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Ada Highway Dist. V. Public Utilities Com'n Clerk's Record v. 2 Dckt. 37294

Vol 2 of 6

IN THE SUPREME COURT OF THE STATE OF IDAHO

THE BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO, Appellant,	)	DOCKET NO. 37293-2010
v.	)	LAW CLERK
IDAHO PUBLIC UTILITIES COMMISSION and IDAHO POWER COMPANY, Respondents	)	
ADA COUNTY HIGHWAY DISTRICT, Appellant,	)	DOCKET NO. 37294-2010
v.	)	
IDAHO PUBLIC UTILITIES COMMISSION and IDAHO POWER COMPANY, Respondents	)	CONSOLIDATED AGENCY RECORD ON APPEAL

APPEAL FROM THE IDAHO PUBLIC UTILITIES COMMISSION
Commissioner Marsha H. Smith, Presiding

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS.	**CASE NO. IPC-E-08-22** **COMMENTS OF BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO**

The Building Contractors Association of Southwestern Idaho ("Building Contractors"), by and through its attorneys of record, Givens Pursley LLP, and pursuant to Commission Order No. 30746, submits its comments in the above-captioned matter. The Building Contractors' comments are supported by the accompanying Direct Testimony of Richard Slaughter and Exhibits 201 through 204. The Building Contractors appreciate the opportunity to provide these comments and testimony to the Commission, and the additional time the Commission granted for their submittal.

The underlying premise of Idaho Power Company's ("Company" or "Idaho Power") Application to amend its Rule H tariff is that "growth should pay its own way." The issues and facts are more complex than this simple shibboleth suggests. And neither the increasing

popularity of the slogan "growth should pay for itself," nor the apparently sound policy it seems to capture, support Idaho Power's effort in this proceeding to shift the cost of providing service from itself or from one class of its customers to another.

Mr. Slaughter's accompanying testimony analyzes the actual source of increased costs to extend new distribution plant and concludes that it is inflation, not growth. Mr. Slaughter's testimony also analyzes the economic impacts of the Company's proposal on the Company and its existing customers, and on the Building Contractors and their customers. The Company's proposal would shield its existing customers from paying for the actual value of the service they receive. This should be expected to stimulate increased electricity demand because of the incorrect market signal this subsidy would send.

The Company's approach is inconsistent with existing Commission policy, established by Idaho Power's last Rule H tariff revision case (IPC-E-95-18), where the Commission held that new customers are entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class, and that it was appropriate that some portion of the cost of new distribution costs be recovered through rates. A significant concern for the Commission in IPC-E-95-18 was the severe impact any different policy would visit on Idaho's economy. The proposed tariff revision also is inconsistent with the Commission's most recently stated position in Case No. IPC-E-08-10 that Idaho Power's rates should send a stronger price signal to customers encouraging the efficient use of energy.

The Company's testimony suggests that its Application is driven by the impact on its ratepayers of the increased costs driven by rapid customer growth. As Mr. Slaughter points out, however, the Company's current line extension costs are less than 1% of its overall rate base. Further, the number of new customers added to the Company's system has decreased by

approximately half in each of the two preceding years, indicating that, to the extent growth places any objectionable "upward pressure" on rates, the concern should be a decreasing one.

Idaho Power's tariff modifications are aimed, quite simply, at the elimination of allowances and refunds for its own sake. The Company has not provided any facts supporting its proposed tariff revisions other than that the revisions will further this objective. The proposed modifications are a step backward from the current requirement that the Company fund a level of investment equal to that made to serve existing customers, and that it recover a portion of the cost of new distribution through rates. In short, there are no new circumstances supporting a sea change in Commission policy concerning the proper allocation of new service costs or the need to send proper market signals to energy consumers.

What *is* new, however, is the recent and significant economic downturn that Idaho citizens and businesses now are faced with. The Building Contractors' members are feeling the brunt of reduced access to credit to fund their day-to-day operations *and* a stagnant demand for their products. The light at the end of the current economic tunnel is dim and uncertain at best. Idaho Power's tariff proposal would move a brick from its back and onto that of the Building Contractors' members to carry through this tunnel and beyond. In the current economic climate, some may not be able to carry it. And as recent analysis by the National Association of Home Builders indicates, incremental additional costs to a new home purchase price can and will "price-out" many potential new home buyers, not to mention, place upward pressure on the costs of all homes in the market. This in turn has adverse and unintended consequences on all homeowners, including those already receiving electricity from Idaho Power, that will be perhaps equal to or exceed whatever arguable benefit they might receive from paying electric rates set below the cost of service.

For the reasons stated above, and as set forth in Mr. Slaughter's testimony, the Building Contractors urge the Commission to: deny Idaho Power's Application; increase the terminal facilities allowances under its current tariff; provide for periodic true-ups of these allowances; and increase the period from five years to ten years during which vested interest refunds are be made.

DATED this 17th day of April, 2009.

GIVENS PURSLEY, LLP

By: 

Michael C. Creamer
Attorneys for Intervenor The Building
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2009, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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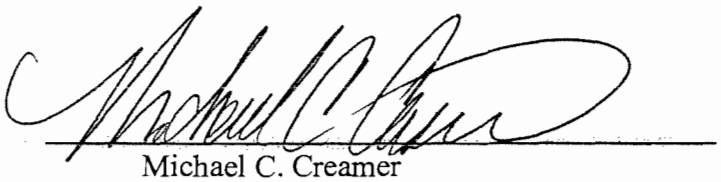

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS.	**CASE NO. IPC-E-08-22**

BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO

DIRECT TESTIMONY

OF

RICHARD SLAUGHTER

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ORIGINAL

Q. Please state your name and business address for the record.

A. My name is Richard Slaughter. My business address is 907 Harrison Blvd, Boise, Idaho 83702.

Q. Have you prepared a statement of your qualifications to offer testimony in this proceeding?

A. I have. It is attached to this testimony as Attachment A. Expanding on the qualifications detailed in Attachment A, between 1998 and 2001 I consulted in Kazakhstan and Kyrgyzstan on tax policy and revenue estimation. The work in Kyrgyzstan was supported by the Asian Development Bank ("ADB"). My report can be found in ADB Technical Assistance No. 3106-KGZ, Benchmark Report Section V "Economic and Tax Analysis." The implications of that work for third world economic development are presented in the Summer 2002 issue of *The National Interest*, a public policy journal. My comments on the Former Soviet Union (FSU) and third world economic development are grounded in my academic work in international politics and economics, almost fifty years as a close observer of the Soviet Union and comparative politics, my work as Chief Economist for the Idaho Division of Financial Management, and my consulting work in the region.

Q. Are you offering any exhibits in support of your testimony?

A. Yes. I am sponsoring Exhibits 201 through 204.

Q. What is the purpose of your testimony?

A. I have been asked by the Building Contractors Association of Southwest Idaho ("BCA") to provide to the Commission my analysis and opinions concerning Idaho Power Company's ("Idaho Power" or "Company") proposed Rule H tariff modifications.

Q. Have you previously testified before this Commission?

A. Yes. In 1995 I provided testimony to the Commission on behalf of the BCA concerning proposed modifications of the Company's Rule H tariff in Case No. IPC-E-95-18. I also have testified in numerous other cases before this Commission involving avoided cost and cost of capital.

Q. Please summarize the scope of your analysis concerning the Company's proposed Rule H tariff revisions.

A. I have reviewed the Company's Application and supporting testimony in this proceeding and the Company's responses to Staff and BCA production requests. I also have reviewed the pleadings, testimony and exhibits and Commission Orders in the Company's prior Rule H tariff proceeding, IPC-E-95-18, as well as subsequent Commission orders having relevance to the Company's cost of service, avoided costs and embedded costs and rates, including the Commission's recent Order No. 30722 in the Company's 2008 rate case, IPC-E-08-10. I also have analyzed available economic data relative to inflation and cost pressures on Idaho Power's rate base.

Summary

Q. Will you also please summarize testimony?

A. My testimony addresses four primary areas. First, I will discuss why the Company's proposed tariff modifications are inconsistent with the Commission's existing policy statements and with economic theory. Second, I will testify concerning the fallacy in Idaho Power's assertion that increased distribution costs are driven by growth itself, as opposed to inflation. Third, I will address the adverse economic impacts of adopting the Company's proposed tariff modifications. Fourth I will propose an updated basis for computing the appropriate allowances and administering vested interest refunds.

Company rationale and Commission policy

Q. What is your understanding of the Company's intent in filing in this case?

A. In his testimony on behalf of the Company, Greg Said has made clear that Idaho Power desires ultimately to impose the full marginal cost of growth (including costs of new generation, transmission and distribution) on new development to eliminate the upward pressure that the addition of new facilities imposes on rates. This Rule H filing is merely the opening salvo in the Company's strategy.

Q. Can you provide support for that conclusion from Mr. Said's testimony?

A. Yes. The following colloquy from Mr. Said's testimony describes that intent, and includes Mr. Said's admission that Idaho Power ultimately is as interested in transferring

generation and transmission costs to new customers as it is in transferring line extension costs:

> "Q. Please describe the instructions you gave to Mr. Sparks regarding the improvements that the company desired be made to Rule H.
> "A. I identified three primary goals for Mr. Sparks to achieve. ... Third, I asked Mr. Sparks to take a close look at line installation allowances and refunds with an eye toward reducing both allowances and refunds.
> "Q. Why is the Company desirous of reducing line installation allowances and refunds?
> "A. As the Commission is well aware, the Company has filed general rate case proceedings in 2003, 2005, 2007, and 2008. In addition, the Company has also filed cases for the inclusion into rate base of the Bennett Mountain gas-fired plant in 2005 and the inclusion of the Danskin gas-fired plant in 2008. With the recent frequency of rate proceedings, a persistent question arises: Is growth paying for itself? The clear answer is no. Additional revenues generated from the addition of new customers and load growth in general is not keeping pace with the additional expenses created and required to provide ongoing safe and reliable service to new and existing customers. While the provisions of Rule H have required some contributions in aid of construction for new distribution facilities, there are no requirements for contributions in aid of construction for new transmission or generation facilities which [sic] are also typically required to serve customer growth. Reducing the Company's new customer-related distribution rate base by reducing allowances and refunds will relieve one area of upward pressure on rates and will take a step toward growth paying for itself." [Said, DI, p. 5, l 23 to p. 6, line 22] (emphasis added).

This statement, together with Mr. Said's instructions to Mr. Sparks to "take a close look at line installation allowances and refunds with an eye toward reducing both allowances and refunds [SAID, DI, p. 4, lines 20-22]," is clear indication that Idaho Power desires that new connections pay the full marginal cost of capital. His language suggests a belief that rates should forever be stable in nominal terms, and declining in real terms, for those customers who are currently on the system and who never move to a new residence.

It is also telling that Mr. Said's instructions were for the purpose of arbitrarily "reducing both allowances and refunds." There is no attempt whatsoever to lay a theoretical or empirical base for the Rule H proposal. He does not, except in the most general conventional wisdom sense, tie the proposal to changes in the Company's specific costs, nominal or real.

Q. Does Mr. Said suggest that it will be the Company's policy to recover from new customers the marginal costs for expansion of Idaho Power's generation and transmission plant?

A. Yes, that would appear to be the case.

Q. Please explain.

A. Mr. Said complains that "growth does not pay its way." He states that all areas of the Company's costs have been rising, and attributes those increases to growth, citing several Company rate cases over the past decade. He then instructs Mr. Sparks to design proposals that would "take a step toward growth paying for itself." There is no other logical interpretation to make.

Q. What has been the Commission's public policy record on this issue?

A. Broadly speaking, in IPC-E-95-18, the Commission determined that new customers should receive credit for the embedded costs of providing distribution/terminal services. In Order 26780, the Commission found, among other things, that:

- … new customers are entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class; and

- To the extent that any allowance is ordered, some portion of distribution cost will continue to be recovered through rates. [Order 26780, IV (C) Commission Findings, ¶ 2.]

Q. What rationale supports this policy?

A In part, it is the recognition that unless new customers receive credit for their contributions to the cost of new facilities *and* some or all of the embedded costs of existing distribution/terminal facilities, then the rates for existing customers are suppressed below the actual cost of service, which in turn suppresses the consumer's incentive to limit his or her electricity use.

