MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

FROM:SCOTT WOODBURY

DATE:SEPTEMBER 5, 1996

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

SCHEDULE 26 – EXPERIMENTAL DIRECT ACCESS DELIVERY SERVICE

What is presented by Water Power in its May 7, 1996 Schedule 26 offering is an opportunity for some Idaho customers to voluntarily transfer up to one-third of their load from Schedule 25 to Schedule 26, and to choose an alternate supplier at a price presumably less than the Company’s Schedule 25 rate.  The Company requested an effective date July 1, 1996.  The proposed experiment is of limited duration, expiring August 31, 1998.  The Company anticipates still that the experiment will provide it and the Commission with some useful information in what is perceived by some to be a national transition of the electric industry to a more competitive environment.

Staff filed comments in this case supporting the Company’s Application.  Staff comments were filed prior to the Commission’s Order in the electric restructuring case.  The Commission stayed deliberation in Water Power’s Schedule 26 offering pending deliberation and decision in the electric restructuring case, Case No. GNR-E-96-1.

The Commission in its August 16, 1996 Order No. 26555 identified its role in a transformation toward free market principles as one of continued effort to insure that all of Idaho’s electric consumers continue to receive high quality service at reasonable rates.  The Commission in its findings and analysis determined that “the deregulation or opening up of Idaho’s distribution system is not feasible or desirable at this time.”  The Commission noted that customers of Idaho’s regulated electric utilities, on the average, currently pay some of the lowest rates in the Nation.  The Commission observed that while with competition some of Idaho’s larger customers may be able to obtain lower rates through contract sales with other energy suppliers due to their size and buying power, evidence suggested that the majority of Idaho’s ratepayers would see their electric rates increase.  Also of stated concern to the Commission is the possibility that a full or partial deregulation of the electric utility industry may result in the diminution of the quality of service.  The Commission in its Order concluded that “the deregulation of Idaho’s electric utilities, without some form of Commission oversight, is not in the best interest of the general body of Idaho’s electric utility ratepayers.”

Perhaps the reluctance of the Commission to embrace the Company’s Schedule 26 proposal stems from the following statement in its electric restructuring Order:  “large customers must not be allowed opportunities that are not available to small customers, under the guise of competition.  Restructuring should be accomplished in a manner that allows the economic efficiencies of a competitive market to benefit all customers and not just a select few.”  Although the Commission in its May 22 Notice in the Schedule 26 case solicited comments on the “perceived reasonableness and/or value of fashioning an experimental program or market test for other customer classes,” the Company’s filing nevertheless remains unchanged, and it does not appear that fashioning a similar test for other classes can be developed without significant effort, time and resources.

The Commission in its electric restructuring Order noting that the Electric Supplier Stabilization Act (ESSA) consists of the operative statutes which provide public utilities with their monopoly status, concludes that the Act “must be reexamined before any form of deregulation can take place.”  The Commission states that the Act

•Should be clarified to provide exclusivity only in the provision of distribution lines, not the supply of energy;

•Should be revised to vest the Commission with the explicit authority to determine if, when and how deregulation of investor-owned electric utilities occurs;

•Should be revised to outline a process for consideration of [deregulation] with respect to the service territories of non-public utility suppliers, such as municipal corporations and cooperatives;

•Should perhaps be revised to vest the Commission with authority to establish geographical boundaries between the respective service territories of distribution providers.  This, the Commission contends, would require that the Commission issue certificates to municipals and cooperatives for the limited purpose for defining their exclusive distribution areas.

The Commission notes “in proposing the foregoing changes to the Act we do not suggest that the existing authority of municipals to annex areas and acquire service territory or customers be altered.  Furthermore, we are not suggesting that this Commission be given the authority to set rates for or regulate the operations of municipals or cooperatives.”

Having completed its electric restructuring analysis the Commission is now faced with continued consideration of the Company’s Schedule 26 Application and the comments previously filed therein.  The Commission directs Staff since it earlier recommended approval of the experimental tariff to develop a regulatory framework for implementation and ostensibly to demonstrate how the Company’s filing and the Commission’s concerns regarding ESSA can be reconciled.

The Commission Staff believes that if otherwise acceptable, the nature of the Company’s Schedule 26 offering dictates a light regulatory hand consisting of (1) a modified certificate requirement, in this case a simple registry of alternate energy providers and (2) regulatory oversight consisting simply of review of filed quarterly company reports.  Staff contends that no greater regulatory structure is required for the following reasons:

◆eligible Schedule 25 customers remain customers of Water Power

◆participation is voluntary

◆Water Power under Schedule 26 continues to provide ancillary services

◆non participating customers are unaffected

◆Schedule 25 rates which are the fall back rates and the cap have already been determined to be fair, just and reasonable

The significance of the ESSA (Idaho Code 61-332 et seq.) in relation to the Company’s Schedule 26 offering has been overstated.  The stated purpose of the ESSA is “to promote harmony among and between electric suppliers furnishing electricity within the state of Idaho, prohibit the “pirating” of customers of another supplier, discourage duplication of electric facilities, and stabilize the territories and customers served with electricity by such suppliers.  Reference Idaho Code 61-332(B).  As recognized by the Idaho Supreme Court, the purpose of ESSA was to vest district courts with jurisdiction to address service territory disputes between utilities and either cooperatives or municipalities not subject to the jurisdiction of the Commission.  Reference UP&L v. IPUC, 112 Idaho 10, 730 P.2d 930 (1986).  To the extent the ESSA was enacted to provide a framework for the resolution of disputes, Staff suggests that if there is no dispute or controversy there is no need to consider it.  Furthermore the Schedule 26 offering within the context and duration of the experiment should be interpreted as generally providing the “written consent” to the alternate energy provider arguably required by Idaho Code 61-332B.  A requirement of formal written consent is seemingly necessary only in the instance of a coop or municipal alternate energy provider.  As to such providers, the Commission of course has no statutory jurisdiction, and jurisdiction cannot be contractually or consensually provided.

The Staff proposed Certificate requirement for alternate energy providers, would require identification type information, i.e.,

●name, address and form of business

●certified copy of Articles of Incorporation

●evidence of FERC registration and qualification (if required)

●evidence of qualification to do business in Idaho

●name and address of registered agent for service in Idaho.

The Certificate would be limited in scope and duration and restricted to providing energy to eligible WWP Schedule 25 customers.  Recognizing that this is an experiment, the Commission will provide no assurance as to the ability of an alternate provider to follow through with its commitment.  There is an element of risk and a spectrum of reliability, which may be reflected in the lower price of the alternate energy.  Remedies for alternate provider default, if any, should be contractual.  The Commission should be clear that it is not a forum for resolution of such disputes.

Under the proposal of Staff, the Certificate procedure would require no Notice.  The registry, of course, will be available for public inspection and it is anticipated that customers desiring to participate in the program would refer to such schedule in order to develop contacts and proceed with individual negotiation.  It is Staff’s belief also that the Commission’s role in this experiment should not be one of review and approval of alternate energy rates or contracts.   Staff’s review reveals that the Schedule 26 rates are adequate to recover the costs of providing ancillary services.  The Schedule 26 rates are as much a part of the experiment as the contracts for alternate energy.If the Commission desires greater record for justification of such rates, as Potlatch suggests is necessary, then a schedule for further procedure should be established.  Staff recommends that the Commission be bold and move forward with the experiment.

Scott Woodbury

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