power argues, the Commission cannot make a determination that the costs the intervenor proposes to recover are reasonable in amount as required by Rule 162(c) of the Commission’s Rules of Procedure.

Third, Idaho Power notes that none of the six findings or recommendations identified by the RFG in its Application were actually accepted by the Commission.  Idaho Power argues that the RFG essentially advanced legal arguments which were also advanced by other parties to the proceeding and which were rejected by the Commission.

Fourth, Idaho Power contends that the RFG did not intend that its 13 individual members would be the rate group the RFG contends should be responsible for reimbursement for the intervenor funding award.  Pursuant to Rule 165.03 of the Commission’s Rules of Procedure, “awards of intervenor funding shall be chargeable to the class of customers represented by the intervenors.”  Consequently, Idaho Power argues that the request for intervenor funding should be denied on the grounds that the Application does not provide the information required for the Commission to rule, i.e., which customer class should be responsible for reimbursement of the intervenor funding award.

Finally, Idaho Power notes that the award of intervenor funding is a matter of discretion for the Commission.  The Company proposes that if the Commission does award intervenor funding in this case, the cost of the payment of the award should be deferred until Idaho Power reports its 1997 earnings for purposes of meeting the earnings test.  If Idaho Power has earned in excess of 11.75%, then the Company would recommend that it be permitted to recover this award with appropriate interest by deducting this amount from any refund due the Company’s customers.  If, on the other hand, the Company’s earnings are less than 11.75%, then Idaho Power proposes to continue deferring this amount until some monies were collected from a public purposes charge, or if not, in the next general rate proceeding.

Staff Analysis

Rule 162 of the Commission’s Rules of Procedure (IDAPA 31.01.01), provides:

An Application for intervenor funding must contain the following:

01.Itemized List of Expenses.  An itemized list of expenses that the intervenor requests to recover broken down into categories such as legal fees, witness fees, or reproduction fees.

02.Statement of Proposed Findings.  A statement of the intervenor’s proposed finding or recommendation that the intervenor wishes the Commission to adopt.

03.Statement Showing Costs.  A statement showing that the costs that the intervenor proposes to recover are reasonable in amount.

04.Explanation of Cost Statement.  A statement explaining why the costs described in subsection 162.03 constitute a significant financial hardship for the intervenor.

05.Statement of Difference.  A statement showing how the intervenor’s proposed finding or recommendation described in subparagraph b differs materially from the testimony and exhibits of the Commission Staff.

06.Statement of Recommendation.  A statement showing how the intervenor’s recommendation or position addressed issues of concern to the general body of utility users or consumers.

07.Statement Showing Class of Customer.  A statement showing the class of customer on whose behalf the intervenor appeared.

Regarding the time in which an Application must be filed, Rule 164 of the Commission’s Rules of Procedure states:

Unless otherwise provided by order, an intervenor requesting intervenor funding must apply no later than fourteen (14) days after the last evidentiary hearing in a proceeding or the deadline for submitting briefs, proposed orders, or statements of position, whichever is last.  Motions in opposition to intervenor funding must be filed within fourteen (14) days after the request for intervenor funding is filed.

Finally, the Commission’s decision whether to award intervenor funding and in what amount is controlled by Rule 165 of the Commission’s Rules of Procedure which provides:

01.Order Awarding Intervenor Funding.  The Commission may by order award intervenor funding pursuant to section 61-617A, Idaho Code.  The total award for all intervening parties combined shall not exceed twenty-five thousand dollars ($25,000) in any proceeding.  The Commission must find that:

a.the intervenor’s presentation materially contributed to the Commission’s decision,

b.the costs of intervention awarded are reasonable in amount,

c.the costs of intervention were a significant hardship for the intervenors,

d.the recommendations of the intervenor differed materially from the testimony and exhibits of the Commission Staff, and

e.the intervenor addressed issues of concern to the general body of users or consumers.

02.Payment of Awards.  Awards of intervenor funding must be paid within twenty-eight (28) days of the order of the Commission awarding intervenor funding, unless the order of the Commission is stayed.

03.Recovery of Awards of Intervenor Funding.  Awards of intervenor funding paid by electric, gas, water or telephone utilities will be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility’s next rate case.  Awards of intervenor funding shall be chargeable to the class of customers represented by the intervenors.

Staff takes no position regarding whether, as required by Rule 165, the RFG contributed “materially” to the Commission’s decision in this case; whether the RFG’s stated fees and costs are reasonable in amount, or; whether the costs of intervention constitute a significant hardship for the RFG.  These  are discretionary determinations that the Commission must make based upon its own observations and conclusions regarding the RFG’s participation in this case.  Staff does have a position, however, regarding some of the technical issues raised by Idaho Power in opposition to the RFG’s application.

 First, Staff disagrees that the RFG’s application was untimely.  Rule 164 of the Commission’s Rules of Procedure states that an intervenor requesting funding must apply “no later” than 14 days after the last evidentiary hearing or the deadline for submitting briefs.  Consequently, the RFG’s initial application filed May 8, 1997 (more than two months before the final Order was issued), albeit filed rather early, was timely.  Because this case was handled pursuant to modified procedure and because it was heard on reconsideration, it was never entirely clear at what point it had been finally submitted to the Commission for review.  Nonetheless, the RFG’s initial application was timely filed.  Moreover, when the Commission granted the ICIP’s Petition for Reconsideration in Order No.27124, it established a filing schedule for the parties.  The last deadline for filing comments in that schedule was October 1, 1997.  The RFG’s supplement to its initial application was filed on August 14, 1997.

Second, contrary to Idaho Power’s suggestion, the Commission’s Rules of Procedure contain no requirement that the legal costs of an intervenor be specifically itemized according to specific attorney tasks.  This, in fact, has never been required by the Commission.  The Company seems to have crafted this rule unilaterally.

Third, the Commission’s Rules of Procedure do not require that the Commission specifically adopt the position of an intervenor in order for that intervenor to qualify for funding as Idaho Power suggests.  The Rules simply states that the intervenor’s participation in the case must have materially contributed to the Commission’s decision.  Again, that is a determination the Commission must make using its own discretion.

Fourth, Idaho Power’s contention that the RFG is not entitled to intervenor funding simply because, according to Idaho Power, the 13 individual members of the RFG did not intend to  reimburse the Company for a funding award is entirely without merit.  Historically, the Commission has often awarded funding to intervenor groups that did not represent an entire class.  Rule 71 of the Commission’s Rules of Procedure states that anyone who claims “a direct and substantial interest in the proceeding” may petition for intervention.  Rule 72 states that Petition for Intervention 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.”  Nothing in the Commission’s Rules requires that an intervenor must represent a specific customer class or a particular portion of a class.  The Commission found that the RFG qualified as an “intervenor” when it issued Order No.26951 on May 29, 1997 granting the RFG’s intervention.  In the event the Commission chooses to award funding to the RFG, it should determine which customer class(es) the RFG represents and allow Idaho Power to recover the award from that (those) class(es).

Finally, Staff does not oppose the recovery of these funds through a reduction to any refund the appropriate class(es) may receive if Idaho Power’s 1997 earnings are above 11.75%.  Staff believes it is appropriate to defer this amount until it can be collected from a public purposes charge, or if a public purposes charge is not implemented, in the next general rate proceeding.

Commission Decision

Does the Commission wish to grant intervenor funding to the RFG?  If so, in what amount?

Brad Purdy

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