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

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| 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-97-13    ORDER NO.  27551 |

On April 27, 1998, the Commission granted FMC Corporation and Idaho Power Company’s Joint Application for approval of a new special contract for electric service to FMC to replace the existing 1973 Contractand for approval of a revised Tariff Schedule 28 (the FMC tariff). Order No. 27463. On May 18, 1998, the Commission received a Request for Reconsideration filed by Idaho Rural Council, N.W. Energy Coalition and Mary McGown, pursuant tothe Commission’s Rules of Procedure 321-322, IDAPA 31.01.01.321.02 and IDAPA 31.01.01.322.  FMC Corporation and Idaho Power Company opposed reconsideration.

That same day, the Commission also received a Joint Petition to Intervene filed by Idaho Rural Council, N.W. Energy Coalition and Mary McGown,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 on the record before the Commission and on the rules, the Commission denies the Request for Reconsideration and denies the Petition for Intervention  Furthermore, the Commission finds that because the Petitioners also petitioned for reconsideration, intervention is unnecessary.  Persons who petition for reconsideration become parties for the purposes of appeal or for any proceedings on reconsideration.  Idaho Code § 61-627.

BACKGROUND

On December 31, 1997, Idaho Power Company and FMC Corporation filed a Joint Application and a revised Tariff Schedule 28 (the FMC tariff) requesting that the Commissionapprove a new special contract for electric service to FMC Corporation to replace the existing 1973 Contract.  Idaho Power and FMC also sought approval to revise Idaho Power Company’s Power Cost Adjustment.  They claimed the tariff revisions and the revisions to the PCA were necessary if the Commission adopted the new proposed FMC Contract.

On January 26, 1998,the Commission suspended the proposed effective dates for a period of thirty (30) days plus three (3) months and ordered the Joint Application be processed under Modified Procedure with comments due March 30, 1998.  Order No. 27336.  The Commission also issued its “Notice of Application” in the same order and gave notice according to Commission procedure.  The Notice of Application provided in relevant part:

YOU ARE HEREBY NOTIFIEDthat Idaho Power and FMC state this negotiated special contract and tariff schedule are necessary to update the parties’ 1973 contract.  The 1973 contract was based on a total Idaho Power hydro system.  Since 1973, Idaho Power has become a mixed hydro/thermal system.  Idaho Power and FMC state that these revisions are necessary to account for the new resources makeup of Idaho Power and at the same time to meet the unique operational characteristics of the FMC phosphate plant.  Idaho Power and FMC state this will not adversely affect existing customers.

YOU ARE FURTHER NOTIFIED that the proposed contract increases rates paid by FMC for the first block of power (120,000 kW) from those paid for the primary power block under the 1973 contract and establishes a floating rate for the energy used under the second block of power.  Under the 1973 contract, energy used under the second block of power was billed at 23 mills/kWh.

\* \* \* \*

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on this Joint Application may file a written comment in support or opposition with the Commission within sixty (60) days from the date of this Notice.  The comment must contain a statement of reasons supporting the comment.  Persons desiring a hearing must specifically request a hearing in their written comments.  Written comments concerning this Joint Application shall be mailed to the Commission and the Applicants at the addresses reflected below:

\* \* \* \*

YOU ARE FURTHER NOTIFIED that if no written comments are received within the time limit set, the Commission will consider this matter on its merits and enter its Order without a formal hearing.  If written comments are received within the time limit set, the Commission will consider them and, in its discretion, may set the same for formal hearing.

YOU ARE FURTHER NOTIFIED that the Joint Application has been filed with the Commission and is available for public inspection during regular business hours at the Commission offices.

The comment period was sixty (60) days.  Timely comments were received from the Commission Staff and others, including members of the public.  No one requested a hearing.  All the comments generally supported approval of the FMC proposed contract, the revised tariff and the changes to the PCA.  Idaho Rural Council, N.W. Energy Coalition and Mary McGown did not comment or request a hearing.

The Commission also notified the public that anyone desiring to receive copies of the comments should contact the Commission within ten (10) days from the service date of that order.

YOU ARE FURTHER NOTIFIED that those persons desiring to be served with comments in this proceeding should contact the Commission Secretary in writing no later than ten (10) days from the service date of this Order.  The Commission will create a service list and provide it to interested persons.  Persons filing comments in this proceeding will be required to serve their comments on members of the service list.

Order No. 27336 at p. 3.  Idaho Rural Council, N.W. Energy Coalition and Mary McGown did not request they be served with comments.

