DECISION MEMORANDUM

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WORKING FILE

FROM:SCOTT WOODBURY

DATE:JULY 2, 1996

RE:CASE NO. WWP-E-96-2

SCHEDULE 26 — EXPERIMENTAL DIRECT ACCESS DELIVERY

                                 SERVICE

On May 7, 1996, The Washington Water Power Company (Water Power; WWP; Company) filed an Application with the Idaho Public Utilities Commission (Commission) for approval of a proposed electric Schedule 26, Experimental Direct Access Delivery Service tariff.  The proposed tariff is a program of limited duration (July 1, 1996-August 31, 1998) that will provide the Company’s Schedule 25 extra large general service customers the opportunity to voluntarily transfer up to one-third of their load from Schedule 25 to Schedule 26, and to choose an alternate supplier to provide capacity and energy service for that portion of their load.  Water Power reports that it has 11 Idaho industrial customers eligible for the experiment.  These customers have loads ranging from 1.3 to 7.8 average megawatts (aMW), and a total load of 33 aMW.  This represents approximately 14 percent of Water Power’s Idaho retail electric load.

As proposed, the Schedule 26 tariff would not affect the rates for other customer classes during or after the experimental period (July 1, 1996 – August 31, 1998).  The Company is not requesting any special accounting treatment associated with the proposed tariff.  During the experimental period, the Company is proposing to absorb all the lost margin associated with loads being served on Schedule 26.  Following the experimental period, the Company will provide an evaluation report to the Commission.

On May 24, 1996, Water Power filed an amendment to its Application in Case No. WWP-E-96-2, in which it proposed numerous changes to Schedule 26.  As amended Schedule 26 includes the following  major elements:

•  Effective dates: July 1, 1996 through August 31, 1998

•  60 day prior written notice requirement to initiate/terminate service

•  Minimum one-year service term

•  Customer can change supplier as often as monthly, if desired

•  Termination of Schedule 26 service ends eligibility for remainder of experimental period

•  Capacity and energy amounts may not exceed one-third of customers average peak demand and total energy as billed under Schedule 26 during the period January – December 1995.  Total capacity eligible for Schedule 26 is to be rounded to the nearest whole MW (all customers presently served under Schedule 25 will be able to purchase at least one MW of capacity from an alternate supplier under Schedule 26).

•  Capacity and energy amounts may be changed after 12 months of service

•  Scheduling and delivery information, including load shape

•  Amount of energy and capacity delivered by alternative supplier would be deemed “first through the meter” for monthly billing purposes

•  WWP to provide all ancillary services necessary to provide uninterrupted service to customer (incl. scheduling, balancing, load following, and generating reserves)

•  Pricing and termination provisions re:  nondelivery of contractual capacity and energy by alternate supplier.  Charges for energy and capacity supplied by WWP when alternate supplies are not delivered will be $2 per kW for capacity, plus WWP’s incremental energy cost (based on non-firm purchases and sales), plus the Schedule 26 rates for kWh.

•  Schedule 26 rates subject to temporary Power Cost Adjustments (PCA) Schedule 66 and experimental DSM rider adjustment Schedule 91

Water Power is proposing a Schedule 26 tariff rate of 1.384¢/kWh.  This rate provides the customer with transmission, distribution, A&G, scheduling, balancing, load following and generating reserves.  These costs and services will be referred to by the Company as “delivery costs” and “delivery services.”  The Company’s filing details the derivative components of the Schedule 26 rate.  Per Company calculation, the average Schedule 25 customer who takes service under the Schedule 26 tariff will reduce their power bill to the extent that they can purchase capacity and energy from an alternate supplier for less than 1.546¢/kWh.

On May 22, 1996, the Commission issued Notices of Application and Modified Procedure in Case No. WWP-E-96-2.  Although the Company’s proposal is limited to its Schedule 25 industrial customers, the Commission solicited comments on the “perceived reasonableness and/or value of fashioning an experimental program or market test for other customer classes.”  As established in its Notice, the deadline for filing written comments with respect to the Application and the Commission’s use of Modified Procedure was June 18, 1996.  Timely comments were received from Idaho Power Company, Potlatch Corporation and Commission Staff.  On June 27, 1996, Water Power filed a response.  The filed comments (attached) can be summarized as follows:

Idaho Power Company

Idaho Power contends that there are public policy issues presented in Water Power’s Schedule 26 tariff that the Commission must address.  Specifically Idaho Power identifies the following perceived issues:

1.Must an alternate supplier such as Idaho Power obtain a Certificate of Convenience and Necessity to serve Water Power’s customers under Schedule 26?