Q. Please explain.

A. Embedded distribution costs greatly understate both the replacement cost and the economic value of distribution services. As will be described later in my testimony, the ratepayer pays for current depreciation and for return on capital for the un-depreciated portion of the distribution system. Because the economic life of the system is longer than the depreciation period, much of the existing system costs nothing in rate schedules, even though value continues to be provided to the ratepayer.

Q. Is there other rationale supporting the Commission's decision in IPC-E-95-18?

A. Yes. In the 1995 Rule H case, the BCA provided evidence concerning the adverse economic impacts that would result if new customers were required under the Company's

proposed Rule H Tariff modifications to pay all costs of new distribution facilities in excess of embedded investment. The Commission specifically found that requiring payment of all these costs from new customers could have severe economic effects.

Q. Has the Commission's recognition of the rationale and policy in been carried forward in subsequent orders?

A. At least with respect to its policy of sending appropriate market signals to the Company's customers, yes. The Commission has quite recently affirmatively recognized that the need to constrain unbridled demand growth requires that more accurate market signals be provided to customers. For example, average cost pricing, by design, has protected Idaho Power customers from the full effects of inflation and of the costs of fuel switching and other changes in the cost of delivering energy.

In IPC-E-08-10, the Commission adopted the Company's proposed "inverted block" rate schedule for residential customers, in which an initial block at lowest price was set at approximately 60% of the average residential monthly use, with a higher price for energy in excess of that monthly amount. The Commission also continued to support higher rates for summer use, in recognition of the fact that residential summer demand contributes to the Company's peak demand. The Company proposed, and the Commission approved, an increase in the rate differentials between the Tier 1 and Tier 2 blocks to 20%, to recognize higher summer energy cost, and to "send a stronger price

signal to customers encouraging the efficient use of energy. ..." [IPC-E-08-10 transcript, p. 728].

Q. Does the Company's Rule H proposal conform to both the Company's above-described intent concerning its residential rate proposal in IPC-E-08-10 and Commission policy?

A. No. In fact Idaho Power's current Rule H modification proposal is diametrically opposed to the Company's IPC-E-08-10 proposal and the Commission's decision.

Q. In what way?

A. The proposed Rule H seeks to place the full marginal cost of distribution system expansion onto "new" customers. Rather than sending a price signal to existing customers that capital cost inflation exists, it seeks to remove growth entirely from rate base. This would cause rate base to gradually decline over time due to depreciation.

The only distribution inflation reflected in rate base under the Company's proposal accrues because of system maintenance and replacement, if, as, and once it occurs. Because the economic life of distribution plant tends to be longer than the depreciated life, un-depreciated distribution plant, and thus rate base, will decline over time. Consequently, rates will not reflect the actual (higher) cost of service or the increased (and accruing but not-yet-incurred) cost of maintenance and replacement of the existing distribution system.

Q. What effect would Commission support for the Company's current Rule H proposal have on ratepayers?

A. It would undercut the price signal the Commission's decision in IPC-E-08-10 was intended to provide by removing inflation from a major component of energy costs. This is a subsidy to existing customers. Causing customers to believe that energy costs less than it actually does will cause overall demand to rise above the level that might be expected from current policy.

Rising costs, inflation, and market signals

Q. Is there reason to believe that Mr. Said is confusing nominal with real costs, and that the nominal costs for new terminal services do not in fact represent "higher costs of growth?"

A. Yes. The conclusion that "growth does not pay its own way" can only be reached by a simple comparison of embedded distribution costs with that of new service. In Mr. Said's view, since new service costs more than the average of the existing rate base, rapid growth results in nominal rate increases.

Q. Is Mr. Said's comparison accurate?

A. No, because Mr. Said is comparing apples and oranges. First, as mentioned earlier, the Company's existing system contains substantial distribution assets that are fully depreciated. Thus, even if inflation were zero, Idaho Power's embedded costs would be below that of new plant, simply because the economic life of new plant is longer than the

depreciation schedules. Second, the Company's existing system is of lower quality and capacity than new plant because of its age. As a result, the additional distribution system provided for new customers is of significantly higher quality, has a higher capacity, a longer expected life, and lower maintenance costs than the aging, depreciated system that existing customers are charged for as part of their rates.

Q. Please elaborate.

A. For the past quarter century the portion of Idaho served by Idaho Power, particularly the Treasure Valley, has grown rapidly. This growth is consistent with current public policy of the State, the City of Boise and business and public entities in the Treasure Valley. It has caused Idaho Power's overall distribution system to be younger than it otherwise would be. While one result is rising average costs, the reduction in average system age also will cause maintenance costs to be lower than would otherwise be the case – reducing costs down the road. In other words, new customers who generate the need for new distribution plant, in the long run, reduce real costs for all customers.

Q. So growth is not a cause of real cost increases?

A. No. To quote my prior testimony, "growth, especially accelerating growth, will cause the effects of an underlying cost change to be felt more quickly. In itself, however, growth does not cause higher costs. In inflation adjusted terms, if the same facilities are provided at the same real unit cost, then average real cost per customer will not change. This is true regardless of the rate of growth."

Q. Did you provide an example?

A. Yes. Exhibit 203 illustrates four hypothetical customers coming onto the system over four years, each requiring a $100 investment. The investments in the example have a four-year life, depreciated straight line.

As the illustration shows, total depreciation cost does indeed grow, until after the fourth year, when the last customer is added. From that time forward, depreciation cost remains constant. Even adding replacement investment does not cause the total cost to rise. Average cost remains constant over the period. Absent inflation, growth cannot cause per customer cost to rise.

This example demonstrates that the phrase "growth should pay for itself," while an appealing political slogan, is devoid of analytical insight insofar as it relates to costs of service.

Q. Is there a reason why Commission policy should discourage the artificial aging of the distribution system?

A. Yes, there are several. First, artificially suppressed energy prices encourage excess demand, and result in higher costs later, as the Commission recognized in Order No. 30722 when it approved an inverted-block rate structure for the Company. Second, extending the economic life of distribution assets to hold rates down can have adverse economic consequences.

Q. Please give examples:

A. Example 1:

In the former Soviet Union (FSU) the government used heavily subsidized utilities as a social safety net, in a centrally-directed economy in which markets and prices as we know them did not exist. Subsequent to independence, it has been politically impossible for governments to charge rates sufficient to support the existing utility infrastructure. The result in the FSU has been a steady deterioration of transmission and distribution plant, with increasing outages and insufficiently reliable service to support economic growth:

> "Estimates of electrical power consumption show that a full third is lost to poor quality transmission and distribution systems … . Much of the electrical usage is not metered or the meters not read. Additionally, despite the extremely low price, much of the power is not paid for, especially in rural areas. As such, it amounts to a *de facto* subsidy to the poorest in the population. The price paid for the subsidy is an unreliable and inadequate supply." [Asian Development Bank Technical Assistance No. 3106-KGZ Benchmark Report – Economic and Tax Analysis, Page V-25]

> "For most consumers, there is little incentive to conserve electricity and much incentive to waste gas. Our house in Jalal-Abad had an electric furnace, while the cookhouse had a gas stove and a gas-fired heater for washing and for the sauna. The electricity was metered at six mills per kilowatt—about a fifth the cost of its production and delivery. The gas was metered, too, but because the meter only had three digits, the monthly bill was negotiated with the meter reader. Our landlady would regularly turn the electric furnace off at six every morning, in freezing weather, to save 'that expensive electricity,' but she cared less about the gas, even though the burners are so crude that they waste most of the energy used. We once fired the sauna for four hours; because the gas pressure was low, it would not heat to the required temperature. From the standpoint of the individual consumer, such profligate behavior is entirely rational." [Richard Slaughter, "Poor Kyrgyzstan," *The National Interest*, Summer 2002]

While no one expects Idaho Power's system to deteriorate to anywhere near this extent, real examples exist to validate economic theory regarding subsidies, market signals and demand in the context we are discussing here today. The policy proposed in the current proceeding attempts to hide from ratepayers the true economic value of the services they receive, and in so doing encourages excess consumption. The following example illustrates that while not as acute, the same problem does exist within Idaho Power's system:

Example 2:

The distribution system in Boise's North End, like much of the Company's service territory, is several decades old. When that system was placed in service, the average home did not have today's array of computers, kitchen appliances, saunas, hot tubs, air conditioners, and other electrical consumers. Today, the distribution system built to serve a typical 1940s load can be incapable of handling current demands:

> "In December 1990 we were living in Boise's North End on 18th street. It was extremely cold with periods of lows in the -20 degree range and some daily highs not exceeding zero. During the later part of the month we experienced reoccurring power outages. During one of the outages I talked with an Idaho Power lineman who was working to restore power in the alley behind our house. I asked him why the system wasn't staying on, even after repair. He told me in older areas, like the North End, since the lines were put in, homes now had significantly more electronic items – electric heat, microwaves, computers, television sets, etc. – that put a load on the system that was higher than anticipated when the system was built. Therefore, due to the higher loads per household, during an extremely cold period like we're having, the system couldn't keep up." [Don Reading, former IPUC Policy Administrator, anecdote from personal experience while living on 18th street in Boise]

This is anecdotal evidence. But for customers in many of Boise's older neighborhoods, Dr. Reading's description of his experience over 18 years ago could be a fair statement of their own contemporary service experience in cold, or hot, or windy circumstances. Another example occurred in the late 1990s when an Idaho Power transmission line, heated by high load, shorted on a tree in southern Idaho causing multiple hours' power outage in several states.

Q. Your first example compares modern utility regulation with the collapse of a centrally-directed economic system. Is that appropriate?

A. More than Idaho Power may realize. While Idaho Power enjoys a monopoly-lock on its electrical customers, unlike modern telephone or cable companies, it does not enjoy a lock on all energy customers, and fuel switching is not only possible, it is practiced. Unlike the Soviet-controlled energy supply and distribution system discussed above, Idaho Power does not have control over its own customers' choices. Idaho Power's existing customers can and do shift portions of their overall demand between energy sources in response to changing non-subsidized natural gas and oil prices.

Q. Please give an example.

A. There are three specific areas, each of which undercuts the Company's view that new growth is the primary contributor to higher costs. First, most of the Company's existing customers have the capacity to substitute electric heat, through room heaters, for gas or

oil. As gas and oil prices rise relative to electricity, those substitutions can be and are being made.

Second, there is a growing national movement to replace gasoline with electricity for short-distance automotive commuting. While the proposals generally envision capturing existing off-peak capacity through "smart grids" and nighttime recharging, these emerging energy policies and technologies inevitably will result in requirements from existing customers for more generation and transmission.

Third, average electricity consumption is rising, as it has for the past half century. Homes now feature multiple televisions, computers, hot tubs, saunas, laundry equipment, outdoor lighting, air conditioning, and many other electric consumers – many of them never fully turned off – that did not exist in prior years. These demands come from existing, as well as new, customers, and are a reason for the demand management policies discussed earlier.

Q. What does this mean for the Company's underlying thesis?

A. There are two effects, which together mean that this attempt to protect existing customers from energy costs is futile and self-defeating. The attempt should be abandoned.

Q. Please elaborate.

A. First, it is the policy of the State and local governments throughout Idaho, and of Idaho Power for all of my memory going back to the 1950s, to encourage demand growth.

From the days of "Reddy Kilowatt" until Idaho Power recently became capacity constrained, growth has been deliberately sought on the basis of low hydro energy costs.

Q. How does the Company propose to handle the conflict between the attraction of low energy prices and its capacity constraints?

A. As a short-term strategy, the Company recently completed a customized sales agreement with a new industrial facility, Hoku Materials, whose demand exceeds 25 MW, for the purpose of managing the costs of this specific large industrial expansion. [Order No. 30748, Case No. IPC-E-08-21] Demand up to 25 MW is to be supplied through the existing large industrial tariff, while demand in excess of that amount is to be supplied at the existing PURPA avoided cost rate. That rate represents Idaho Power's cost of additional energy and capacity in lieu of its marginal energy costs from capacity that is no longer in surplus. For the longer term, the conflict is not resolved.

