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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  COMMENTS OF THE COMMISSION STAFF |

COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Scott Woodbury, Deputy Attorney General, and in response to the Notice of Application, Notice of Modified Procedure and Notice of Comment/Protest Deadline issued on May 13, 1998, submits the following comments.

On April 28, 1998 Intermountain Gas Company (Intermountain; Company) submitted an application to place into effect a tariff for Firm Distribution Only Transportation Service (Rate Schedule T-4).  Associated with this action Intermountain has proposed to modify the existing LV-1, T-1, T-2 and T-3 tariffs to address existing customers who intend to switch to either T-3 or T-4 service.

T-4 TARIFF PROPOSAL

The implementation of a Firm Distribution Only Transportation Service is supported by Staff since it will give companies the flexibility to choose alternative gas providers.  This in turn is expected to allow these companies to take advantage of any cost savings that may be available.  It is noted that the Northwest Industrial Gas Users, an organization of industrial companies located in the region, also supports the implementation of a Firm Distribution Only Transportation Service tariff.  Intermountain has also seen advantage in offering this service since it may minimize their need to purchase additional pipeline capacity in the future.  Therefore, there is virtually total agreement that a Firm Distribution Only tariff be approved.

The issues regarding this application are centered on the requirements set in the proposed T-4 tariff for existing customers.  New customers will have the option of choosing the service(s) they desire and the contractual issues (e.g., service type, costs, etc.) may then be set.  In summary, Intermountain has proposed that existing LV-1, T-1 and T-2 customers who elect to choose T-4 service be subject to the following conditions.

∙The application describes two procedures for existing LV-1, T-1 and T-2 customers who elect T-3 or T-4 service.  First, the customer(s) will have 90 days from the time the tariff is approved to renegotiate their contract.  Secondly, the customer(s) may submit a written notice one year or more in advance.  (A third option not specifically noted in the application is the case where a contract is up for renewal and renegotiation during the interim period, i.e., more than 90 days but less than one year from the approval date.)

∙Exiting LV-1, T-1 and T-2 customers 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.

∙Intermountain has proposed an exit fee of $0.015 per therm times the customer’s T-3 or T-4 Block 1 and Block 2 annual usage, billed out over a two year period.

∙Intermountain has proposed an exit fee waiver for exiting customers which would be applied using a lottery system.  Existing customers who provide one year or more advanced written notice would be eligible to participate in the lottery.  The waiver will be given for a maximum of 200,000 therms per day of capacity.

∙Intermountain has proposed to allocate back to the T-3 and T-4 customers any credits generated in excess of the PGA Case No. INT-G-97-3.

Staff has reviewed the proposed exit fees and lottery system with Intermountain personnel.  The following additional information has been considered in reviewing this application.  Intermountain has forecasted the need for an additional 200,000 therms per day capacity by October 1999, hence the proposal to waive the exit fee if one year or more notice is given by the customer.  Intermountain’s existing primary pipeline capacity agreement is in place until the year 2009 and a secondary agreement extends several years beyond that.  Additional pipeline capacity is currently being purchased by Intermountain and excess capacity released as a result of customers opting for T-3 and T-4 service may be leased out by Intermountain (with the credit being passed through to a separate account for crediting to the T-3/T-4 customers).  The proposed exit fee, $0.030 per therm, is based on the current daily rate for pipeline capacity (refer to PGA).

Most larger gas users have a contract anniversary date in May of each year, with an evergreen clause attached in the event no negotiations are required.  However, Intermountain has elected to give these firms 90 days from the date of approval of the T-4 tariff to renegotiate their current contracts.

After reviewing the aforementioned application materials and information provided during meetings with Intermountain personnel, Staff has prepared the following analysis.  The primary issue of concern regarding this application centers on the proposed exit fee provisions.

EXIT FEE PROVISIONS

The exit fee provision had been proposed by Intermountain as a method to assess the cost of securing pipeline capacity for the existing LV-1, T-1 and T-2 customers who elect T-3/T-4 service.  The current pipeline capacity reserved by Intermountain is reported to be based on their 1994 IRP and existing contractual obligations.  Their primary and secondary capacity agreements extend well beyond the year 2000 (i.e., beyond their proposed exit fee basis period of a maximum of one year).  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 Intermountain customers would be unfair.  These costs should be borne by the exiting customers in exchange for terminating their contractual obligations.

For customers who elect to renegotiate their contract terms within 90 days of the date of approval of this tariff, Staff believes an exit fee should be applied to address the cost of reserving the pipeline capacity.  Intermountain has proposed that the exit fee be applied for a twelve month time period.  However, Staff has noted that there may be legal limitations to applying a mandatory twelve month exit fee period 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 similarily situated customers pay different rates for the same service.

