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

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| IN THE MATTER OF THE APPLICATION OF INTERMOUNTAIN GAS COMPANY FOR AUTHORITY TO PLACE INTO EFFECT A FIRM DISTRIBUTION ONLY TRANSPOR­TATION SERVICE TARIFF, AND TO MODIFY ITS EXISTING LV-1, T-1, T-2 AND T-3 TARIFFS. | )  )  )  )  )  )  )  ) | CASE NO. INT-G-98-2  ORDER NO. 27656 |

On April 28, 1998, Intermountain Gas Company (IGC; Company) filed an Application with the Idaho Public Utilities Commission (Commission) for authority to place into effect a Firm Distribution Only Transportation Service tariff (Schedule T-4), and to modify its existing Schedule LV-1 (Large Volume Firm Sales Service), T-1 (Firm Transportation Service), T-2 (Firm Transportation Service with Maximum Daily Demands), and T-3 (Interruptible Distribution Transportation Service) tariffs.

The proposed T-4 tariff will enable customers whose usage is 200,000 therms or more per year to contract for firm transportation on IGC’s distribution system without using IGC’s interstate transportation capacity.  This will enable industrial customers to enter into contracts with third parties for both firm gas supplies and interstate transportation and with IGC for Firm Distribution Only Transportation Service.

The proposed T-4 tariff, the Company contends, will broaden the menu of services currently offered to contract customers and, to the extent that the tariff is utilized, will serve to minimize the need for IGC to purchase incremental capacity on the interstate pipeline system, thereby helping to keep costs down for all of IGC’s customers.

As part of its Application, the Company proposes to grandfather service to current LV-1, T-1 and T-2 customers at current service levels.  In the event an existing LV-1, T-1 or T-2 customer’s annual usage is below 500,000 therms, the customer will be allowed incremental usage up to and including 500,000 therms under their existing LV-1, T-1 or T-2 tariff.  Any incremental or additional service needs for said customers, the Company proposes, must be met from T-3 or T-4 service.

New customers whose annual usage is expected to exceed 500,000 therms will be required to purchase gas supply and interstate pipeline capacity from a third party and receive distribution transportation service under the existing T-3 or proposed T-4 service.  A new customer whose annual usage is less than 500,000 therms will be eligible for LV-1 service.  The proposed T-4 service may be used concurrently with IGC’s other transportation services on the customer’s same  or contiguous property.

The Company notes that its T-2 Firm Transportation Service tariff was approved by the Commission as a two year pilot program expiring November 1, 1997.  Reference Order No. 26203, Case No. INT-G-95-4.  The Company was to reevaluate the tariff at the conclusion of the test period.  By this Application, the Company proposes to continue or grandfather T-2 service only to those customers currently contracting for T-2 service.

In order to mitigate any upward pressure to IGC’s remaining customers resulting from the interstate capacity costs “left behind” or stranded by existing firm contract customers electing T-3 or T-4 service, an exit fee has also been proposed.  The proposed exit fee is $.03 per therm of current firm annual usage, collected at a rate of $.015 per therm times the customer’s actual block 1 and block 2 usage over a two (2) year period.  The $.03 per therm rate approximates the current annual interstate pipeline capacity tariffed rate.  The proposed exit fee may be waived if the existing firm contract customer (LV-1, T-1 or T-2) provides to the Company a one year or more advanced written notice of the customer’s intent to elect T-3 or T-4 service.  The written notice will include the amount of daily firm interstate capacity the customer wishes to relinquish from their LV-1, T-1, or T-2 contract when switching to T-3 or T-4 service.  IGC will select, through a lottery system, the customers eligible for the exit fee waiver up to a Company maximum of 200,000 therms per day of relinquished firm interstate capacity.  T-3 or T-4 service for the selected customers will begin no earlier than October 1, 1999.

Also proposed is a modification of the Company’s interruptible T-3 tariff to include provision for an exit fee.  Any current T-3 customer will not be subject to the new exit fee.