Q. What is the second effect you referred to?

A. The second effect is fuel switching by existing customers, as described earlier. Thus, low electricity prices attract growth, both industrial and residential, which results over time in new requirements for capacity and transmission. Further, customers can and will substitute fuels to save money. You cannot have it both ways, as the Company is attempting to do with this proceeding. *The attempt should be abandoned.*

Q. Why is it useful to examine the source of nominally higher distribution costs?

A. As I explained in my testimony in IPC-E-95-18, rising costs for new distribution plant can be attributed to only three sources: reduced density, inefficiencies, and inflation. The first two of these sources can be dismissed:

- Density: If new construction is, on average, less dense than existing construction, then for the most part the associated costs are accounted for in installation work orders. For that reason, lower density should not contribute to higher average costs because the developer or new customer capitalizes line extensions. Additionally, much residential growth is to be found in high-density development. Thus, while the average single-family residential lot (and associated common area or open space) may be larger than it used to be, the average line and terminal facilities costs may not be.

- Inefficiencies: If the Company or its contractors have become less efficient, then they, and not new growth, will have caused real, as well as nominal, costs to rise. I am not aware of any facts disclosed in this proceeding that would indicate that the Company or its contractors have become less efficient over time, and for the purpose of this discussion I will assume that Idaho Power and its contractors have not become progressively less efficient over time.

- Inflation: The third potential cause for increased distribution facilities costs is inflation or increases in commodity or labor. In my opinion, inflation is the reason for higher costs of new distribution facilities.

Q. Why does this matter for the Company's proposed tariff modifications?

A. Inflation is a rise in the general price level, or put another way, a depreciation of the currency. Rising commodity or labor prices contribute to higher costs, but in so doing they also raise the nominal value of existing plant in the same way they contribute to increases in the nominal value of other assets, including houses. Since these price changes alone do not change the real economic value of all distribution services, and because, as explained earlier, new facilities present lower ongoing costs to the system than existing plant, there is no rationale for protecting existing ratepayers from those costs.

Q. In his pre-filed direct testimony, a portion of which you quoted above, Mr. Said poses, and then answers, the question "is growth is paying for itself?" His answer is that "clearly the answer is no." Do you agree?

A. I do not agree. The only way to agree with his statement is to fully discount the facts that: 1) existing customers contribute to the need for new generation, transmission and distribution facilities when their energy consumption rises; 2) the nominal embedded investment in existing plant is far less than both replacement cost and economic value; 3) inflation is the source of higher nominal costs for new plant; and 4) new customers result in the installation of higher quality facilities that have lower maintenance costs, which tends to lower average costs for all ratepayers.

Contrary to Mr. Said's conventional wisdom, growth DOES pay its own way. Actually, for the reasons discussed above, growth pays more than its own way when it pays costs

above embedded cost. That is because the plant purchased by new development is un-depreciated and higher quality than the plant represented by embedded costs. For existing customers to receive this new plant at zero cost represents a large transfer of capital value from new customers to existing customers. This shift of capitalization from the Company to the customer also represents a major change in utility regulatory policy, where normally the customer effectively leases the use of plant from the Company. The Company's continued legal ownership and control of new plant further supports this view.

Q. Is this a new revelation? Are these arguments based on new facts?

A. No. These facts were before the Commission in 1995, and supported the Commission's findings in Order 26780 addressing the question of the level of support to be provided new customers by the Company. The Commission's finding in this regard bears repeating here:

> "We find that new customers are entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class. Recovery of those costs in excess of embedded costs must also be provided for and the impact on the rates of existing customers is an important part of our consideration. We also recognize that requiring the payment of all costs above embedded investment from new customers could have severe economic effects." [Order 26780, IV. C. Commission Findings, ¶ 2]

Economic effects of the proposed rule

Q. You have testified that the Company's proposal would further shift the capital cost of new distribution services from rate base to the developer, and by implication, to the home

purchaser. The home purchaser, of course, continues to pay for embedded capital costs through rates. Does this capital shift have economic impacts other than "growth paying its way?"

A. Yes. Because assessed valuation for all properties in a taxing district are impacted by the prices of new residences, it has a potential impact on property taxes as well as affecting the overall market and the ability of individuals to purchase houses.

Q. Have you an illustration of how this works?

A. Yes. In a colloquy from my IPC-E-95-18 testimony, I explain the process. Note that much of the problem arises from the fact that a cost formerly capitalized in the Company's rate base is now (for new customers only) *also* capitalized in the price – and thus assessed value – of their house:

> "A. ... I have shown that the 'cost of new distribution facilities,' to the extent they are higher than embedded costs, are higher because of inflation, not changes in the nature of the facilities. I have also demonstrated that growth itself does not cause higher costs. What the existing customer sees when rates rise is an adjustment of his payment to more closely reflect current market value, NOT a new cost for which there should be a "new benefit." Further, there is no benefit delivered to the new customer [that] the existing customer does not already enjoy.
>
> "Q. Is there is an offsetting cost reduction for the ratepayer, such that for all ratepayers there is a zero impact?
>
> "A. Unfortunately, no. There is prospectively an offsetting benefit from reduced rates in the future. Because the fee becomes capitalized in the price of the house, however, it has other undesirable consequences.
>
> "Q. Please elaborate.

"A. In the longer term, a cost increase of between $1200 and $3000 to the developer will result in a price increase for the finished house of from $2000 - $4000, since both developer and builder must mark up their costs to cover overhead and profit. At the higher ranges it will have a definite effect on the ability of buyers to enter the market, and on the payments of all home buyers.

"Q. Can't they just buy an existing home, as suggested by one witness?

"A. No, because the price increase for new properties will be reflected in existing properties as well. New and existing homes are economic substitutes for each other. Since additions to the supply of housing must for the most part be new homes, the cost of development and construction sets the value of older homes as well. Aside from differences in physical condition and location, the value of any existing house is determined by its replacement cost.

"Q. That sounds as though the increase would create new wealth for all existing homeowners, much as when the price of a stock rises. Why is that bad?

"A. Because it has occurred for artificial, non-economic reasons, and because higher values tend to translate into higher property taxes. It is quite possible that existing ratepayers might find themselves paying more in tax than they save in rates.

"Q. Can you roughly calculate the relative effects?

"A. Yes. Assume that the additional cost is $3000 to the developer, and a total of $3500 to the homeowner. At 8% interest, the monthly mortgage would rise by $23. Since Idaho law currently allows local government full recovery of value for new property, his tax bill will rise by an estimated 1.5% of $3500, or over $4 per month. The increased monthly cost, which would add about 4% to the average mortgage, would have a significantly negative impact on the ability of some individuals to purchase acquire financing.

"Q. Please estimate the rate savings.

"A. Initial savings on rates would of course be zero. By the end of ten years, assuming that 1¢ per kwh of current rates is for distribution and that portion would otherwise grow by 3% per year, the monthly savings for all customers would be .35¢ per kwh, or $3.50 per month.

"Q. What then is the net savings?

"A. The new customer is obviously worse off by $27 per month from the beginning, because he is paying not only the additional fee but also interest on amortization of that fee. The existing customer is also worse off. His property tax, given whatever lag is necessary for assessment and services budgets to catch up with his increase, will have risen an estimated $4 per month. He must wait for a period in excess of ten years for the savings on rates to amount to that much."

Q. Aside from the Company's current intent (as extrapolated from Mr. Said's testimony) to shift the entire marginal cost of growth (including all costs of new generation, transmission and distribution) to new development, what if anything is different from its current tariff modification proposal and its previous proposal in Case No. IPC-E-95-18?

A. The most significant differences are the economic climate, its effects on the Company's costs, and the extent of the adverse economic impact that the proposed tariff modification will have.

Q. Please explain.

A. When the Company proposed its tariff modification in 1995, it was experiencing — and thereafter continued to experience — a period of relatively robust and consistent customer growth. The significant economic downturn being experienced nationally and locally has stunted growth of Idaho Power's commercial and residential customers. In fact, as shown in Table 2, the number of new customers in these two classes has been approximately halved in each of the past two years. Consequently, the asserted increasing "burden" of new growth on the Company's assets now is questionable, even if one were to agree with its assumption that growth is not paying its way. Further, the total cost of new facilities above embedded costs reflects only one percent of the Company's

total plant. In other words, it is insignificant in comparison to other factors affecting rates.

On the other hand, the serious economic impacts that the Commission found would result from the Company's 1995 Rule H tariff modification are only compounded in the face of the current economic conditions. Particularly for southern Idaho home buyers and the BCA's members who provide the materials and services to build those homes, the increase in the purchase price of a new home that would need to be imposed to recover the cost-shifting proposed by Idaho Power, should be expected to price-out hundreds of potential home buyers.

Using a computation methodology endorsed by the National Association of Home Builders ("NAHB") and economic data for the Boise City-Nampa, ID Metropolitan Statistical Area, the BCA estimates that for each additional $1,000 of cost in the price of a home, an additional 538 households will be "priced-out" or unable to purchase a home. I have attached the NAHB analysis supporting these estimates as Exhibit 203 to my testimony.

Q. Does the Company's proposal constitute discrimination against new customers?

A. Definitely. While such a policy may or may not be judged unconstitutional, it clearly places the two groups — existing and new customers — in very different positions relative to their cost of energy, without a rational basis for doing so. "New" customers will have paid full marginal cost for their distribution service, while "existing" customers

continue to pay depreciated average cost – and, at the same time enjoy the reduced maintenance cost made possible by the newer plant. Put another way, the new customer will be required to fully capitalize his terminal services – without benefit of ownership, while the existing customer leases capital facilities provided by the Company. And of course, the new customer also is required to join the existing customer in paying the cost of the existing system — essentially paying on two fronts for the same service an existing customer receives.

Q. Does it matter whether this discrimination is judged constitutional or not?

A. Not really. Like the laws of physics, the laws of economics tend to ignore human politics. As shown earlier, customers are not confined to Idaho Power for energy. In making their choices among fuels, they will defeat any attempt to artificially suppress the price of one fuel relative to others. They will move to the cheaper fuel. This fuel switching ability makes expansion of supply (i.e., generation, transmission and distribution) inevitable, regardless of growth.

Q. Nevertheless, do you believe that certain modifications to the Company's Rule H tariff would be appropriate?

A. Yes, I do, although they are in the direction of increased refunds and allowances to the new customer rather than their elimination, as proposed by the Company.

Reconciling allowances and inflated costs

Q. Do you have a proposal for calculating an appropriate refund?

A. Yes. The reason that allowances and refunds fall out of date over time would appear to be inflation. Certainly the Company, in its application and testimony, has provided no other reason, nor have they quantified the presumed disparity.

Thus, it is fully appropriate that these costs be kept in line for periods of time between general rate cases, and adjusted at that point to keep the allowances and refunds in a generally consistent relationship with embedded costs.

Q. How do you propose to do that?

A. To keep the costs aligned with real costs, and to send the correct price signal to customers, allowances and refunds should be indexed annually to an appropriate inflation measure. This could be done as part of the Power Cost Adjustment mechanism, which keeps rates current with fuel prices.

One easily available and conservative index is the implicit price deflator for the Gross Domestic Product. Applying this deflator, PGDP, to the 1995 and prior refund allowances of $800 and $1200, respectively, yields the following information:

Table 1

Year	GDP Implicit price deflator PGDP	Refund $800	Refund $1200
1995	0.025	800	1,200
1996	0.037	830	1,244
1997	0.045	867	1,300
1998	0.042	903	1,355
1999	0.045	944	1,416
2000	0.037	979	1,468
2001	0.008	987	1,480
2002	0.016	1,003	1,504
2003	0.025	1,028	1,541
2004	0.036	1,065	1,597
2005	0.029	1,095	1,643
2006	0.028	1,126	1,689
2007	0.02	1,149	1,723
2008	0.013	1,164	1,745

Q. What is the current embedded cost?

A. The 2008 cost of service study used in IPC-E-08-10 shows distribution rate base per customer of $1,002 for residential service (Exhibit 204). Thus, the inflation-adjusted refund from IPC-E-95-18 appears to be supported by current embedded costs.

