DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

GEORGE FINK

DAVID SCOTT

WORKING FILE

FROM:SCOTT WOODBURY

DATE:MAY 7, 1998

RE:CASE NO. INT-G-98-3 (PROPOSED IGC TARIFF ADVICE NO. 98-1)

PROPOSED STANDARDS FOR COMPETITIVE PRACTICES

On April 30, 1998, Intermountain Gas Company (IGC; Company) filed with the Idaho Public Utilities Commission (Commission), the Company’s proposed Standards for Competitive Practices (attached).  In its letter filing designated as Tariff Advice No. 98-1 the Company states:

Enclosed please find an original and three copies of a tariff advice which is being filed by Intermountain Gas Company pursuant to Idaho Code §§ 61-307 and 61-623.  The filing includes Standards for Competitive Practices (as Attachment 1) which, if approved, will become Section E of Intermountain’s General Service Provisions.  In support of this filing, which comes at the suggestion of the Commission, Intermountain states that the standards proposed for formal approval have been followed by the Company for at least the past two years, as the Company has operated in an open-access environment.  To the extent that such standards exceed the jurisdiction of the Commission, Intermountain agrees to voluntarily comply with them.  With these additions, Intermountain believes that its General Service Provisions will continue to be fair, just, reasonable, and consistent with the requirements of Idaho Code § 61-315 [Discrimination and Preference Prohibited].

Upon receipt of the Company’s filing, the Commission Secretary assigned it a formal case number.  The Company objects to the matter being treated as an Application vis-á-vis a Tariff Advice and by letter dated May 4 (attached) requests that both filing options be presented to the Commission for consideration.

Staff Analysis

Staff believes the Commission Secretary was correct in treating the Company’s filing as a formal Application and assigning it a case number.

The Commission is reminded that the Company’s filing is in response to Staff’s decision memorandum of March 9, 1998, complaint/investigation of alleged anti competitive, preferential and discriminatory practices.  In the Company’s letter response to Staff’s memo dated March 27 the Company made the following commitment: “In order to facilitate input by the Staff as well as all other interested parties, the Company will file a formal application with this Commission requesting review and approval of its proposed standards for competitive practices.”

Staff’s attorney at the decision meeting, as reflected in his notes of that meeting, made the following comments:

In this matter questions have been raised regarding Intermountain Gas Company, its affiliate relationship with IGI Resources, and whether this relationship affects its regulated operations; specifically, questions have been raised as to whether the Company’s affiliate and contractual relationship with IGI disadvantages other marketers of gas, inhibits fair competition or creates impediments to customer choice.

Staff believes that a formal and public docket should be opened to develop standards of conduct regarding relationships and transactions between regulated utilities and unregulated gas marketing affiliates.  This is a discussion that has occurred in many states as monopoly providers transition to a more competitive market.

The Company has committed to file a formal Application with the Commis­sion requesting review and approval of proposed standards for competitive  practices.  This will be acceptable to Staff with a specific time line for filing.

The Company committed to make such a filing by May 1, 1998.

The Commission’s Rules of Procedure define Application in Rule 52 and Tariff Advice in Rule 134 (rules attached).  There is a clear distinction, as evidenced by Rule 134 language which states “If a tariff advice is suspended, the Commission will open a formal proceeding and treat the tariff advice as an application.”  So too, tariff advices are generally processed informally as evidenced by the following language:

134.03  Ex Parte Action.  Ordinarily the Commission acts upon tariff advices with the assistance of an ex parte recommendation of the Commission Staff.  Every recommendation of the Commission Staff is required to specifically state whether it is appropriate to act upon the advice without notice of application being generally distributed to the public.

Staff contends that the Company committed to filing a formal Application, that the Staff acquiesced to the Company’s proposal, and that the Commission directed the Company to make such a filing.

Commission Decision

Should the Company’s filing be designated as a Tariff Advice or an Application?

If a Tariff Advice, Staff notes that no effective date is requested and that the 30-day default effective date is not applicable.  Accordingly, the Tariff Advice may not go into effect until approved by Order or Minute Entry.  Staff would recommend that the matter be Noticed, that comments be solicited, that discovery be made available, and assuming that comments justify same, that a public meeting for marketers and industrial customers be scheduled.

If the matter is to be treated as a formal Application, Staff recommends that the matter be initially processed pursuant to Modified Procedure with an extended comment period.  Staff would anticipate somewhere down the road that a public meeting would also be required.

How does the Commission wish to process the Company’s filing?

Scott Woodbury

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