DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

BRAD PURDY

STEPHANIE MILLER

DAVE SCHUNKE

KENT SCHNEIDER

KEITH HESSING

TERRI CARLOCK

DAVID SCOTT

WORKING FILE

FROM:CHERI C. COPSEY

DATE:MARCH 20, 1998

RE:IDAHO POWER COMPANY’S AND FMC CORPORATION’S APPLICA­TION 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.

On December 31, 1997, Idaho Power Company and FMC Corporation filed a Joint Application requesting that the Commissionapprove a special contract for service to FMCeffective January 1, 1998. Idaho Power and FMC also sought approval to revise Idaho Power’s Power Cost Adjustment mechanism.

On February 4, 1998, the Commission received a Petition for Leave to Intervene filed by Solutia, Inc., formerly Monsanto Company.  FMC and Idaho Power opposed Solutia’s intervention.  Both parties filed replies and responses.

On February 27, 1998, the Commission denied intervention.  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.

They argue that FMC and Idaho Power acknowledged Solutia through its subsidiary, Naturemark, is a small commercial customer of Idaho Power.  As a small customer, Solutia alleges 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 states 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.

Solutia contends that the proposed contract changes will allow FMC to buy and sell power on the open market.  Solutia requests the Commission to 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 mis-characterized the FMC contract changes and their effect, Idaho Power and FMC argue that Solutia still has not articulated a “direct and substantial interest in the proceeding.”  Idaho Power and FMC Opposition at p. 4.  They argue 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 claim that the issue Solutia wants to litigate -- that the FMC contract constitutes a type of de-regulation that gives Solutia the right to reopen and renegotiate its contract with PacifiCorp -- is completely irrelevant to the proceeding.  FMC and Idaho Power suggest 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); Ex. 1.  Therefore, FMC and Idaho Power continue to oppose intervention.

Commission Decision:

Does the Commission want to grant Solutia’s, Monsanto’s, P4's and Naturemark’s Petition for Clarification and Reconsideration of Order No. 27378?

Cheri C. Copsey

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