Q. How do the per lot costs under the existing Rule H compare with this analysis?

A. Given the analysis provided by the Company in response to our production request (Exhibit 202), under the existing Rule H total rate-based costs are $1,964, $1,140, and $1,159 for developments of 3,10, and 32 lots respectively. Under the proposed Rule, those costs fall to $1,187, $178, and $222. The existing Rule shows some consistency as development size increases; the proposed Rule is totally inconsistent between very small

and larger developments, and attempts to force the new customer to fully capitalize these costs, contrary to long-standing utility costing principles.

Q. What do you recommend?

A. For reasons stated above, I recommend the Commission require that terminal facilities be provided and included in rate base, as they were prior to IPC-E-95-18. I further recommend that the per-lot refund for line extensions be raised to $1000 per lot and indexed to the GDP implicit price deflator, adjusted annually together with the PCA mechanism between general rate cases.

Following my earlier analysis, it is wholly appropriate that new plant introduced into rate base be costed at a level slightly higher than current embedded cost, as would be accomplished by adoption of my recommendations. This practice will cause additional plant to be priced at a level comparable to replacement plant, appropriately reflect the economic value of new plant to the system and to all rate payers, and avoid the discrimination inherent in the Company's proposal.

Q. Does the Company provide quantitative support for its proposal that terminal facilities plus an allowance be replaced by a flat $1780 per transformer?

A. No, it does not. For that reason, and the reasons stated above, this proposal should be rejected, in favor of the practice prior to the IPC-E-95-18 case.

Q. What do you recommend for general overhead?

A. Overhead is an extremely difficult area to analyze without a full audit of the Company's operations. I do not have a specific recommendation. There are many areas of the Company's operations that have very little to do with line extensions: general corporate operations, generating and transmission plant, billing and receivables management, power purchases and sales, and others. Engineering is already included at cost; certainly some management, secretarial, office, inventory, and other costs are appropriate. So while the existing overhead rate of 1.5% may be too low, adopting a company-wide rate on an arbitrary basis would appear to be excessive. It would also, pending the next general rate case, cause double collection of those costs.

Q. How important is this issue to Idaho Power's other ratepayers? How much pressure do distribution costs from new construction place on rates?

A. Not very much, particularly in today's economy. Residential growth has been slowing, falling from a high of 4.0% in 2005 to just under 1% in 2008, making this issue something less than urgent. There were 3,736 new residential customers in 2008. Assuming that each represents a new lot on which an $800 was refunded, plus approximately $3000 per transformer, that totals just under $3 million of new distribution cost, out of $445 million of residential distribution plant (0.9%), or of $1.5 billion of total plant (0.27%). In fact, many of the new customers are in high-density apartment blocks, reducing costs significantly. The impact on average retail rates could not be more than $.06 x .01, or six-tenths of one mill, rather smaller than the 3% inflation experienced in the rest of the economy.

Table 2

Idaho Power Residential customers, end of year

	Customers	Added	% growth
1995	281,792	8,596	3.1%
1996	291,116	9,324	3.3%
1997	299,696	8,580	2.9%
1998	308,432	8,736	2.9%
1999	318,896	10,464	3.4%
2000	326,922	8,026	2.5%
2001	335,285	8,363	2.6%
2002	344,447	9,162	2.7%
2003	354,704	10,257	3.0%
2004	366,218	11,514	3.2%
2005	380,952	14,734	4.0%
2006	393,338	12,386	3.3%
2007	400,637	7,299	1.9%
2008	404,373	3,736	0.9%

Source: IPCo Response to BCA First Production Request, page 42

Q. The Company proposes that to reduce administrative costs the time allowed for vested interest refunds should be reduced from five years to four. Can you support that proposal?

A. No. The Company's proposal would appear to be based on the asserted difficulty of maintaining current addresses for developers beyond a very short time period. To further reduce the period for recovery of vested interests is arbitrary and inappropriately designed for the need.

Q. Do you propose an alternative method?

A. Yes. In today's economic environment, with growth substantially slowed, the recovery period should not be reduced, but expanded. In my opinion, a ten-year period would

more appropriately track the connection of new customers with distribution facilities. There is no reason that the Company's accounting cannot track the accounts for that period of time.

Q. How do you propose to handle the problem of missing addresses or contact information?

A. That burden could be shifted from the Company to the owner of the vested interest. The contract creating the vested interest might simply require the developer or other owner to maintain current contact information with the Company. The Company could then be relieved of its refunding obligation after a reasonable period during which a vested interest owner did not have valid information on file with the Company.

Q. Does this complete your testimony?

A. Yes, it does.

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-3-08-22

BUILDING CONTRACTORS ASSOCIATION OF SOUTHWEST IDAHO

SLAUGHTER, RICHARD

EXHIBIT NO. 201

Cost of Growth Example

Cost of Growth Example

Year –>	1		2		3		4		5	
	Inv.	Depr.	Inv.	Depr.	Inv.	Depr.	Inv.	Depr.	Inv.	Depr.
Customer 1	100	25		25		25		25	100	25
Customer 2			100	25		25		25		25
Customer 3					100	25		25		25
Customer 4							100	25		25
Total	100	25	100	50	100	75	100	100	100	100
Average		25		25		25		25		25

Annual investment and depreciation cost for four customers over five years. Investment for each customer is $100, with a four-year life.

Exhibit 201
Direct Testimony of Richard Slaughter (BCA)
IPUC Case No. IPC-E-08-22

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-3-08-22

BUILDING CONTRACTORS ASSOCIATION OF SOUTHWEST IDAHO

SLAUGHTER, RICHARD

EXHIBIT NO. 202

Comparison of Existing and Proposed Rule H Cost Distribution

Comparison of Existing and Proposed Rule H Cost Distribution

		Existing Rule H				Proposed Rule H			
No. of Lots	Project Cost	Terminal Facilities Allowance	Maximum Refund	Total Customer	Total Company	Terminal Facilities Allowance	Maximum Refund	Total Customer	Total Company
3	$10,897	$3,493	$2,400	$5,004	$5,893	$3,560	$0	$7,337	$3,560
10	$19,929	$3,397	$8,000	$8,532	$11,397	$1,780	$0	$18,149	$1,780
32	$50,432	$11,496	$25,600	$13,336	$37,096	$7,120	$0	$43,312	$7,120

Source: Idaho Power Company's Response to BCA production request, Page 5

Exhibit 202
Direct Testimony of Richard Slaughter (BCA)
IPUC Case No. IPC-E-08-22

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-3-08-22

BUILDING CONTRACTORS ASSOCIATION OF SOUTHWEST IDAHO

SLAUGHTER, RICHARD

EXHIBIT NO. 203

NAHB Calculation of Households Priced Out of a Market

Boise City-Nampa, ID MSA Households that Can Afford to Buy a House When Price Declines

Area	Mortgage Rate	House Price	Monthly Mortgage Payment	Taxes and Insurance	Minimum Income Needed	Households That Can Afford House
Boise City-Nampa, ID MSA	5.00%	$214,990	$1,093	$172	$54,186	107,374
Boise City-Nampa, ID MSA	5.00%	$215,990	$1,098	$173	$54,439	106,836
Difference		$1,000	$5	$1	$252	-538

Calculations assume a 10% down payment and a 45 basis point fee for private mortgage insurance.
A Household Qualifies for a Mortgage if Mortgage Payments, Taxes, and Insurance are 28% of Income

Boise City-Nampa, ID MSA Household Income Distribution for 2008				
Income Range:			Households	Cumulative
$0	to	$10,397	11,330	11,330
$10,398	to	$15,596	11,711	23,041
$15,597	to	$20,795	9,472	32,513
$20,796	to	$25,994	13,951	46,464
$25,995	to	$31,192	15,471	61,935
$31,193	to	$36,391	13,703	75,637
$36,392	to	$41,590	13,535	89,173
$41,591	to	$46,789	11,839	101,012
$46,790	to	$51,988	11,603	112,615
$51,989	to	$62,386	22,186	134,801
$62,387	to	$77,983	25,666	160,466
$77,984	to	$103,977	26,465	186,931
$103,978	to	$129,972	14,883	201,814
$129,973	to	$155,966	7,717	209,531
$155,967	to	$207,955	7,034	216,565
$207,956	to	More	8,112	224,677

Exhibit 203
Direct Testimony of Richard Slaughter (BCA)
IPUC Case No. IPC-E-08-22

National Association of Home Builders, based on data from the 2007 American Community Survey, U.S. Census Bureau.

Determining the Number of Households Priced Out of a Market

The issue of house price changes and their impact on affordability arises in a number of contexts, such as when considering policies that impose fees on new construction. A relatively straightforward approach often used by NAHB to analyze this situation is based on mortgage underwriting standards. Under those standards, it is relatively easy to calculate the number of households that can qualify for a mortgage before an increase in a representative home price, but not afterwards. The difference is the number of households that are 'priced out' of the market for a representative home.

A priced out analysis doesn't answer all possible questions about impacts on housing markets, such as what the differences in home sales or housing starts would be. Although these are important questions, a reasonable attempt to answer them requires estimates of key economic parameters such as the willingness of households to accept homes that are somewhat smaller or have fewer amenities to achieve affordability, the relationships among different segments of the housing market in question, and the adjustments builders make in the products they offer in response to changed affordability conditions on the rise. Good estimates of these parameters are seldom available. In comparison, a priced out analysis that simply shows how many households in an area cross a particular affordability threshold is relatively easy to understand and can be calculated in a straightforward manner using data that are available for any housing market in the U.S.

According to the American Housing Survey (which is financed by HUD and conducted every other year by the U.S. Census Bureau), only about one-fifth of home buyers purchase their homes for cash. Thus, affordability for most prospective buyers is tied tightly to ability to qualify for a mortgage, and mortgage underwriting standards provide a reasonable basis for estimating affordability. Indeed, in the recent economic environment characterized by many financial institutions trying to recover from past errors in judgment, lenders have become very conservative and are more likely than ever to apply conventional underwriting standards with little flexibility.

Standards to qualify for a mortgage are typically expressed as a fraction of prospective buyers' income. One common standard is based on what the industry calls a "front end ratio"—the percentage of income that would be consumed by paying principal and in interest on the mortgage, as well as property taxes and property insurance. The front end ratio can easily be computed for a set of assumptions about the mortgage and household income.

The assumptions NAHB typically uses in "priced-out" computations are a downpayment equal to 10 percent of the purchase price and a 30-year fixed rate mortgage. For a loan with this downpayment, lenders would typically require mortgage insurance, so NAHB also assumes an annual premium of 45 basis points for private mortgage insurance. Local information about property taxes and property insurance per dollar of home value can be computed from the Census Bureau's most recent (2007) American Community Survey (ACS) data.

Detailed 2007 income distributions for all states and metropolitan areas are also available from the ACS. NAHB makes relatively minor adjustments to the ACS income distributions to account for income and population changes that may have occurred since 2007. Dollar boundaries of the income distribution are adjusted based on percentage changes in the median family income estimates that HUD produces annually for all states and metropolitan areas. The number of households in each income bracket is adjusted using the 2006-2007 percentage change in the number of households reported in the ACS, assuming that this household growth rate applies evenly across all income brackets rate in the period after 2007.

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-3-08-22

BUILDING CONTRACTORS ASSOCIATION OF

SOUTHWEST IDAHO

SLAUGHTER, RICHARD

EXHIBIT NO. 204

Idaho Power Company's Allocation of
Distribution Rate Base

Idaho Power Company
Allocation of Distribution Rate Base
Case No. IPC-E-08-10[a]
2008 Test Year

	Residential Service (1)	Small General Service (7)	Large General Service Primary. (9-P)	Large General Service Secondary (9-S)
RATE BASE - DISTRIBUTION				
Substations - General	$ 63,364,339	$ 2,253,911	$ 3,636,415	$ 31,570,149
Lines - Primary	138,627,398	8,118,342	3,829,647	37,948,817
Line Transformers - Primary	21,737,910	1,273,022	600,520	5,950,685
Line Transformers - Secondary	94,563,927	5,400,665	2,334,795	27,226,347
Lines - Secondary	38,379,046	2,079,803	1,809,641	12,144,140
Services	13,967,295	1,216,145	26,362	1,184,110
Meters	21,834,424	3,839,118	780,798	11,800,537
StreetLights	-	-	4,057	-
Other Installations at Customers' Premises	-	-	2	-
Total	$ 392,474,339	$ 24,181,006	$ 13,022,237	$ 127,824,785
Average Number of Customers	391,525	31,171	146	26,702
Distribution Rate Base per Customer[b]	$ 1,002	$ 776	$ 89,193	$ 4,787

Notes:
(a) Distribution-related rate base values can be found on Exhibit No. 65, page 1 of 6, Case No. IPC-E-08-10.
(b) Customer numbers can be found on Exhibit No. 78, page 1 of 1, Case No. IPC-E-08-10.