IGC proposes by way of this Application that any credits related to volumes of interstate capacity release generated in excess of that included in the Company’s PGA Case No. INT-G-97-3 be allocated back to include those customers who have exited LV-1, T-1 or T-2 service for T-3 or T-4 service.

IGC further proposes that any customer who wishes to elect T-3 or T-4 service, within 90 days of the time that this Application is approved, be allowed to renegotiate their service contract with the Company.  The Company has requested an effective date of July 1, 1998.

On May 13, 1998, the Commission issued a Notice of Application and Modified Proce­dure in Case No. INT-G-98-2.  The deadline for filing written comments was June 17, 1998.  Timely comments were filed by the Northwest Industrial Gas Users (which also petitions for intervention), Idaho Power Company and Commission Staff.  The Company filed reply comments on June 26, 1998. (Comments attached).

Comments of the parties can be summarized as follows:

Idaho Power Company (IPC)

∙IPC has stated that it believes that Service Condition 3 of the T-3 Tariff is no longer necessary and that the T-3 service rates are lower than T-4.  It also suggests that proposed T-3 tariff be revised to detail the  physical service conditions under which a customer will receive firm service.

∙The T-3 Tariff condition number 6 and proposed condition number 8 contradict each other.

∙Regarding exit fees for Schedules T-3 and T-4, IPC proposes that the exiting customer retain use of the capacity assignment and pay the associated costs (instead of paying an exit fee).  It also expresses the opinion that IGC should encourage customers to move to T-3/T-4 service to open up additional pipeline capacity, but contends that the proposed exit fee and waiver program will discourage customers from switching service.

∙IPC suggests that the proposed system for crediting back capacity release revenues is vague and unnecessary.   Instead it proposes that stranded cost protection may be achieved by following the standard set in Case No.  INT-G-96-2, concerning minimum billings for T-3 service.

∙IPC requests clarification of the calculation used to develop the temporary price adjustment and fixed cost allocation figures given in the IGC application.

Northwest Industrial Gas Users(NWIGU)

∙NWIGU supports the T-4 Tariff for unbundled firm distribution service and requests approval without delay.

∙NWIGU is against imposition of any exit fees, stating that it believes it is an inappropriate assignment of costs to customers choosing unbundled service, is potentially discriminatory in its treatment of new and existing customers, and may constitute unlawful retroactive ratemaking as pertains to existing LV-1, T-1 and T-2 customers.  Further, NWIGU states that an exit fee is not appropriate and contends that it is in essence a penalty for service that should have been offered years ago.

∙NWIGU contends that it is inappropriate for the exiting customers to pay an exit fee for capacity that IGC intends to retain for projected growth as per its 1996 IRP.

∙NWIGU proposes that an exit fee, if imposed,  should be coupled with mitigation measures including: an exit fee waiver program; tariff conditions that IGC allow customers to delay converting to unbundled service until the capacity is needed for core IGC customers; and, that IGC should return all credits from capacity releases attributable to customers transferring to T-3/T-4 services.

∙NWIGU also proposes that the transferring T-3/T-4 customers, if paying an exit fee for pipeline capacity, should have the option to utilize this capacity for a set period of time.  Agreements to this effect would be staggered to meet future capacity needs with the terms to be set by separate tariff service, provisions in the T-3/T-4 tariffs, or by special contract.  This would allow IGC to “park” it’s capacity with the exiting T-3/T-4 customers until needed.

Commission Staff

Staff recommends approval of the proposed Schedule T-4 and modifications to Schedules LV-1, T-1, T-2 and T-3 with the following exceptions:

∙The exit fee be determined and applied as submitted by IGC with the exception that the exit term be limited to the balance of the contract period for existing LV-1, T-1 and T-2 customers who elect to transfer to T-3 or T-4 prior to the current contract anniversary date.

