(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|  |  |  |
| --- | --- | --- |
| IN THE MATTER OF THE PETITION OF IDAHO POWER COMPANY FOR A DECLARA­TORY ORDER DETERMINING THE JURISDIC­TION OF THE COMMISSION OVER THE LEASING OF FIBER OPTIC AND METALLIC CONDUCTOR CABLES. | )  )  )  )  )  )  ) | CASE NO. IPC-E-97-1  NOTICE OF APPLICATION |

YOU ARE HEREBY NOTIFIED that on February 20, 1997, the Idaho Power Company (Idaho Power; Company) petitioned the Commission, pursuant to Rule 101 of the Commission’s Rules of Procedure, IDAPA 31.01.01, for a Declaratory Order determining that the leasing of “dark” optical fibers and/or “dead” metallic conductors in cable owned by Idaho Power does not constitute the providing of telecommunication services subject to the provisions of the Telecommunications Act of 1988 contained in Title 62, Chapter 6 of the Idaho Code.  The Petition states that the proposed service would not include the electronic equipment which would be required to send or receive data over the communication conductors; hence the terms “dark” fiber and “dead” conductors or copper.

In its Petition, Idaho Power notes that in December 1993, it filed a Petition seeking a declaratory ruling “whether the leasing to the state of Idaho of one or more dark optical fibers in a cable owned by Idaho Power is the providing of telecommunication services” under the Idaho Telecommunications Act.  After reviewing the Petition and the Comments in that case (Case No. IPC-E-93-31), the Commission issued Order No. 25425.  Idaho Power contends that Order limited its Application to only “dark fiber” cable service in the state of Idaho.

On May 22, 1996, Idaho Power filed a second Petition seeking a declaratory ruling as to the providing of dark fiber cable to various locations in the state of Idaho.  After reviewing the Petition, the Commission issued Order No. 26514.  Again, Idaho Power contends, the Commission limited the Application of its Order to dark fiber cable service to Albertsons and the City of Boise.

Idaho Power states that it continues to receive inquiries from entities, including CSHQA and Trus Joist McMillan, as to whether the Company is interested in providing dark fiber and/or dead copper communications cable service on a point-to-point basis between various locations within the state.  According to the Company, these entities would provide the electronic equipment by which they could send or receive data over the communications cable.  CSHQA purportedly desires that dark fiber and/or dead copper communications cable service be provided from its main office located at 200 North 6th Street in Boise to its satellite office located at 106 North 6th Street also in Boise.  Trus Joist McMillan purportedly desires that dark fiber and/or dead copper communications cable service be provided from its main office at 200 East Mallard Drive in Boise to its satellite office at 380 Park Center Boulevard in Boise.

Idaho Power states that it would lease one or more of the dark or dead communications conductors and cables to the lessees CSHQA and Trus Joist McMillan and would only be responsible for the installation of the communications cable.  In the case of fiber optic communication conductors, Idaho Power states, the Company would also install termination points, one for each fiber, on either wall mounted or rack mounted panels.  In either case, the Company states that it would not own, install, or maintain the communications equipment required to send or receive the lessees data.  The communications cable would be primarily installed in Idaho Power’s existing underground ducts and/or attached to existing Idaho Power poles.

Idaho Power refers to Title 62, Chapter 6 of the Idaho Code, referred to as the “Telecommunications Act of 1988" under which § 62-604, the Company contends, provides that a telephone corporation which does not provide basic local exchange service shall be exempt from the provisions of Title 61 of the Idaho Code.  Furthermore, Idaho Power asserts, § 62-605(3) of the Idaho Code permits competition as to those services which have been excluded from regulation under Title 61 of the Code.

The Company seeks a declaration from the Commission as to whether the leasing to Albertsons and CSHQA of one or more dark optical fibers and cable owned by Idaho Power constitutes the providing of telecommunication services under Title 62, Chapter 6 of the Idaho Code and, if so, what regulatory requirements must be met by the Company.

YOU ARE FURTHER NOTIFIED that the Application together with attachments have been filed with the Commission and are available for public inspection during regular business hours at the Commission offices.

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and that the Commission may enter any final Order consistent with its authority under Title 61.

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq.

DATED at Boise, Idaho this                  day of March 1997.

Myrna J. Walters

Commission Secretary

vld/N:IPC-E-97-1.bp

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

March 13, 1997