In response to Idaho Power and FMC requests, Staff also conducted a public workshop on February 18, 1998, to discuss how Idaho Power’s PCA should be revised. This public workshop was noticed to the public by the Commission Staff on February 3, 1998.  Idaho Rural Council, N.W. Energy Coalition and Mary McGown did not attend.

On April 27, 1998, the Commission granted FMC Corporation and Idaho Power Company’s Joint Application for approval of a new special contract for electric service to FMC to replace the existing 1973 Contractand for approval of a revised Tariff Schedule 28 (the FMC tariff). Order No. 27463. In its final decision, the Commission found that approval of this special contract did “not open the door to retail deregulation.”  Order No. 27463 at p. 14.  It further found that “FMC does not sell or buy power.  Idaho Power buys and sells power.”  Id. at p. 13.  Finally, the Commission confined the effect of its decision to the facts before it and found that:

each special contract and each case must depend upon its own particular facts and the customer’s unique characteristics.  Likewise, each utility has its own revenue requirements and unique conditions.

The Commission further finds that approval of the proposed Contract, its provisions, or its pricing mechanism shall not be considered to be a determination that the terms of this particular contract are appropriate in every instance. Parties that negotiate similar special contracts in the future must demonstrate that the circumstances justify approval.  Costs of service, quantity of energy  used, the nature of the use, the time of use, the pattern of use, the differences in the conditions of service, the reasonable efficiency and economy of operation and the actual differences in the customer’s situation for delivery of service may be different.  In short, this decision shall, henceforth, be viewed as pertaining only to the agreement in question.

Id. at p. 14.

Idaho Rural Council, N.W. Energy Coalition and Mary McGown filed a Request for Reconsideration and Petition to Intervene on May 18, 1998, twenty-one (21) days after the final order was filed and nearly four (4) months after the Notice of Application was issued..  Two days later, they filed a Certificate of Service stating that the Petitions and the Certificate were mailed to all parties on the service list on May 20, 1998.

THE  REQUEST FOR RECONSIDERATION AND JOINT PETITION TO INTERVENE

In their Joint Petition to Intervene, Idaho Rural Council alleges it is a non-profit corporation representing small farmers, ranchers, small businesses and individuals concerned with protecting a rural lifestyle.  N.W. Energy Coalition alleges it represents more than 50,000 Idaho citizens and that its primary purpose is to promote “an energy future that is reliable, affordable and equitable with the least overall cost to society and our natural environment.”  Mary McGown alleges she is an individual Idaho Power customer.  All the Petitioners allege a “special interest” in this contract because it may significantly impact Idaho Power residential customers.  They do not identify how approval of this special contract may impact residential customers.  Petitioners do not state any reason they delayed filing the Joint Petition to Intervene until the last day for filing for reconsideration, more than four (4) months after the Notice of Application was issued.

In their Request for Reconsideration, Idaho Rural Council, N.W. Energy Coalition and Mary McGown “request the Idaho Public Utilities Commission reconsider its ORDER No. 27463 filed April 27, 1998, and hold a full public hearing . . .”  Request at p. 1.  The claimed basis for the Request is that the Commission’s “Notice of Application” issued in Order No. 27336 was inadequate because it did not specifically apprise them of all the possible ramifications presented by the  Joint Application.  Specifically, they allege that “one part of the Commissions [sic] decision would include approval of the resale of the second block of FMC power under circumstances where FMC might profit from that sale.”  Requestat p. 1.  They also allege that:

The intervenors have requested that the same rights given to FMC be accorded to them in their contracts.  This is an issue not addressed in the Notice.  While the Commission has denied and disputed the intervenors [sic] position, Order 27436's approval of the FMC contract will be used to supports intervenors [sic] future arguments.  The Notice of Application really should have specifically discussed the possible ramifications of the application so that Petitioners and others could have gathered evidence and commented as appropriate.

The intervenors [sic] argument raises legal issues which Petitioners would like to carefully research and have considered.

Id. at p. 2.  Finally, they generally suggest that deregulation is being considered by the Legislature  and that, without identifying how, the “actions taken by the Commission are actions for the Legisla­ture to consider.”  Id.

FMC’S AND IDAHO POWER’S OPPOSITION TO INTERVENTION AND TO RECONSIDERATION

Both Idaho Power and FMC oppose granting Idaho Rural Council, N.W. Energy Coalition and Mary McGown intervention.  They argue that the Joint Petition does not comply with Commission rules.  Specifically, both allege that the Joint Petition violates Commission Rules 72 and 73 because it fails to state what relief is requested, other than to participate in hearings, and does not state any reason for the Petitioners’ delay in filing the Joint Petition.