Exhibit 204
Direct Testimony of Richard Slaughter (BCA)
IPUC Case No. IPC-E-08-22

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2009, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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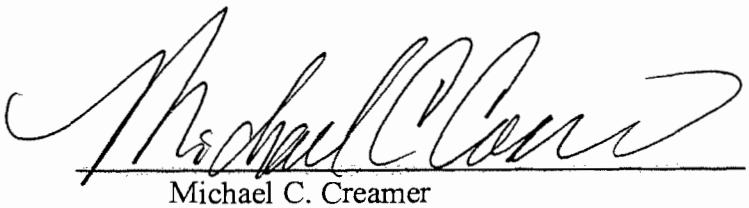

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May 1, 2009

Via Hand Delivery

Jean Jewell
Idaho Public Utilities Commission
472 W. Washington
P.O. Box 83720
Boise, ID 83720-0074

Re: IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS
Case No. IPC-E-08-22
Our File: 10495-1

Dear Jean:

Enclosed for filing please find an original and seven (7) copies of The Building Contractors Association of Southwestern Idaho's Response to Comments filed by the Commission Staff in the above entitled matter.

Thank you for your assistance in this matter.

Sincerely,

Tina M. Adornetto
Document Specialist

tma
cc: Service List (w/enclosures)
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10495-1/555219_1

Attorneys for Intervenors The Building Contractors Association of Southwestern Idaho

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS	**CASE NO. IPC-E-08-22** **BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO'S RESPONSE TO COMMENTS**

The Building Contractors Association of Southwestern Idaho ("Building Contractors"), by and through its attorneys of record, Givens Pursley LLP, submits this Response to comments filed by the Commission Staff in the above-captioned matter.

INTRODUCTION

In this Response, Building Contractors take issue with the inconsistency of the Staff's analysis and recommendations when compared to its purported position (and current Commission policy) that Idaho Power Company ("Company" or "Idaho Power") should have an investment in distribution facilities at least equal to the average embedded cost per customer for such facilities. Staff Comments support Idaho Power's proposed line extension tariff modifications, which actually result in the Company's investment per new residential customer

being reduced to as low as $176.00, over $1,000.0 *less* than Staff's estimate of current per customer embedded cost.

The Staff Comments also provide no rationale for the position that new customers, who provide a future revenue stream on which the Company and its shareholders may earn an assured rate of return, should now bear 100% of the investment risk for new distribution facilities. Staff's proposal to convert what have been allowances under historical Rule H tariffs, to refunds, would require developers to carry essentially the entire line extension cost with only an expectation that they may receive a vested interest refund in the future, and then only if additional customers come on line within a relatively short five-year window.

Staff essentially concurs with Dr. Slaughter's testimony that the increased costs of distribution facilities are attributable to inflation, but it supports a line extension tariff that disproportionately allocates the additional cost of facilities to new customers simply because they are new customers. When combined with the fact that the proposed tariff modifications result in the Company paying as much as $1,056.00 less than the current per-customer embedded cost for distribution facilities, the modifications are inherently discriminatory and inconsistent with longstanding Commission policy.

DISCUSSION

1. Staff's Policy Statement Compared to Staff's Calculations.

Although Staff appears to support the policy stated in Order 26780 (IPC-E-95-18) that new customers are entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class, examination of Staff's comments reveals significant discrepancies between that policy and Staff's resulting calculations found on Attachment 9, page 2 of 4. On pages 3 and 5, Staff indicates that Company investment should at least equal average embedded cost per customer:

> Staff believes that the goal in setting allowance and refund amounts for distribution line extensions should be to eliminate the impact on existing electric rates. More specifically, Staff believes the line extension rules should provide a new customer allowance (Company investment) that can be supported by electric rates paid by that customer over time. . . .

Staff calculates a "revenue neutral investment of $1,232.44 which Idaho Power can make to provide service to new residential customers." Dr. Slaughter's calculation of the embedded cost in this regard was similar and, for purposes of this Response, Building Contractors accept Staff's $1,232.44 figure as a reasonable approximation. Staff then states that "[b]ecause the average investment of existing customers ($1,232) is fairly close to Staff's estimate of the cost of overhead terminal facilities ($1,444), Staff believes terminal facilities should be provided at no cost to the residential customer." Staff Comments at 5.

The proposed changes to Rule H are complex; Building Contractors believes that Staff has inadvertently calculated the cost of terminal facilities assuming one transformer, a 100-foot line drop and a meter *as a per lot allowance*, and incorrectly concluded that the proposed Rule H tariff modifications will result in an appropriate Company investment.

According to Scott Sparks, the Company defines "Terminal Services" as one 25 KVa transformer and one service drop, up to 100-feet in length. Meters are not included in the calculation because meters are free to all customers. Moreover, a line extension often involves more than one transformer, and more than one customer may be connected to a single transformer. If two or more customers (lots) are connected to a single transformer, the service drop is provided for one within the proposed allowance; others are charged to the developer.

The table below prepared by Dr. Slaughter compares cost distribution under the existing Rule H tariff, the Company's proposal, and the Staff proposal using subdivision examples presented by Staff, as provided by the Company. This table incorporates Staff's calculated

existing embedded cost of $1,232.44 per customer and Staff's proposal to treat work order cost as being equal to Total Design Cost.[1]

Comparison of Investment Under Existing Rule H, and Company and Staff Proposals					
Subdivision example	1	2	3	4	5
No. of Lots	3	10	32	60	101
Average embedded cost (Staff)	**$1,232.44**	**$1,232.44**	**$1,232.44**	**$1,232.44**	**$1,232.44**
Total Design Cost	$10,572	$15,116	$50,432	$72,528	$144,771
Design (work order) cost per lot	$3,524	$1,512	$1,576	$1,209	$1,433
Allowance (Company)/ Eligible for Refund (Staff)	$3,560	$1,780	$7,120	$8,900	$17,800
Developer costs per lot (including extra service drops):					
Staff	$2,337	$1,334	$1,354	$1,060	$1,257
Company	$2,337	$1,334	$1,354	$1,060	$1,257
Existing Rule H	$1,565	$233	$417	$148	$383
Company investment per lot:					
Staff	$1,187	$178	$222	$149	$176
Company	$1,187	$178	$222	$149	$176
Existing Rule H	$1,959	$1,279	$1,159	$1,061	$1,050
Difference between Staff investment goal and actual Company investment per Staff Attachment 9 P. 2	**$45.44**	**$1,054.84**	**$1,010.44**	**$1,083.64**	**$1,056.06**
Difference between Staff estimated embedded cost and current Company line extension investment	**$(726.56)**	**$(46.16)**	**$73.44**	**$171.64**	**$182.06**

The above table highlights that under the Company's proposal, as supported by Staff, the Company's investment in distribution facilities to serve new residential customers falls far short of its investment to serve existing residential customers for all but the smallest developments. For subdivisions larger than three lots, the Company's investment would be less than $200 per lot. These calculations also show that *even under the current Rule H tariff*, Company investment

[1] The Company shows Work Order Cost as being the Total Design Cost less Allowance. The Staff proposal is that the allowance be made an after-the-fact refund.

is less than the embedded cost for developments larger than ten lots. The proposed tariff modifications only make this situation worse.

Further, if the terminal facilities allowance is to be $1,780, then for a 32-lot subdivision, terminal facilities constitute approximately $222 per lot. Deducting $222 from a $1,232 embedded cost should yield a per-lot refund of $1,010. This analysis ties closely with Dr. Slaughter's estimated $1,164 per lot, based on the 1995 refund of $800 and accounting for inflation since that time. Based on the foregoing, and the Company's proposed terminal facilities allowance of $1,780 per transformer and one service drop, the per-lot refund should be $1,000 and indexed to the GDP Implicit Price Deflator between major rate cases. Under the Company's and Staff's proposal, the per-lot refund would be only $222.

2. **Shift of Terminal Facilities Risk to Developer**.

Staff's (and ostensibly the Company's) position appears motivated by the goal of protecting current ratepayers from higher nominal rates. They would do so by requiring a new customer to pay the entire cost of new distribution facilities and its proportionate share of the cost of existing facilities. This strategy shifts all of the investment risk, including inflationary costs and vagaries of the economy to the new customer/developer of a subdivision.

Going a step further than even the Company's requested modifications, Staff proposes that the existing terminal facilities allowance become a refundable expense, after calculation of Work Order Cost, rather than an allowance deducted from Total Design Cost. It is not clear why Staff made this proposal, other than to suggest that terminal facilities would be an appropriate basis for refunds—a suggestion that Building Contractors disagrees with. Building Contractors oppose this proposed shift, as the preponderance of line extension cost risks already are borne by the developer and/or new customer.

3. **The Effects of Inflation on Costs**.

Staff agrees with Idaho Power that rising costs are a function of inflation and growth. At the same time, however, Staff's analysis presented in its Attachment 1A is in line with Dr. Slaughter's analysis, showing that if inflation is zero, *the total revenue requirement rises as customers are added, but the revenue requirement per customer does not.* In fact, the revenue requirement per customer actually declines over time. Only in the inflation example does the revenue requirement rise. *Thus, rising costs are entirely a function of inflation, which existing customers should not be shielded from any more than new customers.* Rapid growth does in fact cause these higher costs to enter rate base faster than they would otherwise, but that is *not* the same as "growth not paying its way."

The tendency of both the Company and Staff to equate rising costs with growth ignores both the effect of inflation and the rising consumption of energy by the installed customer base. The average customer consumes far more energy today than he or she did several decades ago, even if that customer has *never* been a "new" customer on the Idaho Power system. Further, as Dr. Slaughter explained, new distribution facilities to serve growth reduce the average age of the distribution system and increase its capabilities. They therefore enhance the system, reduce average maintenance costs, and do *not* contribute to rising real costs.

4. **Commission Policy**.

It bears repeating that in its order in IPC-E-2008-10 the Commission made clear its belief that energy prices should reflect market costs, and that to discourage excess demand, the customer should not be artificially protected from market forces. To that end, it is appropriate for slowly rising distribution costs to be reflected in the rate base. As has been shown, however, even the existing Rule H tariff results in Company investment in distribution facilities serving new customers below Staff's estimate of embedded costs. The impression that somehow

"growth does not pay its way" is entirely a function of how one characterizes inflation. Mischaracterizing it as a cost of growth to be imposed solely on new customers sends a market signal exactly the opposite of what the Commission has said it desires.

CONCLUSION

For the reasons stated above, and as set forth in Dr. Slaughter's testimony, the Building Contractors urge the Commission to: 1) deny Idaho Power's Application insofar as it seeks to reduce developer refunds and reduce the vested interest recovery period; 2) increase the terminal facilities allowances under its current tariff; 3) provide for periodic true-ups of these allowances; and 4) increase the period from five years to ten years during which vested interest refunds are made. With respect to the manner in which the refunds are made by the Company, Building Contractors also request that the Commission require the Company to provide an itemized statement with each refund payment showing the calculation supporting the amount refunded and identifying the particular line extension, participating developer or customer, subdivision and/or lot for which the refund is being made.

DATED this 1st day of May, 2009.

GIVENS PURSLEY, LLP

By: _____
Michael C. Creamer
Attorneys for Intervenor Building Contractors Association of Southwestern Idaho

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 2009, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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Michael C. Creamer

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An IDACORP Company

LISA D. NORDSTROM
Senior Counsel

May 1, 2009

VIA HAND DELIVERY

Jean D. Jewell, Secretary
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472 West Washington Street
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Boise, Idaho 83720-0074

Re: Case No. IPC-E-08-22
Rule H

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Reply Comments in the above matter.