Idaho Power contends that unless otherwise specifically excepted, suppliers of electric service at retail in Idaho must comply with Idaho Code, Title 61, including the certificate requirements set out in Idaho Code 61-526-528, and the “Electric Suppliers Stabilization Act” Idaho Code 61-332 et seq.

2.Are the rates and charges to be imposed by an alternate supplier subject to Commission review and approval?

Idaho Power questions whether Idaho Power or a municipality or cooperative can be required to submit rates, terms and conditions for Commission review.

3.Does Schedule 26 require a change in public utility law before it can be implemented?

Idaho Power Company contends that Schedule 26 represents a significant departure from a long-standing and expressly articulated state policy of replacing competition with regulation of the utility industry; and suggests that without a prior change in Title 61 Water Power may be subject to state and federal anti-trust laws.  Citing a recent federal Ninth Circuit case (60 F.3d 1390 (9th Cir 1995)).  In this case, Idaho Power states, it is the dominant competitor, Water Power, that has established the parameters under which it will allow competition in the affected area.  Normally, Idaho Power contends, the only way that a private entity can place such restrictions on its competitors is if (1) such restrictions are expressly approved by the state agency (in this case the Commission), and (2) if the Commission actively supervises this activity of anti-competitive behavior.

Potlatch

Potlatch prefaces its remarks by stating that Water Power’s Schedule 26 offering is a pro-active response to the new realities of the energy market and is in the public interest.  The Company, its customers, and the Commission, Potlatch states further, will all benefit from “hands on” experience with alternative supply arrangements and the introduction of market conditions to the utility’s service territory.  That being said, Potlatch then respectively suggests, that evidentiary proceedings should be held to fully consider the Schedule 26 tariff and its implications.  The experiment, Potlatch contends, is a case of first impression that will undoubtedly influence the public perception of the merits of customer choice, and may likely serve as a precedent for similar proposals by other Idaho utilities.

If evidentiary proceedings are scheduled, Potlatch intends to raise the following questions and issues regarding Schedule 26:

a.Is the proposed Schedule 26 rate “just and reasonable” reference Idaho Code 61-301?

Water Power, Potlatch contends, has supplied no evidence to support its cost of service calculation.  The Commission should be wary, Potlatch contends, of the invitation to establish a precedent that suggests that power delivery charges are somehow exempt from the normal Commission requirement that all rates for services must be fully justified on an adequate evidentiary record.

b.Is Schedule 26 workable for alternative suppliers and potential customers?

Water Power’s Schedule 26 tariff, Potlatch speculates, was apparently designed without input from either marketers/alternative suppliers or affected customers.  It is likely, Potlatch contends, that an evidentiary hearing would produce suggested changes that would improve the tariff—suggesting by way of example that use of a single bundled rate for all delivery services may be a significant impediment to the successful implementation of Schedule 26.

c.Does the Schedule 26 proposal target the appropriate classes?

Noting other experiments elsewhere around the country, Potlatch suggests that there is already a growing body of evidence indicating that retail competition is workable for industrial customers.  The unresolved, and arguably more important question, Potlatch contends, is whether customer classes other than the industrial sector will benefit from power supply competition.

Potlatch urges the Commission to schedule evidentiary hearings and suggests a proposed process for completion within two months.

Commission Staff

Staff recommends that Water Power’s Schedule 26 Application be approved with the following exceptions:

1.  The Company should be required to submit quarterly reports throughout the experiment, and

2. The Company should be directed to continue examining retail wheeling experiment options for the residential and small commercial classes and report the results of its investigation to the Commission.

Based on its review and analysis, Staff identifies the following advantages associated with approval of Schedule 26:

a.The Company, Schedule 25 customers, suppliers, the Commission Staff  and the Commission will gain valuable experience with retail wheeling.

b.Safety, reliability, and customer service should not be adversely affected by this experiment.

c.The rates of non-participants will not be affected by the experiment.

d.A substantial but limited amount of competitive choice will be available to Schedule 25 customers.

e.No jurisdictional or class cross-subsidization will result from the experiment.

f.All current Washington Water Power resources remain available to the Company for use in serving its jurisdictional customers.

