DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

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WORKING FILE

FROM:SCOTT WOODBURY

DATE:MAY 22, 1998

RE:CASE NO. WWP-E-98-5

REQUEST FOR WAIVER OF SCHEDULE 51 DEVELOPER DEPOSIT/CREDIT REQUIREMENT.

On April 10, 1998 The Washington Water Power Company (Water Power; Company) filed a Petition with the Idaho Public Utilities Commission (Commission) requesting a waiver of its electric line extension tariff Schedule 51 developer deposit/credit requirement for a proposed residential and commercial development (Montrose Project) in Post Falls, Idaho.  The Montrose Project will be developed in six phases and when complete will encompass 1,650 residential lots and approximately 100 acres of commercial/industrial property.  The developer Greenstone Corporation, estimates the construction and sale of 100 to 125 residential homes and development of three to five acres of commercial property each year.

Both Water Power and Kootenai Electric Cooperative (Kootenai Electric) have distribution facilities within a quarter-mile of the Montrose Project.  Water Power has 13 kV lines surrounding eighty percent of the proposed development and has several substations in the immediate area.  Kootenai Electric has one existing distribution line running along the north side of the development.  Greenstone purportedly has flexibility and discretion in where it will initiate development of the project and in so doing can select who will be the electric provider to the entire development.  Reference Electric Supplier Stabilization Act, IC § 61-332.

Water Power’s present electric line extension Tariff Schedule 51 requires developers to provide a deposit of $790 per lot, which is refundable to the developer for each customer/lot which is connected during the first five years after the extension is completed.  The developer must apply to the Company in order to receive a refund for each lot where service is connected.  As an alternative, Schedule 51 allows the developer to provide the Company with a letter of credit, performance bond or other credit instrument.

Greenstone views Water Power’s Schedule 51 deposit/credit requirements as onerous, and despite Water Power’s more favorable kilowatt-per-hour rate has stated that if Water Power cannot waive these requirements, it will choose Kootenai Electric (no deposit requirement) to provide electric service to the development.

Greenstone intends to make a decision on the electric service provider by June 1, 1998 and begin construction shortly thereafter.  To obtain the Montrose Project load, the Company in this case requests a one-time exemption to the Schedule 51 deposit/credit instrument requirement.  As the present Schedule 51 requirement is ultimately for the protection of the Company’s existing customers, Water Power states that it is willing to bear the financial risk associated with any potential under-recovery of the incremental revenue requirement necessary to serve the proposed project.  Should a similar situation arise in the future, the Company states that it would request a proposed revision to its Schedule 51.

Providing an estimated margin/contribution analysis, Water Power contends that securing the Montrose Project will benefit all of its Idaho electric customers.

Commission Notices of Application and Modified Procedure in Case No. WWP-E-98-5 were issued on April 22, 1998.  The deadline for filing comments was May 13, 1998.  Timely comments (attached) were filed by Kootenai Electric Cooperative, Inc., Commission Staff, Prairie Falls Development, LLC, Morco LLC, L & R Markizon, and Hobert G. Jenkins.  The comments can be summarized in the following fashion:

Kootenai Electric in its filing and by affidavit contends that Water Power as an incentive to Greenstone and in violation of Schedule 51 rules regarding conversions and relocations has offered to move an overhead service line on the south side of Montrose development to the south side of Seltice Avenue at no cost.  Kootenai petitions to intervene in Case No. WWP-E-98-5 and requests a hearing.  By reply and affidavit filed by Water Power (attached), the Company disputes Kootenai’s contention and represents that the Company’s tariff Schedule 51 conditions concerning the costs to developers, if any, associated with the relocation of facilities will be followed according to its terms.  The Company opposes intervention by Kootenai Electric contending that simply being a competitor does not provide it with requisite standing.  Citing Clearwater Power Co. v. Washington Water Power, 78 Idaho 150, 299 P.2d 484 (1956).

Commission Staff contends that the requested waiver of the deposit/credit provisions of Schedule 51 for the Montrose project is discriminatory and should be denied.  Reference Idaho Code § 61-315 (Discrimination and Preference Prohibited).  Staff does not believe that the Company has sufficiently demonstrated that through reduced risk or financial need that this developer should be treated differently from any other.  Staff contends, however, that existing Schedule 51 language allows Water Power to set the terms of the credit instrument to reflect the relative risk of the developer.  The pertinent tariff language reads as follows:

in lieu of a cash payment of the Basic Cost in a development, the company will accept a cash payment of $120 per lot and letter of credit, a contractors performance bond, or another credit instrument for $790 per lot upon execution of a written agreement with the developer.  The agreement shall prescribe the requirements for such a credit instrument and shall permit the face amount of the instrument to be reduced annually as new customers are connected within the development.  Rule 51.5.e.

Given Staff’s opinion that the Company has sufficient flexibility, even without the benefit of the requested waiver, to address the relative risk  of each developer when selecting the appropriate credit or financial instrument, Water Power in its reply states that it is prepared to withdraw its request for an expressed waiver of the credit/deposit provisions of tariff Schedule 51, if the Commission concurs with the Staff’s analysis and recognizes that the existing language of tariff Schedule 51 allows Water Power to flexibly administer its policies, on a non-discriminatory basis, and in accordance with the following guidelines:

Acceptable forms of security or deposit from the developer may include a secured credit instrument, cash deposit, or an unsecured promissory note.  An unsecured promissory note may be accepted where there is evidence that home construction within the proposed development will proceed on a timely schedule, and build-out of the development (or applicable phase of the development) will occur within a five year period.  That evidence will include, but not be limited to:  economic conditions in the area, the location and compatibility of the development with the surrounding area, the developer’s credit history, and the developer’s rate of build-out in prior developments.  When the Company is reasonably uncertain that home construction will not occur on a timely schedule or build-out of the development will not occur within a five year period, the Company will require a cash deposit or secured credit instrument from the developer.

The Company represents that its policies and procedures will be administered in such a way as to reflect these guidelines which seek to recognize the “relative risk” of each developer.  If the Commission is in agreement with this approach, the Company contends that it mutes the need for an expressed waiver of the existing tariff language.

If this approach is not acceptable to the Commission, the Company however states that it would renew its request for an express waiver of the credit/deposit provisions of the tariff Schedule 51 under these limited circumstances, given the imminent need for resolution of this issue, in order for Greenstone Corporation to make a decision on or about June 1, 1998 regarding a service provider.  Unfortunately, the Company states that the timing of this decision would not otherwise allow for the filing of tariff revisions, in the ordinary course, in order to otherwise modify the expressed terms of tariff Schedule 51.

The remaining submitted comments were filed by developers who contend that this is an issue of fairness and competition and recommend that the Company’s Application either be denied or that the tariff requirement be rescinded for all developers.  Morco LLC additionally expresses  concern in a process whereby Water Power is allowed to make a [subjective] determination of whether or not a developer is reputable.

Commission Decision:

Does the Commission agree with Staff’s analysis regarding the Company’s discretion under tariff Schedule 51 to address the relative risk of each developer when selecting the appropriate credit or financial instrument?

Does the Commission find the proposed expressed guidelines submitted by the Company to be reasonable?  Should the guidelines be footnoted to the tariff?

If the Commission agrees, should the Company be permitted to withdraw its petition?

If the Commission does not agree, does the Commission continue to find Modified Procedure to be reasonable?  If not, should Kootenai Electric be granted intervention?  Is the Commission prepared to address the issue of line relocation cost waiver based on the submitted affidavits?

If Modified Procedure continues to be appropriate, should the requested waiver be granted or denied?

Scott D. Woodbury

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