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MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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March 4, 2010  
*via Hand Delivery*

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2010 MAR -4 PM 12:17  
IDAHO PUBLIC  
UTILITIES COMMISSION

Idaho Public Utilities Commission  
472 W. Washington  
Boise, Idaho 83702

INT-6-10-01

**Re: Intermountain Gas Company - Petition for Declaratory Judgment**  
MTBR&F File No. 11500.0340

Dear Clerk:

Enclosed for filing in the above-referenced matter is the original and seven (7) copies of Intermountain Gas Company's Petition for Declaratory Judgment and an extra copy Petition to conform and return to our office.

Please file stamp the enclosed Petition and return it to our Moffatt Thomas messenger.

Thank you for your assistance.

Sincerely,

*Sara Chadek*

Sara E. Chadek  
Administrative Assistant  
sec@moffatt.com

/sec

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IDAHO PUBLIC  
UTILITIES COMMISSION

**INTERMOUNTAIN GAS COMPANY**

**CASE NO. INT-G-10-0/**

**PETITION**

**In the Matter of the Petition of INTERMOUNTAIN GAS COMPANY**

**for a Declaratory Ruling**

Stephen R. Thomas, ISB 2326  
MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.  
101 S. Capitol Boulevard, Suite 1000  
Boise, Idaho 83702  
Telephone: (208) 345 2000  
Attorney for Intermountain Gas Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of  
INTERMOUNTAIN GAS COMPANY  
for Declaratory Order

Case No. INT-G-10-0\_/  
**PETITION**

Intermountain Gas Company ("Intermountain" or "Company"), a subsidiary of MDU Resources Group, Inc. with general offices located at 555 South Cole Road, Boise, Idaho, hereby respectfully petitions the Idaho Public Utilities Commission ("Commission") pursuant to Idaho Code Section 61-307 and IDAPA Rule of Procedure 31.01.01.101 for a Declaratory Order stating that the Commission lacks economic jurisdiction over the resale of natural gas by third party non-utilities for use in motor vehicles.

Communications in reference to this Application should be addressed to:

Eldon Book, Executive Vice-President and Chief Operating Officer  
Intermountain Gas Company  
Post Office Box 7608  
Boise, ID 83707

and

Katherine Barnard, Manager – Gas Supply and Regulatory Affairs  
Intermountain Gas Company  
222 Fairview Avenue North  
Seattle, WA (98109-5312)

and

Stephen R. Thomas, ISB 2326  
MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.  
101 S. Capitol Boulevard, Suite 1000  
Boise, Idaho 83702

In support of this Application, Intermountain does allege and state as follows:

## I.

Intermountain is a gas utility, subject to the jurisdiction of the Idaho Public Utilities Commission, engaged in the sale of and distribution of natural gas within the State of Idaho under authority of Commission Certificate No. 219 issued December 2, 1955, as amended and supplemented by Order No. 6564, dated October 3, 1962.

Intermountain provides natural gas service to the following Idaho communities and counties and adjoining areas:

Ada County - Boise, Eagle, Garden City, Kuna, Meridian, and Star;  
Bannock County - Chubbuck, Inkom, Lava Hot Springs, McCammon, and Pocatello;  
Bear Lake County - Georgetown, and Montpelier;  
Bingham County - Aberdeen, Basalt, Blackfoot, Firth, Fort Hall, Moreland/Riverside, and Shelley;  
Blaine County - Bellevue, Hailey, Ketchum, and Sun Valley;  
Bonneville County - Ammon, Idaho Falls, Iona, and Ucon;  
Canyon County - Caldwell, Greenleaf, Middleton, Nampa, Parma, and Wilder;  
Caribou County - Bancroft, Conda, Grace, and Soda Springs;  
Cassia County - Burley, Declo, Malta, and Raft River;  
Elmore County - Glenns Ferry, Hammett, and Mountain Home;  
Fremont County - Parker, and St. Anthony;  
Gem County - Emmett;  
Gooding County - Gooding, and Wendell;  
Jefferson County - Lewisville, Menan, Rigby, and Ririe;  
Jerome County - Jerome;  
Lincoln County - Shoshone;  
Madison County - Rexburg, and Sugar City;  
Minidoka County - Heyburn, Paul, and Rupert;  
Owyhee County - Bruneau, Homedale;  
Payette County - Fruitland, New Plymouth, and Payette;  
Power County - American Falls;  
Twin Falls County - Buhl, Filer, Hansen, Kimberly, Murtaugh, and Twin Falls;  
Washington County - Weiser.

Intermountain's properties in these locations consist of transmission pipelines, a liquefied natural gas storage facility, distribution mains, services, meters and regulators, and general plant and equipment.

## II.

Intermountain seeks with this Petition a declaration from the Commission that it has no economic jurisdiction over the resale of natural gas which Intermountain sells to third party non-utilities who in turn intend to resell the natural gas for motor vehicle transportation purposes. Intermountain is filing this Petition so that all interested parties will better understand what is permitted under Idaho law. Equally important, Intermountain believes that there are economic and

environmental benefits for its customers and the state of Idaho if the Commission issues the requested declaratory ruling, thereby facilitating and encouraging the contemplated use of natural gas as a transportation fuel.