The Schedule 26 rate, Staff contends, was developed in a consistent manner using the results of a cost-of-service study prepared by the Company and reviewed by Staff.

Water Power Response

Water Power in its response contends that Idaho Power and Potlatch raise no issues that should prevent the Commission from approving Schedule 26.

Re: Potlatch Concerns—

The Company contends that evidentiary hearings are not necessary because of the limited term and experimental nature of the tariff.  It was not the intent of the Company to establish a “perfect rate”, only a rate that would encourage participation.  Non-participating customers, it states, are held harmless.  The risk to participants who are free to choose whether or not they participate is minimal.  A single bundled rate rather than being an impediment, as suggested by Potlatch, the Company argues, significantly simplifies the experiment.  Unbundling the rate at this point, the Company contends, would only serve to delay the experiment by initiating hearings which are likely to result in a contentious and protracted cost-of-service proceeding.  Refuting Potlatch’s contention that the Schedule 26 tariff was apparently designed without input from either marketers/alternative suppliers or affected customers, the Company reports that it has held both a supplier and a customer meeting to discuss and solicit input on the proposed tariff.  Seventeen different suppliers and 18 out of the 26 eligible customers attended the meetings.  The Company has received no feedback that the operating details and options developed are unworkable.  The Commission Staff, the Company states, has reviewed the documents and workpapers supporting Schedule 26, discussed them with the Company and is recommending approval.

Addressing Potlatch’s suggestion that there is nothing new to learn from this experiment, Water Power points out that not just industrial customers are eligible.  Of the eligible accounts, there are five universities, two hospitals, two governmental accounts, and one hotel complex.  These customers, the Company states, have load requirements ranging from one to twenty-one average megawatts and load factors ranging from 30% to 80%.  This is a fairly diverse group of customers, the Company contends, and the outcome of the experiment is not predictable.

As reflected in Water Power’s response to Staff Production Requests (see Staff Comments attached), the Company maintains that it is simply not properly Staffed or prepared at this time for the implementation of an expanded experiment for smaller customers.

Re: IPCo Concerns

In response to Idaho Power’s question regarding the necessity of a Certificate for alternate suppliers, Water Power points out that Idaho statutes define “electrical corporations” as entities “owning, controlling, operating or managing an electric plant for compensation within the state.”  Under Schedule 26, the Company states, all of the facilities used to actually deliver electric energy to consumers would be owned, controlled, operated and managed by Water Power.  The Company concludes that a Certificate is not required, nor is it necessary for the Commission to approve specific retail wheeling transactions.

Water Power further contends that the rates and charges of alternate suppliers should not be reviewed or approved by the Commission.  The philosophical basis for retail wheeling, the Company states, is the premise that competition for customers will obviate the need for extensive rate regulation.  The purpose of the Company’s Schedule 26 tariff, is to promote competition, ergo. . . .  Water Power contends that neither Idaho Power (or any other power marketers or providers) should be required to submit its rates, terms and conditions to the Commission for approval.

In a world of rate regulation, Water Power contends that neither regulated utilities nor customers have real choices.  Water Power must serve its customer; the customer must buy from Water Power.  Water Power’s proposal to increase competition, the Company states, cannot be seen as having anti-trust implications merely because the experiment is not open to one and all from the outset.  Water Power’s experiment after all, it states, is designed to promote competition, not restrict it.

The Company suggests that Idaho Power’s two-pronged test will be satisfied with Commission approval and active supervision and reporting requirements.  The voluntary nature of participation in the offering, the Company states, the limited scope of the experiment, and the safeguard of Commission oversight should permit the experiment to go forward without a required change in statute.

Commission Decision

1.  Does the Commission after reviewing the filings of record and cognizant of its statutory authority and jurisdiction and rules of procedure believe that it has enough information to decide the issues presented in Case No. WWP-E-96-2?

If not, does the Commission desire further facts by developing an evidentiary record?

If not, does the Commission desire further briefing of legal issues?

2.Should Schedule 26 be approved?  Is the tariff rate reasonable?  Are the terms and conditions reasonable?

What regulatory requirements, if any, should be imposed?

Requirement of Certificate to serve?

Requirement that contracts be filed with Commission?

If contracts are filed, should they be open to the public or closed?

Review of contract rates, terms and conditions—approval of same?

Implications of ESSA?

Reporting requirements?  Staff review?

Anything else?

Scott Woodbury

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