Also, I would appreciate it if you would return a stamped copy of this letter for Idaho Power's file in the enclosed stamped, self-addressed envelope.

Very truly yours,

Lisa D. Nordstrom

Lisa D. Nordstrom

LDN:csb
Enclosures

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS OR ALTERATIONS	)	CASE NO. IPC-E-08-22
	)	IDAHO POWER COMPANY'S REPLY COMMENTS

COMES NOW, Idaho Power Company ("Idaho Power" or "the Company"), and in response to Comments filed in this docket, submits the following Reply Comments.

I. ALLOWANCES

The Company's proposal to provide allowances equal to the installed costs of "standard" overhead terminal facilities is intended to provide a fixed credit toward terminal facilities and/or line installations for customers requesting service under Rule H. The fixed allowance of $1,780 for single phase service and $3,803 for three phase service is based on the cost of the most commonly installed facilities and attempts to mitigate intra-class and cross-class subsidies by requiring customers with greater

facilities requirements to pay a larger portion of the cost to serve them. The Company's approach and ultimate recommendation for determining allowances was intended primarily to achieve the goal of reducing upward pressure on rates. The cost/economic analyses conducted by the Commission Staff and the Building Contractors Association of Southwestern Idaho ("Building Contractors") will not have the same effect.

By providing allowances equal to the "standard" and most common services installed (see Scott Sparks' filed workpapers pages 12-13, included as Attachment No. 1, and the Company's Responses to Requests Nos. 23 and 24 of the Commission Staff's First Production Request, included as Attachment No. 2), the Company can help ensure that the additional costs associated with larger "non-standard" services are recovered from those customers requesting the services rather than spreading those additional costs to all ratepayers. Specifically, Idaho Power calculated and recommended allowances that were impartial to customer classes and minimized subsidization of terminal facilities costs. Under the Company's proposal, the quantification of standard terminal facilities costs would be updated annually. Attachment No. 3 summarizes the positions of the parties as presented in Comments filed with the Commission in regard to major issues like allowances.

The Company is not entirely opposed to Staff's recommendations for allowances; however, it does have a few concerns. First, if the Company was to pay an allowance equal to overhead terminal facilities on larger service installations, it is possible that the allowance could be inflated by the lack of equipment sizing equivalents. For instance, if a 750 kVa underground padmount transformer is required for a new service, the Company would calculate an allowance based on a similar overhead installation.

Because there are no 750 kVa overhead transformer equivalents, the allowance would be calculated based on an installation of three overhead transformers totaling 1,000 kVa. This clearly results in an inflated allowance resulting from equipment sizing differences in underground and overhead transformers.

Second, Staff does not address Schedule 1 Non-residence and Multiple Occupancy. If the Commission was to accept Staff's recommendation for Schedule 1, the Company would propose keeping the existing allowance of providing a meter only for Schedule 1 Non-residential, providing a $1,780 allowance for single phase transformers installed in multiple occupancy projects and a $3,803 allowance for three phase transformers installed in multiple occupancy projects.

Third, the Company wishes to clarify Staff's Attachment 8. Under the column Staff's Proposal, "Terminal Facilities" allowances for Schedules 1, 7, 9, and 24 should be identified as "Overhead Terminal Facilities." Additionally, Staff identifies an existing allowance of 80 percent of terminal facilities for Schedule 24 three phase services. The correct existing allowance is to provide overhead terminal facilities. Idaho Power Attachment No. 4 revises Staff's Attachment 8 to identify in underline the clarifications described above.

The Company does not agree with the Building Contractors' recommendation that all terminal facilities (overhead and underground) be provided and included in rate base. As proposed by both Idaho Power and the Commission Staff, Company-funded allowances provided inside subdivisions would be determined based on the costs associated with the installation of overhead terminal facilities -- whether a fixed amount as proposed by Idaho Power or a variable amount as proposed by Staff. The only

difference is that under Idaho Power's proposal, the allowance would be credited on the subdivision's original work order and under Staff's proposal, the allowance would become refundable to the payee of the original work order as customers connected for permanent service.

For reasons stated above, the Company does not entirely agree with the Idaho Irrigation Pumpers Association's ("IIPA") claim that "the proposed Rule H changes do not in any way address the incremental costs of growth as it applies to associated Transmission and Generation costs." As pointed out on page 5 of Mr. Said's testimony, although "there are no requirements for contributions in aid of construction for new transmission and generation . . . . [R]educing the Company's new customer-related distribution rate base by reducing allowances and refunds will relieve one area of upward pressure on rates and will take a step toward growth paying for itself." The Company also disagrees with IIPA's assertion that the proposed single phase and three phase allowances represent a "Minimum Service Design" rather than a standard design. Pages 12-13 of Scott Sparks' workpapers filed with the Application and the Company's Responses to Requests Nos. 23 and 24 to the Commission Staff's First Production Request (Attachments Nos. 1 and 2, respectively) provide an itemized list of all materials and labor the Company used in determining standard overhead terminal facilities for single phase and three phase services. Idaho Power recognizes the IIPA's concern for proposed allowances associated with large three phase installations; however, it is not the Company's intent to fund all terminal facilities costs for these non-standard service installations.

II. SUBDIVISION LOT REFUNDS

The Company stands by its proposal to discontinue subdivision lot refunds in an effort to shift a greater portion of the cost for facilities installed inside subdivisions from the general rate base to those customers requesting new facilities. As explained in the Company's response to Staff's First Production Request No. 22, included as Attachment No. 5, "if refunds are eliminated, the Company's rate base no longer grows by refunded amounts." This is consistent with the Company's stated objectives outlined in its Application. The Company is not opposed to Staff's recommendation that transformer costs inside subdivisions be refunded to the subdivider/developer as new homes connect for permanent service.

On page 28 of his testimony, Mr. Slaughter recommends that the Commission increase the per-lot-refund for line extensions to $1000. Mr. Slaughter points to the information presented on his Exhibit No. 204 as the basis for his proposed $1000 lot refund amount. Exhibit No. 204 contains a listing of the Company's distribution rate base by customer class as it was presented in Idaho Power's 2008 general rate case, Case No. IPC-E-08-10. As can be seen on Exhibit No. 204, the total distribution rate base per residential customer is $1002, or approximately the $1000 proposed by Mr. Slaughter. Exhibit No. 204 also shows that the Company's investment in distribution substations, primary lines and transformers, secondary lines and transformers, services, and meters is included in the $1002 number.

The purpose of the lot refund has been to reimburse a portion of the line extension costs that developers are required to pay in advance of construction. These refunds are provided as customers begin taking permanent service from Idaho Power.

For residential installations inside subdivisions, the line extension costs represent investment in primary and secondary lines but *do not* include costs associated with distribution substations, terminal facilities, or meters. Mr. Slaughter includes the costs of distribution substations, terminal facilities, and meters in his calculation; this is incorrect and creates an appearance of inflated developer investment. With these facts in mind, it is clear that Mr. Slaughter's method for developing his lot refund recommendation is flawed. Therefore, because the true cost basis for lot refunds does not align with Mr. Slaughter's recommendation, the Company does not agree that lot refunds for line extensions should be raised to $1,000 per lot.

It has been pointed out in individual letters sent to the Commission and in the Comments/testimony provided by the Building Contractors that increases in housing prices have a direct impact on the number of buyers eligible to make home purchases. The Company does not dispute this generalization; however, it does dispute the implication that updating the charges and credits in this filing will have a direct impact on housing prices. It is well known that the costs associated with home construction are diverse and well beyond the costs associated with electrical service alone. When taking into account all costs (engineering, planning, permitting, grading, materials, labor, utilities, etc.) associated with new home construction inside and outside of subdivisions, the Company does not believe there is a one-for-one relationship between charges and credits under Rule H and the price of homes. Ultimately, the market sets housing prices -- not home builders, suppliers, utilities or developers. Builders and developers have the opportunity to adjust their construction practices to meet current demand by assessing all related construction costs, including, but not limited to, supplier and

subcontractor contracts, general overheads, profit margins, and the number and type of homes they choose to build. This is evidenced by the fact that home prices have varied dramatically, both increasing and decreasing in value, since Idaho Power Company last made major revisions to Rule H in 1997.

III. UNDERGROUND SERVICE

The Company does not support Staff's recommendation that underground service should be provided at no cost for Schedule 1 and Schedule 7 if the customer supplies the trench, backfill, conduit, and compaction. Instead, the updated underground service attachment charges proposed in Rule H Section 4.b. should apply when underground service is requested. It is important to note these charges account for costs associated with overhead services and they only reflect the incremental costs of providing underground service as opposed to overhead (see Attachment No. 6, the Company's Responses to Requests Nos. 9 and 10 of the Commission Staff's First Production Request). If the Commission determines that underground service should be provided at no additional charge, then the Company recommends a maximum distance limitation of 100 feet of 1/0 service cable and a maximum sized service panel of no more than 200 amperages. Services requiring more than 100 feet of service cable would be subject to the charges listed under Rule H Section 4.b.

IV. WORK ORDER COST METHOD AND CONTROLS

Staff's Comments and ultimate recommendation concerning Idaho Power's work order cost method and controls were based on a review of a confidential internal memorandum specifically designed to identify outliers -- not the overall disparity between work order estimates and actual costs. The report was originally prepared to

satisfy Sarbannes-Oxley requirements to "review a selection of contributions in aid of construction work orders where actual costs were greater than or less than estimated costs to ensure that the original estimate charged to the customer reasonably represents costs of services provided." Each identified outlier had a logical explanation for a variance and the report summary clearly states in bold that "the results of the review found that all of the work order estimates were reasonable." The Company believes that its current internal audit process of reviewing work order cost estimates not only satisfies Sarbannes-Oxley requirements but ensures that a reasonable amount of contributions in aid of construction are collected.

V. GENERAL OVERHEAD RATE

General overheads are costs that are incurred in direct support of the Company's construction process, but would be very difficult to directly associate to a particular construction job. These costs are accumulated and allocated back to construction jobs based on a cost allocation methodology. It is Idaho Power Company's policy, per 18 CFR Part 101 Electric Plant Instructions (4) (2007), to apply overheads to construction work orders.

18 CFR Part 101 Electric Plant Instructions (4)(2007) allows the pay and expenses of the general officers, administrative workers, engineering supervisors, and other engineering services applicable to construction work to be charged to construction. As a result, some of the construction related-employees that support Rule H projects charge a portion of their wages and other expenses to general overheads (FERC account 107). Like all other plant additions, all overhead charges are initially charged to FERC account 107, Construction Work in Progress, and then subsequently

moved to FERC account 101, Electric Plant in Service, when the work order they have been applied to is completed. Overhead charges are applied to the work order monthly as a percentage of actual charges to the work order.

Staff alleges in its Comments that an adjustment to the overhead rate charged under Rule H outside of a general rate case, as proposed by the Company, would result in a double collection of costs. That is, Staff claims that increasing the overhead rate charged under Rule H to 15 percent prior to the next general rate case proceeding would result in the collection of the difference between the current overhead rate of 1.5 percent and the proposed 15 percent rate (13.5 percent) in both general rates and again from those requesting line extensions under Rule H.

The Company does not agree with Staff's assessment of double counting. Because overhead costs do not become additions to electric plant in service until the work order they have been applied to is completed, any future overhead costs would not be included in electric plant in service and therefore in rates until the next general rate case. As described earlier, all overhead charges are ultimately charged to FERC account 101, Electric Plant in Service, when the work order they have been applied to is completed. Any incremental plant additions that occurred or will occur beyond the 2008 test year are not included in current rates. Correspondingly, any incremental overhead costs charged to FERC account 101 beyond the 2008 test year would not be included in current rates. From a ratemaking perspective, the Company's proposal to increase the current overhead rate charged under Rule H will simply reduce the level of overhead costs that would otherwise be included in rate base as part of a future general rate case.

VI. VESTED INTEREST PERIOD

The Company proposes to reduce the vested interest period from five years to four years based on a supportive internal report. Idaho Power does not oppose Staff's recommendation to keep the vested interested period at five years. The Company opposes the Building Contractors' recommendation that the vested interest period be increased to ten years.

