DECISION MEMORANDUM

TO:COMMISSIONER SMITH

COMMISSIONER NELSON

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DAVID SCHUNKE

DON HOWELL

GARY RICHARDSON

WORKING FILE

FROM:SCOTT WOODBURY

DATE:FEBRUARY 22, 1995

RE:CASE NO. WWP-E-95-1

PETITION FOR DECLARATORY ORDER (KOOTENAI ELECTRIC)

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 31.01.101-102; 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’s Stabilization Act not withstanding, and grant WWP the right and obligation to serve all territory within the identified counties.

Commission Decision

How does the Commission wish to process this Petition?  Does the Commission believe that the issues presented are appropriate for Modified Procedure?

Scott Woodbury

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