Staff notes that at issue is who will carry the costs for the pipeline capacity abandoned by a customer prematurely leaving LV-1, T-1 and T-2 service while electing T-3/T-4 service.  Staff believes that passing through these costs to remaining IGC customers would be unfair.  These costs, Staff contends, should be borne by the existing customers in exchange for terminating their contractual obligations.

Staff notes that there may be legal limitations to applying a mandatory 12-month exit fee.  As inferred in the citation given below:

Regardless of the Company’s motive—whether it seeks to benefit or harm a particular customer—the policy of non-discriminatory rates is violated when similarly situated customers pay different rates for the same service.  MCI Telecommunications Corp. v. American Telephone & Telegraph Co., 512 US 218 at 229 (1994); See also Idaho Code § 61-315.

∙Customers planning to transfer to T-3 or T-4 service on their contract anniversary date shall give a minimum 90 days advance notice of their intent to switch to T-3 or T-4 service.

∙The lottery system for issuing of exit fee waivers be disapproved.  In the event the Commission elects to require the issuance of exit fee waivers.  Staff recommends that the waivers be issued using a proportional or hybrid lottery methodology.

∙IGC will return to the T-3 and T-4 customers any excess credit resulting from the release of these customers’ excess capacity during the exit fee period.  In addition, IGC will return to the T-3 and T-4 customers any fees, less management costs, for the temporary leasing of the excess capacity during the exit fee period.

∙Modify the proposed new language in the LV-1, T-1 and T-2 tariffs to clearly state that the T-3 and T-4 secondary rates and MDFQ are “as specified in the contract.”

Intermountain Gas (Reply Comments)

IGC disagrees with NWIGU’s comments regarding the Company’s delay in offering a firm distribution only transportation service.  Furthermore, IGC takes exception to NWIGU’s contention that an exit fee is “unjustly discriminatory” and retroactive rate making for existing customers.  Idaho Code Section 61-315, the Company argues, does not prohibit all differences in rates and charges—just “unreasonable differences.”  A fee applied with due regard to giving customers an option, for example, is not unreasonable.  The Company contends that an exit fee is needed to pay the costs incurred to secure the pipeline capacity for current industrial customers, including those who intend on switching to T-4 service.  The fact that an exit fee has not been charged in the past does not make a case, the Company argues, for retroactive ratemaking.  The Company also states that NWIGU’s suggestions for modifying the exit fee provisions do not correctly reflect the intent for this provision.  IGC reiterates that an exit fee is needed to absorb the cost of retaining the exiting customers’ capacity until it is required for Intermountain’s growing core market or a purchaser is located.  The Company also contends that the suggested recall option would not be as cost effective and that prearranged capacity releases may be defeated by market forces.  Finally, the Company disputes NWIGU’s contention that exiting customers would be paying twice for capacity, once to the Company for capacity they cannot use, and then to someone else for the capacity they actually use.  Credits received by Intermountain for the released capacity beyond the benchmark set forth in its Application, the Company states, would be credited back to the exiting customer during the exit fee period.  Importantly, the Company reminds the Commission, no one is forcing any industrial customer to make an unwanted bargain.  Customers choosing to elect T-4 service obviously believe that they will be able to secure an economic advantage.

Idaho Power requested clarification of the relationship of the T-3 and T-4 tariffs including the suggestion that the T-3 Tariff be dropped.  Intermountain agrees the use of the T-3 Tariff will likely decrease but contends that it should be retained as an optional service for customers who desire interruptible distribution transportation service.  The Company agrees that condition number six should be deleted from the proposed T-3 Tariff.  IPC expressed concern regarding a shortage of pipeline capacity, to which the Company responds that it is more a matter of cost.  The Company does not specifically respond to IPC’s proposal that the exiting customers retain their capacity and pay the associated costs.  Responding to IPC’s comment that the exit fee and limited waiver program will discourage companies from transferring to the new T-4 Tariff, IGC expresses the opinion that in today’s capacity market these customers can obtain capacity at an economic advantage even with the exit fee payments.   The Company notes that the exit fee waiver program was designed only to provide IGC with the projected additional capacity needed by October 1999.  The Company believes that an exit fee system is more equitable and easier to understand than a minimum billing condition as previously used in the T-3 Tariff.  Finally, IGC provides an explanation for the temporary price adjustment and fixed allocation figures, as requested by Idaho Power.