VII. CHANGES TO DEFINITIONS

The Company does not oppose Staff's recommendation to modify the definition of "Unusual Conditions"; however, it does recommend adding language to the last sentence of Staff's proposal. The last sentence would read: "Cost associated with unusual conditions are separately stated and are subject to refund **if not encountered**."

In addition, Staff proposed that a section be added to Subsection 6.h. to specify that "if unusual conditions are not encountered, the Company will issue the appropriate refund within 30 days of completion of the project." The Company appreciates Staff's concern for specifying a time limit for unusual conditions refunds; however, the Company is limited in its flexibility to refund due to existing contracts signed with subcontractors of the Company. Currently, construction contracts with subcontractors of Idaho Power Company specify that subcontractors must invoice the Company for work completed within 60 days of project completion. Because of this stipulation, the Company cannot commit to issuing refunds 30 days after completion of projects for unusual conditions not encountered. Nevertheless, the Company agrees with Staff that refunds for unusual conditions not encountered should be made in a timely manner and will work to narrow the time frame for subcontractor invoicing in future contract

negotiations. The Company recommends a 90-day refund period for unusual conditions not encountered while it works to negotiate new contracts with subcontractors.

VIII. RELOCATIONS IN PUBLIC ROAD RIGHTS-OF-WAY

A. Background

For at least 30 years, Idaho Power's Rule H and its predecessor rules have required that parties who request the relocation of Company utility facilities are obligated to pay for the costs of the relocations. This policy ensures that the costs of relocations are borne by the parties benefitting from the requests and not by all of the Company's customers through higher electric rates. In this case, the Company has proposed a new Section 10 to Rule H, which specifically addresses the situation where Company facilities are located in public road rights-of-way. Ada County Highway District ("ACHD"), Association of Canyon County Highway Districts ("ACCHD"), and the City of Nampa ("Nampa") all submitted substantially similar Comments urging the Commission to reject the Company's proposed Section 10 because it would usurp the authority of public road agencies to govern the public use and the safety of public highways. For purposes of these Reply Comments and the proposed Section 10, a "public road agency" is any state or local agency, county, or municipality that administers the public road rights-of-way and is requesting Idaho Power to relocate utility facilities.

Idaho Power respectfully submits that ACHD, Nampa, and ACCHD (hereinafter collectively referred to as "the Agencies") misunderstand (1) what the Company is requesting, (2) the scope of the Commission's authority to regulate utility rates and operations, and (3) how the Commission's jurisdiction encompasses the allocation of

costs arising out of relocation of utility facilities, including relocation in public road rights-of-way. This misunderstanding is clearly illustrated in the comments of ACCHD. "The IPUC does not have authority to approve Idaho Power's proposed Rule H-Section 10. The proposed terms would place the IPUC in the position of having to determine what does or does not constitute a general public benefit versus a third-party benefit versus a shared benefit. *This determination it [sic] outside the expertise and role of the IPUC.*" (Emphasis added.) (Comments ACCHD, p. 3.) Both the Commission and the Agencies are charged with performing their statutory duties consistent with the public interest. The public that ACHD and ACCHD serve are the users of the roads and highways within the particular geographic locale encompassed by the districts' boundaries. In the case of the City of Nampa, the public is the citizens of the City.

For the Idaho Public Utilities Commission, the public interest extends beyond a specific local geographic area. The public interest that the Commission must protect covers every citizen of the state of Idaho receiving utility service from regulated public utilities.

It is the Agencies' position that they have sole and complete jurisdiction to determine when relocation is required to avoid "incommoding the public." Idaho Power agrees. However, the Agencies go one step further and contend that their authority to require relocation also gives them the sole discretion to decide if the utility will receive any reimbursement from third parties benefitting from the road improvement and relocation. It is this second step that Idaho Power disputes. It is Idaho Power's contention that the Commission also has an obligation to protect the public interest and when it comes to allocating the costs of utility facility relocations to determine utility

rates and charges, the Commission has exclusive jurisdiction. Fortunately, there is a win-win resolution to this disagreement. Idaho Power's proposed Section 10 of Rule H allows the Commission to exercise its jurisdiction concurrently with the Agencies in a way that does not contravene, in any way, the important role the Agencies play in constructing, operating, and maintaining the streets and highways within their jurisdiction.

Attachment No. 7 is a flowchart that graphically depicts how the Company's proposed Section 10 accommodates these concurrent jurisdictions and protects all of the public, both local and state wide.

B. Summary of Proposed Section 10 of Rule H

The vast majority of Idaho Power's distribution facilities are located on public roads rights-of-way. Transmission facilities, because of their large size and for safety and operating reasons, are generally located on private rights-of-way or on public land where the Company obtains long-term permits for the location of transmission facilities.

The desirability of utilizing public road rights-of-way to locate electrical distribution facilities was recognized early in Idaho's history. In 1903, the Legislature established Idaho Code § 62-705, which granted electric utilities the right to utilize all public roads, streets, and highways for electric facilities so long as that usage did not "incommode the public use of the road, highway, street . . . ." (Idaho Code § 62-705.)

Idaho Power's proposed Section 10 does not have any impact on the authority of public road agencies to manage and control their rights-of-way. More specifically, Section 10 has no impact on the public road agencies' right to require utilities to relocate their facilities from the road rights-of-way, at no cost to the public road agency, where

the facilities incommode the public use. Instead, Section 10 addresses the entirely separate issue of whether the utility relocation costs should be borne by the utility (and all of its customers) or by a third party who directly benefits from the relocation. This determination involves the Company and the third party and has no impact on the public road agencies' jurisdiction over its rights-of-way.

Section 10 provides a simple, time-tested standard for determining whether the Company or a third party should pay for utility relocations caused by road improvements. The basic rule is that the third party should pay the same percentage of the utility relocation costs as it pays for the underlying road improvement costs. In summary, the proposed Section 10 rules provide:

1. If the public road agency determines that it will use 100 percent of its own funds for the road improvements that necessitate the utility relocation, then Idaho Power would pay 100 percent of the utility relocation costs it incurs.

2. If the public road agency determines that 100 percent of the cost of a road widening or other improvement should be funded by payments from a party other than the public road agency, "a third-party," then it will be presumed that the highway project is being performed to exclusively benefit the third party making the contribution. In that instance, utility relocation costs would be borne 100 percent by the third party.

3. If the public road agency determines a highway improvement should be funded partially by using the public road agency's own funds and partially by a contribution from a third party or parties, then the utility would collect the same percentage of relocation costs from the third party. For example, if the public road agency was funding 50 percent of the cost of a right-of-way improvement from its own

funds and a third-party was paying an impact fee or otherwise funding the other 50 percent of the cost of the right-of-way improvement, the utility would collect 50 percent of its relocation expense from the third party and the balance would be recovered in the Company's electric rates.

The cost-sharing arrangement proposed in Section 10 is simple, straightforward, and allows the public road agency, in the initial instance, to decide to what degree road improvement work and resulting utility relocation work are for a public purpose or for the specific benefit of a third party.

C. Agencies Misunderstand the Scope of the Commission's Jurisdiction

The Agencies correctly note in their Comments that the jurisdiction of the IPUC is limited to that expressly granted by the Legislature. *Washington Water Power Company v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). Idaho Power agrees. However, it cannot be seriously argued (and the Agencies do not so argue) that the Commission does not have the authority to regulate how utilities will recover the costs of relocating their facilities in their rates and charges. This authority includes the authority to require the beneficiaries of a relocation of utility facilities to contribute the cost of that relocation. Such contributions affect rates because if the utility receives such a contribution, it does not have to include those costs in its rates, thereby reducing upward pressure on rates. In spite of this long-standing principal of cost-causation ratemaking, the Agencies argue that *in this one situation* the Legislature has divested the Commission of its authority to determine how utilities will recover the cost of relocating utility facilities in their rates. The Agencies argue that in this one instance, the Legislature intended that the regulation of how utilities recover the costs of

relocating their facilities should be handed over to the dozens of state and local public road agencies.

Idaho Power does not believe any intent to limit the Commission's jurisdiction to regulate utility cost recovery is manifested in any of the cases or statutes cited by the Agencies. Instead, Idaho Power contends that this Commission has been given exclusive jurisdiction to determine utility rates and charges arising out of the cost of relocation of utility facilities. The Company's position is supported in both the Idaho statutes and case law.

Idaho Code § 61-502 provides:

> DETERMINATION OF RATES. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursions or commutation tickets, or that the **rules, regulations, practices, or contracts or any of them, affecting such rates**, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, **the commission shall determine** the just, reasonable or sufficient **rates**, fares, tolls, rentals, charges, classifications, **rules, regulations, practices or contracts** to be thereafter observed and in force **and shall fix the same by order as hereinafter provided**, and shall, under such rules and regulations as the commission may prescribe, fix the reasonable maximum rates to be charged for water by any public utility coming within the provisions of this act relating to the sale of water. (Emphasis added.)

This section of the Idaho Code makes it clear that the Legislature has granted the Commission broad authority to regulate the practices and contracts of utilities as they affect rates. It also makes it clear that the Commission has the authority to

determine just and reasonable utility practices and contracts and to issue orders addressing those practices.

Idaho Code § 61-503 provides:

> POWER TO INVESTIGATE AND FIX RATES AND REGULATIONS. The commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or any thereof, of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices or schedule or schedules in lieu thereof.

Idaho Code § 61-301 provides:

> CHARGES JUST AND REASONABLE. **All charges** made, demanded or received **by any public utility**, or by any two (2) or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered **shall be just and reasonable**. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. (Emphasis added.)

The Agencies' Comments raise the specter that approval of Section 10 by the Commission might be in conflict with the Idaho Constitution. Idaho Power disagrees. In the case of *Grindstone Butte Mutual Canal Company, Etc., v. Idaho Public Utilities Commission*, 102 Idaho 175, 627 P.2d 804 (1981), the Idaho Supreme Court analyzed the constitutional and statutory limitations placed on the Commission. The Court said:

> Appellants contend that the Commission acted outside its constitutional and statutory limitations by giving consideration to the concepts of conservation, optimum use and resource allocation. We do not agree. While the Idaho Public Utilities Commission is a body with statutorily defined jurisdiction, it is also true that the Commission operates in the public interest to insure that every public utility operates

> as shall promote the safety, health, comfort of the public and as shall be in all respects adequate, efficient, just and reasonable. I.C. §§ 61-301 & 61-302. The power to fix rates is for the public welfare. *Agricultural Products v. Utah Power & Light Co., supra*. The Commission has the authority to investigate and determine whether a rate is unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law. I.C. §§ 61-502 & 61-503. 'Every power expressly granted, or fairly to be implied from the language used, where necessary to enable the Commission to exercise the powers expressly granted should be afforded.' *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879 591 P.2d 122, 126 (1979). *Citing United States v. Utah Power & Light Co.*, 98 Idaho 665, 667, 570 P.2d 1353, 1355 (1977), *quoting* 64 Am. Jur.2d, Public Utilities, §232 (1972).

The relief requested by Section 10 of Idaho Power's proposed Rule H falls squarely within the Commission's grant of authority as described in the above-cited cases and statutes. The Commission is charged with ensuring that costs of utility facility relocation have not been unreasonably charged to Idaho Power customers when, in fact, the relocation of utility facilities wholly or partially benefits a person or entity other than the public. If costs are being unreasonably allocated, the Commission has the authority to provide a remedy.

D. Agencies Misunderstand What Idaho Power is Requesting

The Agencies direct the bulk of their comments to pointing out the exclusive jurisdiction the Agencies possess to manage public highways and public rights-of-way within the Agencies' respective geographic boundaries. They characterize the proposed Section 10 of the Company's proposed Rule H as an encroachment on the Agencies' authority to exercise its ongoing responsibilities for constructing, operating, and maintaining road systems. The Comments of Nampa sum up the position of the Agencies very succinctly. "Nampa advises the IPUC to delete the proposed Section 10

and any other parts of the proposed Rule H that attempt to regulate the relocation of utilities on municipal land. Such relocation regulation is outside the jurisdiction of the IPUC." (Comments of City of Nampa, p. 4.) Nampa casts its net too widely. The Commission has always had the authority to regulate relocation of utilities on utility-owned rights-of-way located on municipal property. For example, if Nampa wanted to construct an addition to its City Hall and to do so needed Idaho Power to relocate its utility facilities off of an Idaho Power easement, Idaho Power would request that the City pay the relocation costs in accordance with Rule H. Idaho Power's authority to request those costs be paid by Nampa and the Commission's authority to require Nampa to pay those costs has always been part and parcel of Rule H. Idaho Power does not believe that the City is disputing that fact.

