



specifically address the resale of natural gas. Application at 3. The Idaho statutes referenced by Intermountain Gas in its Petition are set out below.

61-116. GAS PLANT. The term “gas plant” when used in this act includes all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas (natural or manufactured) for light, heat or power.

61-117. GAS CORPORATION. The term “gas corporation” when used in this act includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any gas plant for compensation, within this state, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

61-129. PUBLIC UTILITY. The term “public utility” when used in this act includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, water corporation, and wharfinger, as those terms are defined in this chapter and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act: provided, that the term “public utility” as used in this act shall cover cases both where the service is performed and the commodity delivered directly to the public or some portion thereof, and where the service is performed or the commodity delivered to any corporation or corporations, or any person or persons, who in turn, either directly or indirectly or mediately or immediately, performs the services or delivers such commodity to or for the public or some portion thereof.

The Company did point to one Idaho Commission case and one California PUC case to support its Petition. In Order No. 26514, this Commission found that Idaho Power’s leasing of these “dark” optic-fiber cables was not the provision of a public utility service as defined by Title 62.<sup>1</sup> Case No. IPC-E-96-9. In the California case, the California PUC ruled that persons operating service stations for the resale of compressed natural gas for vehicular use, other than public utilities, are not subject to rate regulation by the California Commission. *In Re Pacific Gas and Electric Company*, 124 PUR 4<sup>th</sup> 107 at pp. 125, 126 (1991).

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<sup>1</sup> The term “dark fiber” normally refers to installed fiber optic cable that is not electronically activated for the transmission of information. In Order No. 26514, the Commission found that leasing Idaho Power dark fiber to Albertson’s and the City of Boise does not constitute a “telecommunications service” as defined by *Idaho Code* § 62-603([13]).

Intermountain Gas also notes that Section 404 of the Energy Policy Act of 1992 may restrict the Commission's jurisdiction over the resale of natural gas. In particular, Section 404(b) provides that:

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. This subsection shall not apply to any provision of State law . . . to the extent that such provision has as its primary purpose the protection of public safety.

Application at 4, *citing* 15 U.S.C. § 717. Intermountain asserts that *Idaho Code* §§ 61-116, 61-117, and 61-129 were all enacted before January 1, 1989. As part of its declaratory order, Intermountain asks that the Commission continue to regulate the safety of natural gas facilities operated by Intermountain, but only to the point where Intermountain's facilities connect to the customer's metering device. *Id.* at 4.

Intermountain does not envision any changes in its existing rate tariffs. If its Petition is granted, Intermountain proposes to sell natural gas to resellers utilizing its existing tariffs.

Intermountain states that it has brought the Petition to the attention of persons who have expressed an interest in reselling natural gas and to those parties regularly intervening in Intermountain Gas cases. *Id.* The service list accompanying the Petition indicates that the Petition was served on nine persons or entities. Although the Petition indicates that it has been brought to the attention of all affected utilities, the service list does not indicate that Avista was served with a copy of the Petition.

#### **NOTICE OF MODIFIED PROCEDURE**

YOU ARE HEREBY NOTIFIED that the Commission has determined that the public interest may not require a formal hearing in this matter and will proceed under Modified Procedure pursuant to Rules 201 through 204 of the Idaho Public Utilities Commission's Rules of Procedure, IDAPA 31.01.01.201 through .204. The Commission notes that Modified Procedure and written comments have proven to be an effective means for obtaining public input and participation.

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on this Petition may file a written comment in support or opposition with the Commission within twenty-eight (28) days from the service 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 Petition shall be mailed to the Commission and Intermountain Gas at the addresses reflected below:

Commission Secretary  
Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074

Street Address for Express Mail:

472 W. Washington Street  
Boise, ID 83702-5918

Stephen R. Thomas  
Moffatt Thomas Barrett  
Rock & Fields, Chartered  
101 S. Capitol Boulevard, Suite 1000  
Boise, ID 83702  
E-Mail: [srt@moffatt.com](mailto:srt@moffatt.com)

Katherine Barnard  
Manager Regulatory Affairs  
Intermountain Gas Company  
222 Fairview Ave. N.  
Seattle, WA 98109-5312  
E-mail: [kathie.barnard@cngc.com](mailto:kathie.barnard@cngc.com)

All comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission's home page located at [www.puc.idaho.gov](http://www.puc.idaho.gov). Click the "Comments and Questions" icon and complete the comment form using the case number as it appears on the front of this document. These comments must also be sent to Intermountain Gas at the e-mail addresses listed above.

YOU ARE FURTHER NOTIFIED that if no written comments or protests 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 Petition has been filed with the Commission and is available for public inspection during regular business hours at the Commission offices. The Petition is also available on the Commission's web site at [www.puc.idaho.gov](http://www.puc.idaho.gov) by clicking on "File Room" and then "Gas Cases."

YOU ARE FURTHER NOTIFIED that all proceedings in this case will be held pursuant to the Commission's jurisdiction under Title 61 of the Idaho Code and specifically *Idaho Code* § 61-129. *See also* Procedural Rule 101, IDAPA 31.01.01.101. The Commission may enter any final Order consistent with its authority under Title 61.

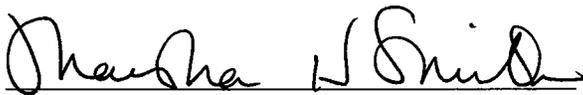
YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq.*

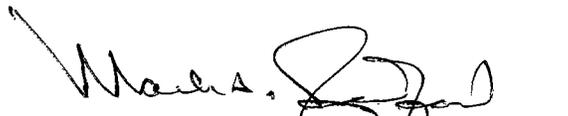
**ORDER**

IT IS HEREBY ORDERED that persons desiring to comment on Intermountain Gas Company's Petition for a Declaratory Order shall file written comments with the Commission no later than twenty-eight (28) days from the service date of this Order.

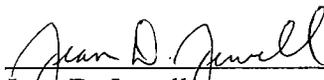
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 8<sup>th</sup> day of April 2010.

  
JIM D. KEMPTON, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
MACK A. REDFORD, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

bls/O:INT-G-10-01\_dh

NOTICE OF PETITION  
NOTICE OF MODIFIED PROCEDURE  
ORDER NO. 31036