In response to Staff’s comments, the Company acknowledges that the suggestions of Staff have some merit, but recommends that it’s Application be approved as filed.  The Company commits to marketing any excess capacity on a best efforts basis.  In regards to the exit fee amount ($0.03 per therm), IGC maintains that its proposal to have a two year payment period at $0.015 per therm would establish a fee that would “clear the market” and allow for an economic advantage to customers who switch to the T-3/T-4 service.  Absent an exit fee, the Company contends that there is the potential for upward pressure to the remaining firm customers of $6 - $7 million of abandoned firm interstate capacity.  The Company agrees to utilize its deferred gas cost accounts to accumulate and then redistribute any capacity release credits net of any management costs to individual exiting customers as part of its annual PGA filing.  In regards to the lottery system for issuing exit fee waivers, the Company in its reply comments maintains that its proposed lottery system is superior to the alternatives proposed by Staff (i.e., proportional distribution or hybrid lottery system).

In later filed joint comments, the Company and Commission Staff agree that rather than using the term “lottery” which may have negative connotations, the selection process should be designated as the “Exit Fee Waiver Customer Selection Process.”  Also agreed to and recommended is a “proportional sharing” method, whereby “all customers requesting the Exit Fee Waiver are assigned a portion of the available 200,000 therms based on the proportion or percentage of their relinquished capacity to the total capacity relinquished by the customers requesting the Exit Fee Waiver.”  The Company and Staff further agreed and recommend that if exit fees are approved 1) a September 15, 1998, deadline (as later modified) will be set for notification by the customers to the Company as to the customers’ intent to participate in the Exit Fee Waiver Customer Selection Process, 2) the outcome of the Exit Fee Waiver Customer Selection Process will be binding on the customer as to the customer’s election for T-3 or T-4 service, and 3) the relinquished interstate capacity eligible for the Exit Fee Waiver will be non-transferable.

Commission Findings

The Commission has reviewed and considered the filings of record in Case No. INT-G-98-2 including the underlying Application, the filed comments of Northwest Industrial Gas Users, Idaho Power Company and the Commission Staff, the reply comments of IGC and the joint comments of IGC and Staff.  The Commission has also reviewed the letter comments of Wasatch Energy directed to Commission Staff.

The Commission continues to find it appropriate to process the Company’s Application pursuant to Modified Procedure, i.e., by written submission rather than by hearing.  Ref. Commission Rules of Procedure, IDAPA 31.01.01.204.  Accordingly, we find no reason to consider the Intervention Petition of NWIGU.

We find that the proposed T-4 service tariff will provide large volume customers with the opportunity to exercise greater control over their individual gas supply and realize potential economic savings.  We find that the released capacity may minimize the Company’s need to purchase incremental capacity to serve increased demand and new customers.  We find it reasonable to require existing customers electing T-3 or T-4 service to assume responsibility for costs incurred on their behalf to secure pipeline capacity.  Parenthetically, we note that recovery of pipeline reservation and distribution capacity costs from exiting customers is an existing Condition No. 8 in rate schedule T-1.  We find that the proposed exit fee is a reasonable means to secure recovery of said costs and to avoid the shifting of said costs to remaining (non exiting) customers.  We find the Company’s proposal to market excess capacity on a good faith best efforts basis to be a reasonable means of mitigating the costs associated with released capacity and protecting its remaining firm customers.

