free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E7–3968 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

March 2, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Amendment of license to upgrade the installed capacity.

b. *Project No.:* 2778–035.

c. *Date Filed:* August 17, 2006.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Shoshone Falls.

f. *Location:* The project is located on the on the Snake River in Jerome and Twin Falls Counties, Idaho. Part of the project occupies lands owned by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Tom R. Saldin, Senior Vice President, Idaho Power Co., P.O. Box 70, Boise, Idaho 83707. Tel: (208) 388–2550. Also, Mr. Nathan F. Gardiner, Idaho Power Co., P.O. Box 70, Boise, Idaho 83707. Tel: (208) 388–2975.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is ready for further environmental analysis. On February 27, 2007, Commission staff issued a draft environmental assessment to facilitate the generation of further analysis on the proposed project expansion. Idaho Power Company (IPC) proposes to demolish a section of the Shoshone Falls powerhouse built in 1907 and containing two generating units 0.4 MW, and 0.6 MW and replace it with a new powerhouse containing a 50 MW generating unit. The project's authorized installed capacity would increase from 11,875 kilowatts (kW) to 60,875 kW, and the hydraulic capacity would increase from 815 cubic feet per second (cfs) to 4,815 cfs. The IPC also requests an extension of the license term for the project from 30 to 50 years.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' '' TERMS AND CONDITIONS,'' or '' FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions

or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

n. An applicant must file no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis provided for in § 4.34(b)(5)(i): (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Magalie R. Salas,

Secretary.

[FR Doc. E7–4122 Filed 3–7–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL05–10–000]

Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates

February 15, 2007.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Terminating Proceeding and Clarifying Policy.

SUMMARY: The Federal Energy Regulatory Commission is terminating the instant proceeding. The Commission also finds that it may only assert jurisdiction over a gathering provider affiliated with an interstate pipeline when the gatherer has used its market power over gathering to benefit the pipeline in its performance of jurisdictional transportation or sales service and that benefit is contrary to the Commission's policies concerning jurisdictional service adopted pursuant to the NGA. Further, the order clarifies that, where the gathering affiliate has engaged in the type of conduct described above as justifying an assertion of jurisdiction, the Commission need not also find ''concerned action'' between the pipeline and its gathering affiliate.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8389.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Order Terminating Proceeding and Clarifying Policy

1. In September 2005, the Commission issued a Notice of Inquiry (NOI) [1] to evaluate possible changes in the criteria set forth in *Arkla Gathering Service Co.*[2] for determining when the Commission may assert Natural Gas Act (NGA) jurisdiction over the gathering activities of a gathering affiliate of a natural gas pipeline to guard against abusive practices by the affiliated companies. In *Arkla*, the Commission held that gathering affiliates of interstate pipelines are generally exempt from the Commission's NGA jurisdiction. However, the Commission also held that ''if an affiliated gatherer acts in concert with its pipeline affiliate in connection with the transportation of gas in interstate commerce and in a manner that frustrates the Commission's effective regulation of the interstate pipeline, then the Commission may look through, or disregard, the separate corporate structures and treat the pipeline and gatherer as a single entity.'' [3]

2. In *Williams Gas Processing—Gulf Coast Company, L.P.* v. *FERC*,[4] the United States Court of Appeals for the District of Columbia Circuit vacated and remanded Commission orders, in which the Commission had sought to reassert jurisdiction over certain affiliated gathering activities under the criteria set forth in *Arkla.* The court held that the Commission had not met its own test under *Arkla* for reassertion of jurisdiction. In light of the court's holding that the circumstances presented by the *Williams Gas Processing* case did not satisfy the *Arkla* test, the Commission determined to explore whether that test should be modified. To assist this reevaluation of the *Arkla* test, the Commission issued the NOI, asking parties to submit comments and respond to a number of specific questions. After carefully reviewing the comments, the Commission has determined not to change its current policies with respect to affiliated gatherers, although we do clarify the existing *Arkla* test.

I. Statutory and Regulatory Backdrop

3. Section 1(b) of the NGA gives the Commission jurisdiction over (1) transportation of natural gas in interstate commerce, (2) sales in interstate commerce of natural gas for resale,[5] and ''natural gas companies'' [6] engaged in such transportation or sales. However, section 1(b) exempts ''gathering of natural gas'' from Commission jurisdiction. The Commission uses the ''primary function'' test to determine whether a facility is devoted to jurisdictional interstate transportation or non-jurisdictional gathering of natural gas.[7] Under that test, the Commission relies on various physical characteristics of the facilities to determine their jurisdictional status.

4. Before Order No. 436,[8] interstate natural gas pipelines generally did not perform transportation-only or gathering-only services. Rather, they used all their facilities, including any gathering facilities they owned, to provide a bundled transportation and sale for resale service, for which they charged a single bundled rate. The United States Supreme Court held that the gathering exemption did not foreclose the Commission from reflecting ''the production and gathering

[1] 112 FERC ¶ 61,292 (2005).

[2] *Arkla Gathering Service Co.*, 67 FERC ¶ 61,257, at 61,871 (1994), *order on reh'g*, 69 FERC ¶ 61,280 (1994), *reh'g denied*, 70 FERC ¶ 61,079 (1995), *reconsideration denied*, 71 FERC ¶ 61,297 (1995) (collectively, *Arkla*), *aff'd in part and reversed in part, Conoco Inc.* v. *FERC*, 90 F.3d 536 (D.C. Cir. 1996) (*Conoco*).

[3] *Arkla*, 67 FERC at 61,871.

[4] *Williams Gas Processing-Gulf Coast Co., L.P.* v. *FERC,* 373 F.3d 1335 (D.C. Cir. 2004) (*Williams Gas Processing*).

[5] The Wellhead Decontrol Act of 1989 removed all first sales from Commission jurisdiction.

[6] Section 2(6) of the NGA defines ''natural-gas company'' as ''a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.''

[7] The Commission first articulated the primary function test in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983). The Commission subsequently modified the test in *Amerada Hess Corp.*, 52 FERC ¶ 61,268 (1990).

[8] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 436, 50 Fed. Reg. 42,408 (Oct. 18, 1985), FERC Stats. & Regs. ¶ 30,665 at 31,554 (1985), *vacated and remanded, Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *readopted on an interim basis*, Order No. 500, 52 FR 30,334 (Aug. 14, 1987), FERC Stats. & Regs. ¶ 30,761 (1987), *remanded, American Gas Ass'n* v. *FERC*, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, 54 FR 52,344 (Dec. 21, 1989), FERC Stats. & Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6,605 (Feb. 26, 1990), FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part and remanded in part, American Gas Ass'n* v. *FERC*, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 498 U.S. 1084 (1991).