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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| 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  COMMENTS OF THE  COMMISSION STAFF |

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Brad Purdy, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued on April 3, 1997, submits the following comments.

On February 20, 1997, the Idaho Power Company (Idaho Power; Company) petitioned the Commission for a declaratory order determining that the leasing (to CSHQA and Trus Joist MacMillan) of dark optical fibers in cable owned by the Company does not constitute the provision of telecommunication services subject to this Commission’s jurisdiction pursuant to Title 62 of the Idaho Code (the Idaho Telecommunications Act of 1988).

In Case Nos. IPC-E-93-31 and IPC-E-96-9, the Commission issued Order Nos. 25425

and 26514, respectively, ruling that the provision of dark fiber service by Idaho Power did not constitute the provision of telecommunication service and did not subject Idaho Power to regulation under Title 62 of the Idaho Code. After a review of this and the previous two dark fiber cases, Staff believes that the issues for which additional information is desirable relates to ownership and installation of the cable itself, with accounting treatment of the associated revenues and expenses, and with possible competitive effects.  Staff submitted a set of questions of the Company in a formal production request.  The production request as well as the Company’s responses are attached hereto as Exhibit A.  Staff’s comments cover three concerns and are as follows.

Staff’s first concern regards lessening the administrative burden associated with seeking a declaratory order relating to whether the provision of dark fiber constitutes telecommunications service under Title 62.  This concern becomes less important each additional time the issue is posed.  When the leasing of dark fiber using electric facilities seemed only incidental, additional concerns relating to accounting treatment and the potential that Idaho Power’s ratepayers could potentially subsidize this activity were of little practical import.  The additional concerns about proper accounting treatment and about possible competitive effects assume greater importance, however, as Idaho Power expands its offering of this service.

1.  Staff does not believe there is a need for further declaratory orders regarding the same subject matter presented in Idaho Power’s application in this case.  This third filing makes it obvious this is no longer an isolated instance deserving special consideration.  Idaho Power seems to have put itself into the business of providing dark fiber.  Previous filings point out that the Company believes each previous order was limited to the case at hand.  To ease work for both the Company and Staff, we would like to provide a generic answer that covers future cases as well, obviating the need to process any more of these cases.  We do not believe that the provision of dark fiber subjects the Company to regulation as a Title 62 telecommunication service provider.  That is really the only question the Company asks to be covered in a declaratory order.  On that singular issue, Staff recommends making a one-time declaration that the provision of dark fiber does not and will not subject the Company to treatment as a telecommunications provider under Idaho law.

2.  Staff has additional concerns addressed by the Company.  A major concern is whether the provision of dark fiber is appropriately accounted for (the “HOW” of regulation) by the regulated electric utility.  In the first “dark fiber” case, IPC-E-93-31, there was no discussion by Staff of the accounting treatment of any revenues and expenses associated with leasing dark fiber to the State of Idaho.  In the next “dark fiber”case, IPC-E-96-9, Idaho Power indicated that the installation of the dark fiber is treated as an asset on the regulated side of the business.  The cost of installation of the dark fiber is booked to Plant In Service (Account 397), and the revenue to Other Electric Revenue (Account 454).  In the current case, Staff submitted a set of production requests to Idaho Power concerning the accounting treatment related to the provision of dark fiber.  Specifically, Staff was interested in learning how the plant in service, expense accounts, and revenue accounts associated with the leasing of dark fiber would be handled in a rate case.  In Response No. 16, Idaho Power stated, “[A]ll plant in service revenues and expenses will be handled in a rate case as if it were part of the regular electric utility business.”  In other words, the Company will “rate base” the investment and include associated revenues and expenses.

During an on-site audit at Idaho Power’s office, Staff received some of the specific costs and revenues associated with the current provision of dark fiber to Albertsons, the City of Boise, and the State of Idaho based on the two previous cases, and the provision of dark fiber to Trus Joist and CSHQA in the application in this case.  Staff has also learned that any labor costs associated with the installation of dark fiber are included with the dark fiber investment.  From the information provided by Idaho Power Company, Staff is satisfied that, currently, the rent revenue from the provision of dark fiber more than covers the return on the investment and the yearly depreciation expenses associated with the plant in service investment.  To date, Idaho Power has not incurred any maintenance expenses on behalf of the provision of the dark fiber.  Should there be any in the future, the revenue stream should be adequate to cover these expenses also.  Staff is satisfied that the ratepayers are not currently subsidizing the dark fiber operations.

Staff notes that the cable is purchased, owned and maintained by the Company and simply leased to third parties.  Staff now understands that the work is being done by subcontract to outside parties subject to Company inspection.  Staff understands that any excess capacity is not used by the Company in connection with the provision of electric service.

Given this information, Staff is concerned about the Company-owned cable itself and wonders whether treatment as electric rate base is fully appropriate (the “WHY” of regulation), irrespective of the accounting treatment.  Staff has doubts that provision of dark fiber should be treated as part of the rate base of an electric utility and has heard from the Company no specific reason that any of this deserves to be treated as plant in service.  Staff recommends that the final order in this case points out clearly that it is a declaratory order regarding the Title 62 issue only and  makes no judgment concerning the propriety of including of this dark fiber service in electric rate base.  Final judgment on that issue should be left to the next general rate case.

3.  Staff’s final set of concerns revolves around issues of competition with respect to the cable construction business and the telecommunications service business .  The Company’s answers to specific questions seem satisfactory on this score with respect to lack of complaints from the construction business.  However, the Company’s response concerning competition for limited space by telecommunications service providers is less satisfactory.  The Company answers that it treats right-of-way requests from telecommunication businesses as requests from other utilities, as required in Idaho Code Section 61-514.  That section requires a complaint from another utility or a Commission-initiated inquiry before issuance of a directive that utilities must share facilities.  In light of the Federal Telecommunications Act of 1996, it seems to be a weak policy to insure that the Company’s private leasing of dark fibers, outside the tele-communications business but not really related to the provision of electric service, does not preclude availability of right of way for use by telecommunications providers.

Staff recommends issuance of a declaratory order as requested, with two accompanying notes.  First, that the order is generic and should obviate the need to create a new case for each additional provision of dark fiber by the Company.  Second, that the order is limited to the applicability of Title 62 and does not constitute formal approval of rate base treatment for dark fiber services by the Company.

DATED  at Boise, Idaho, this            day of April 1997.

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Brad Purdy

Deputy Attorney General

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