We find it reasonable to approve the Application in Case No. INT-G-98-2 with Company agreed modifications, as more particularly described above, including but not limited to the Company’s grandfathering proposal regarding LV-1, T-1 and T-2 customer volumes, the opportunity for said tariff customers to incrementally increase annual usage to 500,000 therms, and the requirement that incremental or additional service needs for said customers be met under T-3 or T-4 service tariffs.  We also find it reasonable to require new customers with estimated annual usage exceeding 500,000 therms to obtain service under the T-3 or T-4 tariffs, and to permit new customers with smaller loads to receive service under the Company’s LV-1 tariff.  Recognizing that the T-2 tariff was approved as a pilot program, we find the Company’s proposal to limit eligibility for the T-2 tariff to existing T-2 customers to be reasonable.

Specifically, we approve as reasonable the following conditions for existing LV-1, T-1 and T-2 customers selecting T-3 Interruptible Distribution Transportation Service or T-4 Firm Distribution Only Transportation Service:

∙Existing LV-1, T-1, and T-2 customers who elect T-3 or T-4 service will have 90 days from the time the tariff is approved to renegotiate their contract.  These customers will be subject to paying an exit fee.  Existing customers who provide one year or more advance notice of the decision to switch to T-3 or T-4 service can participate in the Exit Fee Waiver Customer Selection Process, as described below.

∙The existing LV-1, T-1 and T-2 customers who request a change to T-4 service within 90 days of this Order will be required to pay an exit fee upon execution of a T-3 or T-4 service contract to address pipeline reservation (capacity) costs.  The exit fee will be assessed at a rate of $0.015 per therm times the customer’s T-3 or T-4 usage up to 750,000 therms/month, over a two-year period.

∙The usage on which the exit fee is based will be limited to no more than the customer’s historic high usage for that same month, as measured by the three years ending July 1, 1998.

∙IGC will allocate back to the T-3 and T-4 customers who are paying an exit fee, any credits generated in the sale or temporary leasing of excess pipeline capacity attributable to the transferring existing customers.  IGC will track the credits generated from the transferring T-3 and T-4 customers released capacity and maintain the credits in a pool.  The credits will be distributed to the T-3 and T-4 customers relative to gas usage.

∙IGC will implement an Exit Fee Waiver Customer Selection Process for all existing customers who provide at least one year advance written notice of the intent to switch to T-3 or T-4 service.  The customer’s request to participate in the waiver selection process must be received by the Company by no later than September 15, 1998.  Furthermore, the advanced notice must specify the amount of daily firm interstate capacity the customer wishes to relinquish.  These customers will begin T-3 or T-4 service no earlier than October 1, 1999.

∙The Exit Fee Waiver will apply to a maximum of 200,000 therms per day of capacity.  If the total capacity committed by transferring customers is less than 200,000 therms, all exit fees shall be waived.  If the total release capacity is greater than 200,000 therms, the exit fee waivers will be issued on a proportional basis.  Each participant would receive a proportional share according to the following formula: 200,000 x (customer released capacity/total released capacity).

Regarding the T-3 tariff, we find it reasonable to delete existing Service Condition No. 6, as it conflicts with proposed Service Condition No. 8.  We find the Company’s other miscellaneous related modifications to its Schedules LV-1 (Availability; Service Condition No. 4), T-1 (Availability; Service Conditions No. 2 and 7), T-2 (Availability; Service Conditions No. 2, 4, 8, 10 and 12) and T-3 (Service Condition No. 8; Exit Fee Provisions 1, 2 and 3) tariffs to be reasonable.

CONCLUSIONS OF LAW

The Commission has jurisdiction over Intermountain Gas Company, a gas utility, and over the issues presented in the Company’s Application in this case pursuant to the authority and jurisdiction granted the Commission under Title 61 of the Idaho Code and pursuant to the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq.

O R D E R

In consideration of the foregoing and as more particularly described and qualified above, IT IS HEREBY ORDERED and the Commission hereby approves the Application of Intermountain Gas Company to place into effect a Schedule T-4 Firm Distribution Only Transportation Service tariff  and to modify its existing LV-1, T-1, T-2, and T-3 tariffs.  The Company is directed to file compliance tariffs in conformance with this Order.

THIS IS A FINAL ORDER.  Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order.  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

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

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

July 27, 1998