DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

TERRI CARLOCK

GARY RICHARDSON

WORKING FILE

FROM:BRAD PURDY

DATE:OCTOBER 15, 1996

RE:CASE NO.  IPC-E-96-19; IDAHO POWER PETITION FOR A DECLARATORY RULING THAT RISK MANAGEMENT TRANSACTIONS ARE NOT SECURI­TIES SUBJECT TO TITLE 61

On September 9, 1996, the Idaho Power Company petitioned the Commission for a Declaratory Order determining that electricity futures contracts or other types of risk management instruments; e.g., option contracts, forward contracts, swap agreements, or other forms of derivatives are not security issuances subject to the provisions of Idaho Code Title 61, Chapter 9.

Idaho Power states that it is preparing to become involved in risk management techniques by engaging in electricity futures contracts and other types of risk management instruments such as those listed above.  Idaho Code § 61-901 provides that an electric utility must receive authorization from the Commission and pay certain fees to the Commission for the issuance of securities.  The Company seeks a declaration from the Commission that electricity futures contracts or other types of risk management instruments are not securities under those provisions of the Idaho Code.

Rule 101 of the Commission’s Rules of Procedure allows any person the right to petition the Commission for a declaratory ruling so long as the petition [a] identifies the petitioner and states its interest in the matter, [b] states the declaratory ruling that the petitioner seeks, and [c] indicates the statute, order, rule or other controlling law and the factual allegations upon which the petitioner relies to support the petition.  Rule 102 goes on to state that a notice of petition for declaratory ruling will be issued to all affected utilities.  Orders disposing of the petition will be served on those utilities.  The Rules of Procedure do not specify the manner in which a Petition for Declaratory Ruling is to be processed.  Staff has preliminarily reviewed the Company’s petition and, at this juncture, does not have any objections to the relief sought.  Given the foregoing and the fact that this involves purely a legal interpretation of Idaho statutory law, Staff believes that the matter would best be handled through Modified Procedure soliciting comments from those concerned.

Commission Decision

Does the Commission wish to handle this matter under Modified Procedure as proposed by Staff?

Brad Purdy

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