### III.

Intermountain has been approached by third party non-utility organizations requesting Intermountain to sell natural gas to them for their resale for use in motor vehicles for transportation purposes. One example would be fueling stations in Idaho where a non-utility third party would resell natural gas to other persons for use in motor vehicles. Currently, there is some limited production of compressed natural gas ("CNG") vehicles within the United States and there are a number of firms performing vehicle conversions to CNG. Heavy duty vehicle fleets appear to be the largest growth segment in the CNG market. Currently, there are a number of western states that permit public CNG fueling stations including, but not limited to, California, Washington, Utah and Wyoming. While this is one example, Intermountain anticipates other potential resale transactions may be proposed in the future by other entities in Idaho due to price, availability and environmental benefits of using natural gas as a transportation fuel.

### IV.

Idaho statutory law does not specifically address resale of natural gas; however, Idaho Code Sections 61-116, 61-117 and 61-129 may bear indirectly on this issue. Intermountain is not aware of any court decisions in this state which have addressed this issue; however, in a case addressing the Commission's jurisdiction over public utility services, the Commission in *Re Idaho Power Company*, Case No. IPC-E-96-9 (1996) held that the leasing of "dark" optical fibers was not the providing of a public utility service as defined by Idaho Code, Title 62, Chapter 6.

In a case from California, the California Public Utilities Commission, when interpreting statutory provisions similar to Idaho's, ruled that persons operating service stations for the resale of compressed natural gas for vehicle use, other than those who are public utilities by reason of operations other than operating a fueling station, are not subject to rate regulation by the Commission. See *Re Pacific Gas and Electric Company*, 124 PUR 4<sup>th</sup> 107 at pp. 125, 126 (1991).

The federal Energy Policy Act of 1992 appears to address a part of this issue and, with regard to CNG, preempt Idaho statutes that might otherwise affect the Commission's economic jurisdiction. Section 404 of the Energy Policy Act of 1992 provides:

The transportation or sale of natural gas by any person who is not otherwise a public utility, within the meaning of state law, ....to any person for use by such person as a fuel in a self-propelled vehicle, shall not be considered to be transportation or sale of natural gas within the meaning of any State law, regulation or order in effect before January 1, 1989.

See 15 U.S.C. Section 717 and Section 404 (b) of Pub. L. 102-486.

Idaho Code Sections 61-116, 61-117 and 61-129 were all enacted before January 1, 1989. The Energy Policy Act, however, does not appear to have intended to affect natural gas safety rules and regulations. Intermountain believes and asks for a declaration as part of the Commission's declaratory ruling in this case that the Commission would continue to regulate the safety of natural gas facilities operated by Intermountain, but only to the point where Intermountain's facility or pipeline connects to the customer's metering device.

#### V.

If permitted by the Commission, Intermountain proposes to sell natural gas to resellers utilizing Intermountain's existing rate tariffs. There would be no change in the prices charged by Intermountain Gas Company if this request for Declaratory Ruling is approved by the Commission.

#### VI.

This Application is filed pursuant to the applicable statutes and the Rules and Regulations of the Commission. This Application has been brought to the attention of all affected utilities, to persons who have expressed an interest in reselling natural gas and to those parties regularly intervening in Intermountain's proceedings.

#### VII.

Intermountain requests that this matter be handled under modified procedure pursuant to Rules 201-204 of the Commission's Rules of Procedure. Intermountain stands ready for immediate consideration of this matter.

WHEREFORE, Intermountain respectfully petitions the Idaho Public Utilities Commission as follows:

- a. That the Commission issue its order declaring that it has no economic jurisdiction over the proposed resale by third party non-utilities of natural gas purchased from Intermountain;
- b. That this Petition be considered and acted upon without hearing under modified procedure, and
- c. For such other relief as this Commission may determine proper relative to this Petition.

DATED at Boise, Idaho, this 4<sup>th</sup> day of March, 2010.

INTERMOUNTAIN GAS COMPANY

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

By Katherine J Barnard  
Katherine Barnard  
Manager – Gas Supply and Regulatory  
Affairs

By Stephen R. Thomas  
Stephen R. Thomas.  
Attorney for Intermountain Gas Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4<sup>th</sup> day of March, 2010, I served a copy of the foregoing Case No. INT-G-10-01 upon:

Paula Pyron  
Northwest Industrial Gas Users  
4113 Wolf Berry Court  
Lake Oswego, OR 97035-1827

Chad Stokes  
Cable Huston et al.  
1001 SW Fifth Avenue, Suite 2000  
Portland, Oregon 97204-1136

R. Scott Pasley  
J. R. Simplot Company  
PO Box 27  
Boise, ID 83707

Steven Gray  
J. R. Simplot Company  
PO Box 27  
Boise, ID 83707

Conley E. Ward, Jr.  
Givens, Pursley, Webb & Huntley  
277 N. 6th St., Suite 200  
PO Box 2720  
Boise, ID 83701

Allied Waste  
Dave Fisher (dfisher@awin.com)  
11101 W Executive Dr.  
Boise, ID 83713  
(208)345-1265

The Sprinkler Shop  
Dacx Duffin  
375 West 100 South  
Paul, ID 83347  
208-438-5204

Vector Management LLC.  
Winston Inouye ([winouye@pmt.org](mailto:winouye@pmt.org))  
2313 Conant Dr.  
Burley, ID 83318

Treasure Valley Clean Cities Coalition  
Beth Baird  
City of Boise  
Public Works  
150 N Capital Blvd  
Boise, ID 83702  
208-384-3984

by depositing true copies thereof in the United States Mail, postage prepaid, in envelopes addressed to said persons at the above addresses.

*Katherine J Barnard*

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Katherine Barnard  
Manager – Gas Supply and Regulatory Affairs