MCI Telecommunications Corp.  vs.  American Telephone & Telegraph Co.;  512 U.S. 218 at 229 (1994); see also I.C. §61-315

Consequently, Staff recommends that the time period for which this fee should apply should be restricted to the remaining contractual period.  The transferring customer should only pay an early exit fee for the balance of the contract period; otherwise the fees should not be applied beyond the contract period.  Intermountain will be expected to either lease, sell or reserve the excess capacity according to their projected needs.  Intermountain has stated that they expect to need an additional 200,000 therms per day of capacity by October 1999.

Given the assumptions that the tariff is approved by July 1998 and that majority of the existing contracts are reportedly up for renewal in May 1999, Intermountain may collect for up to ten months of exit fees.  This approximates the one year exit fee term proposed by Intermountain.  However, after this date Intermountain would be liable to address the “excess” capacity released by these customers.  Intermountain may temporarily lease this capacity until needed (October 1999) or release this capacity.

For customers who propose to transfer to T-3/T-4 service on their contract anniversary date, Staff believes there may be legal limitations to applying exit fees.  However, Staff does believe Intermountain should have advance notice of this election or a post-contractual time period to adequately plan mitigation measures for the released pipeline capacity.  This is due to the fact that the current long-term pipeline capacity commitments were made by Intermountain based on the needs presented by the customers, prior to the election to offer the T-4 service.  Therefore, Staff recommends that existing customers who plan to switch to T-3/T-4 service should be required to give a minimum 90 days advanced written notice, prior to the anniversary date of their contract with Intermountain, of their intent.

Staff believes that if the above provisions are approved that the need for the proposed lottery system to waive the exit fees will not be required since Intermountain will have advance notice of the potential excess capacity that will be available.

EXIT FEE TERMS

Staff has reviewed the exit fee terms proposed by Intermountain.  Staff believes the exit fee amount should be adjusted from an annual basis to a monthly basis to accommodate the proposed exit fee time periods previously discussed.  Staff agrees with the proposed basis for setting the exit fee (actual pipeline capacity costs, TF-1, as listed in the PGA).  However, Staff believes the proposed payback period (two years) proposed by Intermountain may be too generous and that the transferring customer be required to pay the exit fee over a one year period or as set in the revised contract.

Staff also agrees that any excess credits Intermountain receives from the release of excess capacity during the exit fee period should be passed through to the T-3/T-4 customers through the PGA.  In addition, any fees received by Intermountain by the temporary leasing of this excess capacity, during the exit fee period should be credited back to the T-3/T-4 customers, less any management costs.  Staff recommends these conditions should be place in the tariffs regardless of the exit fee methodology used in order to ensure there is no double payment made for the excess capacity.

Staff agrees with Intermountain’s basis for determining the monthly quantity of gas used that is the maximum historical MFDQ.

LOTTERY SYSTEM

Intermountain has proposed waiving the exit fee provisions for customers who give one year or more advanced written notice of their intent to switch service.  It is proposed that a lottery system be used to select these customers until a capacity of 200,000 therms per day is reached.  Given the previous discussion, Staff believes this lottery may not be required if the advanced notice and contract terms previously recommended are implemented.

In the event the Commission elects to approve the exit fee terms and exit fee waiver as proposed by Intermountain, Staff recommends that an alternative methodology be used in lieu of the lottery system.  In all cases if the total released capacity is less than 200,000 therms all participants would receive the waiver.  Staff’s primary recommendation is to require Intermountain to waive the exit fees on a proportional basis.  Under this format if the total released capacity is greater than 200,000 therms, each participant would receive a proportional share according to the following formula: 200,000 \* (Customer released capacity/Total release capacity).  This method would distribute the waiver in an equitable manner.  A second, hybrid method that incorporates both the lottery and proportional methods, is to divide up the released capacities into pre-specified increments such as 10,000 therms.  Each company would receive one “lottery ticket” for each 10,000 therm increment they contributed.  A lottery drawing would then would be performed as per Intermountain’s application.

OTHER APPLICATION ISSUES

Intermountain has proposed to modify Rate Schedule LV-1, T-1 and T-2 to included language that specifies the conditions where the customer exceeds the MDFQ.  Staff recommends the proposed language be slightly modified to more clearly specify the application of a T-3 or T-4 secondary rate per the contract and will only be applied if the MDFQ as set in the contract is exceeded.

RECOMMENDATIONS

Staff recommends the approval of a Rate Schedule T-4 and the modifications proposed by Intermountain for Rate Schedules LV-1, T-1, T-2 and T-3, with the following exceptions.

1.  The exit fee be determined and applied as submitted by Intermountain with the exception that the exit fee 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 their current contract anniversary date.

2.  Customers plan 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.

3.  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.

4.  Intermountain 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, Intermountain 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.

5.  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.”

Respectfully submitted this                        day of June 1998.

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Scott Woodbury

Deputy Attorney General

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