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

|  |  |  |
| --- | --- | --- |
| IN THE MATTER OF THE JOINT APPLICATION OFIDAHO POWER COMPANY AND FMC CORPORATION FOR APPROVAL OF A SPECIAL CONTRACT FOR SERVICE TO FMC CORPORATION AND A REVISED SCHEDULE 28--FMC TARIFF AND FOR APPROVAL OF REVISIONS TO THE POWER COST ADJUSTMENT OF IDAHO POWER COMPANY AS A RESULT OF THE NEW FMC CONTRACT. | )))))))))) | CASE NO.  IPC-E-97-13ORDER NO. 27435 |

On February 4, 1998, the Commission received a Petition for Leave to Intervene filed by Solutia, Inc., formerly Monsanto Company, pursuant to Rules of Procedure 71 through 75 of the Idaho Public Utilities Commission, IDAPA 31.01.01.071-75.  Idaho Power and FMC opposed intervention.  Based upon the Commission’s review of all the documents,the Commission denied intervention on February 27, 1998.  Order No.  27378.

On March 11, 1998, Solutia, Inc., Monsanto Company, P4 Production, L.L.C., Joint Venture and Naturemark (collectively “Solutia”) filed a Petition for Clarification and Reconsideration pursuant tothe Commission’s Rules of Procedure 321-322, IDAPA 31.01.01.321.02 and IDAPA 31.01.01.322.  FMC and Idaho Power opposed reconsideration or clarification.

Based on the record before the Commission and on the rules, the Commission denies Solutia’s Petition for Clarification and Reconsideration.

BACKGROUND

Solutia argued that FMC and Idaho Power acknowledged that Solutia through its subsidiary, Naturemark, is a small commercial customer of Idaho Power and that as a small customer, the Petitioners have a

direct and substantial interest in the subject matter of the proceedings in determining whether or not approval of the Application filed by FMC and Idaho Power will result in FMC being permitted open access to the electrical market to the exclusion of other Idaho Power customers and without prior State of Idaho and/or federal legislation allowing such deregulation.

Solutia Petition at p. 2.  Solutia further stated the Petitioners have

direct and substantial interest in determining if open access to the electrical market is the result of an approval of the contract application of FMC and Idaho Power and whether or not similar open access will be available to all customers of utilities within the jurisdiction of the IPUC.

Id.

Thus, Solutia requested the Commission reconsider its denial and allow the Petitioners to intervene, appear and fully participate in this docket.

FMC and Idaho Power responded March 18, 1998.  Aside from contending that Solutia mischaracterized the FMC contract changes and their effect, Idaho Power and FMC argued that Solutia still has not articulated a “direct and substantial interest in the proceeding.”  Idaho Power and FMC Opposition at p. 4.  They argued that Solutia’s only “possible basis for meeting this requirement is the claim that one of its co-owners has a subsidiary that is a small commercial Idaho Power customer.”  Id.  They claimed that the issue Solutia wants to litigate -- that the FMC contract constitutes a type of deregulation that gives Solutia the right to reopen and renegotiate its contract with PacifiCorp -- is completely irrelevant to the proceeding.  FMC and Idaho Power suggested that this is a contract interpretation issue outside the Commission’s jurisdiction.  Id. at footnote 1 citing Lemhi Telephone Company v. Mountain States Tel. & Tel. Co., 98 Idaho 692, 696, 571 P.2d 753 (1977).  Therefore, FMC and Idaho Power opposed intervention and opposed reconsideration or clarification of the Commission’s order denying intervention.

FINDINGS

The Commission finds that Solutia, Inc., Monsanto Company, P4 Production, L.L.C., Joint Venture and Naturemark have not presented any new information that changes the Commission findings made in Order No. 27378.  Based on the pleadings and other documents filed in this case,  the Commission finds that the Petitioners have not established any grounds for clarification of Commission Order No. 27378.  The Commission finds that intervention by the Petitionerswould not serve the purposes of intervention as described by Rule 74 of the Rules of Procedure.  The intervening parties have still not established any interests in this case that are relevant to the issues presented.  Moreover, Solutia, Inc., Monsanto Company, P4 Production, L.L.C., Joint Venture and Naturemark have only articulated legal issues that can be adequately addressed in its comments.  The Commission considers all comments made to these proposals.  Any person can file comments and have them considered.  The Commission finds intervention is unnecessary.

O R D E R

IT IS THEREFORE ORDERED that the Petition for Clarification and Reconsideration filed by Solutia, Inc., Monsanto Company, P4 Production, L.L.C., Joint Venture and Naturemark is hereby denied.

THIS IS AN INTERLOCUTORY ORDER.  Any person interested in this Order may file a petition for review within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order.  A petition to review may request that the Commission: (1) rescind, clarify, alter, amend; (2) stay; or (3) finalize this Interlocutory Order. After any person has petitioned for review, any other person may file a cross-petition within seven (7) days.  See  Rules 321, 322, 323.03, 324, 325 (IDAPA 31.01.01.321 -325.)

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this         day of  March 1998.

                                                                                 DENNIS S. HANSEN, PRESIDENT

                                                                                 RALPH NELSON,  COMMISSIONER

                                                                                 MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

O:ipce9713.cc4

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

March 25, 1998