DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

BILL EASTLAKE

RANDY LOBB

GARY RICHARDSON

WORKING FILE

FROM:WELDON STUTZMAN

DATE:JUNE 3, 1996

RE:CASE NO.  IPC-E-96-9, IDAHO POWER’S PETITION FOR A DECLARATORY ORDER REGARDING THE LEASING OF DARK OPTICAL FIBERS

On May 22, 1996, Idaho Power Company filed a Petition for a Declaratory Order requesting a determination by the Commission whether the leasing of “dark” optical fibers in cable owned by the Company is a telecommunication service subject to Title 62, Idaho Code.  The proposed service does not include the electronic equipment required to send or receive data over the  optical fibers, hence the term “dark” fiber.  Idaho Power’s Petition is prompted by inquiries from Albertson’s and the City of Boise as to whether the Company is interested in providing a dark fiber cable service between various locations within Idaho.  Idaho Power would lease one or more of the optical fibers in cables to the proposed lessees and would only be responsible for the installation of termination points to which the lessees would interconnect communications equipment not owned or maintained by Idaho Power.  The fiber cable would be primarily installed in Idaho Power’s existing underground ducts or attached to existing company poles.  The lessees would provide electronic equipment in order to send or receive data over the optical fibers.

In December of 1993, Idaho Power filed a similar petition in regard to its lease of dark fiber to the state of Idaho.  After reviewing the Petition and comments in that case (Case No. IPC-E-93-31), the Commission issued Order No. 25425 concluding that the leasing of dark fiber to the state of Idaho does not subject the Company to the provisions of Idaho Code, Title 62.  The Commission made clear that its Order was based strictly upon the particular facts presented in that Petition.

Staff has reviewed Idaho Power’s Petition and the Commission’s previous Order in the earlier case, and recommends that Idaho Power’s Petition be processed by Modified Procedure with a 30-day comment period.

Commission Decision

Should Idaho Power’s Petition for a Declaratory Ruling be processed by Modified Procedure?

Weldon Stutzman

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