In addition, both Idaho Power and FMC oppose reconsideration.  They argue that the Request does not comply with Commission rules.  Specifically, both allege that the Request was untimely and that Commission Rules 63 and 64 and Idaho Appellate Rule 20 require its dismissal because neither party was served within the twenty-one (21) day period for reconsideration.  Moreover, both suggest that even if timely, the Request does not meet the requirements for reconsideration because the Petition­ers do not state what evidence or arguments they will make nor do they identify any Commission error in its order.

FINDINGS

The Commission finds that intervention by Idaho Rural Council, N.W. Energy Coalition and Mary McGown would not serve the purposes of intervention as described by Rules 72 through 74 of the Rules of Procedure.  Granting intervention in this case serves no purpose.  As petitioners for reconsideration, Idaho Rural Council, N.W. Energy Coalition and Mary McGown are parties for the purposes of appeal or for the purposes of reconsideration.  Idaho Code § 61-627.

Moreover, even if the Joint Petition for Intervention were not moot, it is fatally defective.   The Joint Petition does not state any reason the Petitioners waited until nearly four (4) months after the Notice of Application was issued and until the last day to petition for reconsideration to petition to intervene.  Rule 73 of the Rules of Procedure specifically provides:

Petitions to intervene must be filed at least fourteen (14) days before the date set for hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice.  Petitions not timely filed must state a substantial reason for delay.  The Commission may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broade­ning of the issues, or for other reasons.  Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition.

IDAPA 31.01.01.073. (emphasis added).

None of these Petitioners states a direct and substantial interest in these proceedings or what they intend to bring to the case at this late date.  General allegations that the decision in this case may impact residential customers is not sufficient.  The Commission finds intervention is unnecessary, because they already are parties to the reconsideration.

Likewise, the Commission finds that Idaho Rural Council, N.W. Energy Coalition and Mary McGownhave not presented any new information that changes the Commission findings made in Order No. 27463.  The Commission finds that the public was specifically informed in the Notice of Application that the Joint Application with its attachments was available for public inspection at the Commission offices.  The Commission finds that the Joint Application included a copy of the proposed special contract and that the contract has been available for public review since January this year.

Moreover, the Commission finds thatat the time the Notice of Application was issued, it was impossible for the Commission to anticipate which parties or members of the public would partici­pate or what issues they might raise.  Therefore, the Commission rejects the Petitioners’ suggestion that somehow the Notice of Application was defective because the Notice did not anticipate other parties’ later requests for similar treatment in their special contracts.  In addition, the Petitioners’ concerns are misplaced.  The Commission’s final order makes clear that any future requests for similar contracts will be determined based on the individual facts.  Order No. 27463, p. 14.  Should there be future requests, the Petitioners can participate in those proceedings and raise their concerns.  Therefore, the Commission finds that its Notice of Application is appropriate, adequately apprising the public about the proposed special contract and fully complying with Commission rules and procedures.

Other than a general request for a public hearing to “present testimony and evidence regarding the propriety of this special contract and its ramifications upon ratepayers and interested persons,” the Commission finds the Petitioners do not state the nature and quantity of the evidence or argument they will offer if the Commission grants reconsideration as required by Commission Rule 331.  In fact, they only suggest “Petitioners may provide legal briefing regarding the legality of the provisions . . .”  Request at p. 3 (emphasis added).  They do not identify any part of the Commission’s final Order that is unreasonable, unlawful, erroneous or not in conformity with the law.  The Commission finds that the Petitioners’ Request for Reconsideration does not meet the requirements specifically established in Commission Rule 331 for reconsideration.

Based on the pleadings and other documents filed in this case, the Commission finds that Idaho Rural Council, N.W. Energy Coalition and Mary McGown have not established any grounds for reconsideration of Commission Order No. 27463. Because of the apparent deficiencies in the Request, the Commission does not reach the timeliness issue raised by FMC and Idaho Power.

O R D E R

IT IS THEREFORE ORDERED that the Request for Reconsideration filed by Idaho Rural Council, N.W. Energy Coalition and Mary McGownis hereby denied.

IT IS FURTHER ORDERED that the Joint Petition Intervention filed by Idaho Rural Council, N.W. Energy Coalition and Mary McGownis hereby denied.

THIS IS A FINAL ORDER ON DENIAL OF RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. IPC-E-97-13 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code § 61-627.

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

                                                                                DENNIS S. HANSEN, PRESIDENT

                                                                                RALPH NELSON,  COMMISSIONER

                                                                                MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

IPC-E-97-13.cc6

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

June 3, 1998