BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE PETITION OF THE KOOTENAI ELECTRIC COOPERATIVE FOR A DECLARATORY ORDER WITH REGARD TO THE WASHINGTON WATER POWER COMPANY’S CERTIFICATE OF CONVENIENCE AND NECESSITY. | )  )  )  )  )  )  ) | CASE NO. WWP-E-95-1  ORDER NO.  25967 |

On February 13, 1995 Kootenai Electric Cooperative, Inc. (Kootenai Electric, KEC) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting a declaratory ruling regarding the consolidated Certificate of Public Convenience and Necessity No. 307 and related service territory maps of The Washington Water Power Company (Water Power; WWP; Company).  Reference IDAPA 31.01.01.101-102; Idaho Code §§ 61-526, -528.

Kootenai Electric is an Idaho non-profit corporation that provides electric service in the northern Idaho counties of Bonner and Kootenai, and areas adjacent to and intermingled with Water Power’s existing service areas in said counties.

On January 10, 1989 the Commission in Order No. 22291, Case No. U-1008-282 consolidated Water Power’s existing Certificates of Public Convenience and Necessity and confirmed the Company’s right to provide electric service and maintain facilities in several counties including Kootenai and Bonner.

Kootenai Electric contends that the Commission’s Order and consolidated Certificate No. 307 contains several ambiguities that cause uncertainty and confusion.  The alleged ambiguities center around the question of whether the Commission intended to restrict Water Power’s certificated areas to just certain defined territories within the counties in which it operates or whether the Commission intended to grant Water Power a certificate encompassing all of the territory in each county in which it operates.

The general rule cited by Kootenai Electric, Idaho Code § 61-526, allows a utility operating within a city or county to expand to areas contiguous to its existing system.  It provides:

. . . that this section shall not be construed to require such corporation to secure such certificate for an extension within any city or county, within which it shall have theretofore lawfully commenced operation, or for an extension into territory whether within or without a city or county, contiguous to its . . . system.

The general rule Kootenai notes is tempered by Idaho Code § 61-528 which allows the Commission to place such restrictions on the territorial scope of Certificates of Public Convenience and Necessity that it deems to be in the public interest.

In its Order No. 22291 the Commission notes “. . . the definition of WWP’s certificated area by county, as proposed, would not, in and of itself, represent a determination with regard to Water Power’s obligation to serve the entirety of the certificated area.”  The implication, KEC contends, is that Water Power is certificated to serve only within a certain territory within the identified counties.  This implication is further supported, KEC contends, by the language of the certificate itself:

. . . It is hereby certified, that the public convenience and necessity require and will require the Washington Water Power Company . . . to supply electric power and energy to the residents and inhabitants of (Kootenai and Bonner Counties) within the territorial limits of said counties . . . as depicted on the attached service area maps . . . (except where service is being or may be lawfully supplied by another electric supplier to the exclusion of the Washington Water Power Company pursuant to the Idaho Electric Supplier Stabilization Act or successor). . . .

The Certificate language Kootenai contends is subject to two conflicting interpretations:

1.That Water Power is permitted to serve anywhere in the identified counties; or

2.That Water Power is permitted to serve anywhere in the identified counties “as depicted on the attached service area maps” or only in those areas depicted on the maps.

It is Kootenai’s understanding that Water Power was not granted an unrestricted Certificate to serve all areas in the identified counties.

Because the consolidated Certificate and underlying Order, Kootenai contends, are subject to two mutually inconsistent readings, Kootenai Electric seeks the Commission’s declaratory ruling that:

1.Order No. 22291 and related consolidated Certificate No. 307 restrict Water Power’s right and obligation to serve to just those areas so indicated on the attached service territory maps.

and that

2.An amendment to consolidated Certificate No. 307 is required before WWP need to serve, or be obligated to serve, areas outside the areas indicated on the attached service territory maps.

or, in the alternative to 1 and 2 above

1.That Order No. 22291 and related consolidated Certificate No. 307 are unrestricted, application of the Electric Supplier Stabilization Act not withstanding, and grant WWP the right and obligation to serve all territory within the identified counties.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over The Washington Water Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code and pursuant to the Commission’s Rules of Procedure, IDAPA 31.A.01.01.000 et. seq.

COMMISSION FINDINGS

The Commission finds the request of Kootenai Electric in this case to be one for clarification of Order No. 22291 pursuant to Commission Rule 325 of the Commission’s Rules of Procedure rather than a Rule 101 request for declaratory Order.  The Commission finds the general rule Idaho Code § 61-526 cited by Kootenai Electric to be the operative rule with respect to Water Power’s Certificate of Public Convenience and Necessity No. 307.  It was not the Commission’s intention in Order No. 22291 nor do we find it in the public interest to place additional restrictions on Water Power’s authority and right under its Certificate and Idaho Code § 61-526 to expand or extend its electric service, beyond the existing limitations of the Electric Supplier Stabilization Act (ESSA), Idaho Code §§ 61-332 to 334b.  The Certificate maps reflect a reasonable approximation of the extent of Water Power’s actual service territory and areas of operation at a given point in time, the date of the Commission’s Order.

O R D E R

IT IS HEREBY ORDERED that the foregoing discussion be interpreted as a clarification of our prior Order No. 22291, Case No. U-1008-282.  Reference IDAPA 31.A.01.01.325.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order) 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.  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of  April 1995.

RALPH NELSON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Chris Maschmann

Assistant Commission Secretary

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