The Agencies cite *Village of Lapwai v. Alligier*, 78 Idaho 124, 129, 229 P.2d 475, 478 (1956) as support for their position. *Lapwai* confirms that municipalities, through franchise agreements with utilities, exercise authority within their municipal boundaries to allow or disallow a utility to locate facilities in their streets and alleys. *Lapwai* confirms that when a franchise agreement expires, a city is not required to procure the consent of the Commission as a condition of requiring removal of utility facilities from the cities, streets, and alleys. *Lapwai*, however, does not address the central question presented here, that is a utility's ability to obtain compensation from private parties that receive a benefit when a city requires the relocation of utility facilities within the public right-of-way when that utility has a valid franchise to operate in that city.

The Agencies also cite *Rich v. Idaho Power Company*, 81 Idaho 487, 346 P.2d 596 (1959) in support of their position. Again, *Rich* does not speak to the issue

presented by Section 10 of Rule H. In the *Rich* case, the Idaho Board of Highway Directors had sought a declaratory judgment to determine the constitutionality of a statute passed by the Idaho Legislature in 1957 providing that utilities would be reimbursed out of dedicated state highway funds for the cost of relocating their utility facilities located on any federal-aid primary or secondary system or on the inter-state system of Idaho public highways, when determined necessary by the Idaho Board of Highway Directors. While *Rich* upheld the common law rule that utilities locating facilities in public rights-of-way can be required to relocate their facilities at their own expense if the safety of the public required it, the principal issue addressed in *Rich* was the source of funding for the utility's cost of relocation. In *Rich*, the court decided that the recently passed statute requiring utility relocation costs be reimbursed to the utility out of the dedicated state highway fund violated the Idaho Constitution's prohibition on the lending of state credit. No such issue exists here. Under Idaho Power's proposed Section 10, public highway funds are never used to reimburse Idaho Power for relocation expense. To the extent it is applicable to this case, *Rich* is essentially a restatement of this common rule law. Idaho Power is not seeking to contravene the common law rule that its use of the public road right-of-way is subordinate to the paramount use of public road right-of-way if that use interferes with the public benefit. Idaho Power's proposed Section 10 does not require any of the Agencies to reimburse the Company for relocation costs where relocation is required to *benefit the public.* It is only in those cases where the road widening or improvement benefits a third party that the Company believes the Idaho Commission should play a role. The Commission

should approve rules that require such third party to reimburse Idaho Power so that the costs of the relocation are not unfairly shifted to the Company's customers.

E. The Commission Is Well Suited to Resolve Disputes Arising Under Section 10

The Comments of the Agencies point out a number of problems they perceive with the definition and treatment of third-party beneficiaries under Section 10. Idaho Power's proposed Section 10 addresses the real-life situation where highway improvements and the concurrent requirement to relocate utility facilities is driven by real estate development adjacent to streets and highways. In response to that situation, the ACCHD states, "The notion seems to be that some improvements are made for the general public and other improvements are made only for the benefit of an identifiable third-party." (Comments of ACCHD, p. 4.) That notion is exactly correct and gets to the heart of the problem that arises when potential economic development within the jurisdiction of an agency colors how the agency views the public interest in association with allocation of the costs of relocating utility facilities. Idaho Power's proposed Rule H sets forth an easy way to parse the respective public benefits of a particular highway improvement project. If the public road agency is willing to utilize its own funds to perform highway improvement, then it is highly probable that the public interest drives the need for the improvement. However, when the public road agency obtains a contribution from a third party to reduce the cost of a highway improvement, it is strong evidence that all or a portion of the highway improvement will confer a benefit on an identifiable third party and is not totally for the benefit of the public.

The Agencies' Comments reflect a concern that Section 10 does not specifically define what constitutes a third-party beneficiary. In its Comments, ACCHD states,

"Section 10 does not clearly define what constitutes a third-party beneficiary, providing only examples: 'private or public third-parties such as real estate developers, local improvement districts, or adjacent land owners.' This definition is problematic and overly broad." (ACCHD comments, p. 4.) First, the Agencies are apparently unfamiliar with the Commission's quasi-judicial role and its considerable experience in fact-finding and resolving disputes. Applying the facts of an individual case to broad policy and legal definitions is precisely what the Commission does all the time. There is no question that the Commission is fully capable of analyzing and resolving individual fact situations arising out of the definitions contained in Section 10. With respect to the Agencies' concern that a third party might be a public agency, Idaho Power is confident that if questions arise, the Commission will be able to assess the respective impacts and benefits as between multiple public agencies and private entities and determine an appropriate allocation of costs between public bodies, private entities, and other utility customers.

F. Other Alternative Forums for Resolving Disputes Are Not Practical

Under the Agencies view of the law, the only alternative available to Idaho Power for resolving disputes arising out of an unreasonable assessment of relocation costs is for the Company to file declaratory judgment actions in district court each time it perceived that a public road agency had unreasonably assigned relocation costs to the utility. Such an approach would be expensive, time consuming, and, frankly, impractical.

While Idaho Power believes that its proposed Section 10 of Rule H provides a simple, efficient way of determining whether all or a portion of relocation costs should be

paid by utility customers or by a third party, the Company also believes there must be a neutral forum that can efficiently resolve disputes. Idaho Power contends that the Commission is uniquely positioned to provide that dispute resolution process.

The Agencies propose that the best way for Idaho Power to address relocation cost issues is to negotiate contracts with highway districts and revise its franchise agreements with municipalities. It should be noted that most, if not all, of Idaho Power's franchise agreements with individual municipalities already contain the following language: "The Grantee shall bear the cost of relocating its facilities at the city's request, unless the facilities are to be relocated for the benefit for third party, in which case the third party shall the pay the costs of relocation." However, problems may arise if a city determines, perhaps for economic development reasons, that a particular street improvement project will be characterized as a city project, thereby relieving a real estate developer of the cost of reimbursing the utility for relocation costs. (See the testimony of Idaho Power Witness David Lowry.)

In the case of non-municipal highway agencies, the Company is willing to work with these agencies to voluntarily develop workable solutions. ACHD correctly points out in its Comments that Idaho Power's proposed Section 10 is very similar to ACHD's Resolution 330. Resolution 330 has generally worked well in assigning relocation costs. The principal problem with the approach of negotiating individual resolutions, ordinances, contracts, and franchise agreements is that Idaho Power operates in dozens of individual highway jurisdictions. If Section 10 provides an over-arching rule, voluntary, individual agreements will be much easier to develop.

However, even with voluntary agreements, when a question arises concerning the equity of an allocation as determined by a public road agency, Idaho Power believes there needs to be a forum, at the Idaho Public Utilities Commission, to which such disputes can be presented for resolution. Idaho Power's Exhibit No. 1 in this case, the communications between the City of Nampa and Idaho Power regarding the City's unwillingness to assess costs of relocation to a local improvement district along Nampa-Caldwell Boulevard, is a good example of a situation where a neutral third party, like the Commission, might have concluded that a public's road agency's determination that a relocation cost should be borne totally by the utility rather than by a third party was not reasonable.

G. The Reference to Local Improvement Districts Needs to be Clarified

In their Comments, the Agencies all identify a drafting problem in the Company's proposed Section 10. They point out that Rule H currently includes the definition of a local improvement district ("LID") as being a district which provides for the funding of the differential between the higher cost of underground facilities as compared to overhead facilities. The Agencies urge the Commission that should it decide to include Section 10 in Rule H as proposed by Idaho Power, that references to any LID as a third-party beneficiary be clarified and limited to the definition currently included in Rule H; i.e., underground/overhead differential LIDs.

Idaho Power appreciates the Agencies pointing out this potential problem area. In Rule H, "local improvement district" is a defined term (and therefore capitalized when used in the text of the Rule) and is limited to the type of LID considered under Idaho Code § 50-2503–LIDs. Proposed Section 10 of Rule H did not capitalize "LID" or "local

improvement district" because it was the intention of the Company that in Section 10, the term LID or local improvement district be used generically and not be limited to a LID for funding the underground/overhead differential as defined in Rule H. It was Idaho Power's intention that the term LID be used in its broader sense of any taxation district. If the Commission decides to approve the inclusion of Section 10 in Idaho Power's Rule H, the Company will provide additional language clarifying the difference in types of LIDs referred to in Rule H.

H. Conclusion

Idaho Power acknowledges that the Agencies have the exclusive authority to determine that relocation of utility facilities located in public road rights-of-way is necessary so as not to "incommode public use." (Idaho Code § 62-705.) Idaho Power also agrees that whenever relocation of utility facilities from public road rights-of-way are necessary to avoid incommoding the public use, the cost of relocation should not be borne by the public road agencies. Idaho Power is only asking the Commission to continue to exercise the jurisdiction it currently exercises to determine who pays the cost of relocating utility facilities located in public roads when persons or entities other than the general public receive some or all of the benefit of the relocation. Section 10 does not encroach upon the Agencies' authority to determine that relocation of utility facilities is necessary. However, the question of who pays for the cost of relocating utility facilities directly bears on utility rates and charges and, as a result, falls squarely within the jurisdiction of the Commission.

IX. RESPONSE TO ISSUES RAISED BY THE BUILDING CONTRACTORS

In his testimony in this case, Mr. Said references general rate cases that occurred in 2003, 2005, 2007, and 2008. He also references single issue rate cases to address the inclusion of gas-fired plants in 2005 and 2008. Mr. Said concludes that these increases have been related to growth because "additional revenues generated from the addition of new customers and load growth in general is not keeping pace with the additional expenses created and required to provide ongoing safe and reliable service to new and existing customers." (Said Direct, p. 5, L. 9.) The Company's loads have been growing by approximately 50 average megawatts ("MW") per year and by approximately 80 MW per year at the time of the system peak. Growth in generation plant investment, transmission plant investment, and distribution plant investment are all impacting the growth in electric rates. Attachment 1 to Staff's Comments explains the relationship between growth and inflation in greater detail.

Yet, the Building Contractors state that, "in itself, however, growth does not cause higher costs. In inflation adjusted terms, if the same facilities are provided at the same real unit cost, then average real cost per customer will not change." (Slaughter Direct, p. 11, Ll. 17-19.) The statement suggests that the only factor influencing electric prices in this decade has been inflation. However, for customers of a regulated utility, the extent to which customers experience the effects of inflation is directly related to growth.

As an example, suppose a car buyer purchases a new car in 2009 and does not replace it until 2020. Inflation may drive the cost of a comparable car up during the next eleven years, but the car buyer will not experience the impact of that inflation until

he/she replaces the car in 2020. Similarly, an electric utility customer is insulated from the impacts of inflation on the cost of facilities until they need to be replaced. To the extent that some replacement of plant occurs each year, such impacts of inflation are experienced by customers. However, as growth occurs, new plant costs in addition to normal replacement costs add to the impact of inflation experienced by customers. The Building Contractors want the Commission to ignore the impact that growth has on ensuring that customers feel the full impact of inflation sooner rather than later. People do not want their car payments to increase just because their neighbor bought a new car. Similarly, existing customers do not want to see rate increases just because there are new customers on the system.

Mr. Slaughter points out that dating back to the 1950s, demand growth has been encouraged. For many years of Idaho Power Company's existence, it was in a surplus generation and surplus transmission situation. Under those conditions, the addition of new customer loads required no new generation costs and no new transmission costs, only new distribution costs. As a result, the Company and the Commission could be promotional (i.e., providing greater allowances) with regard to its line installation provisions. Costs per customer may actually have been declining at times even with generous allowances. Today's situation is not comparable to those times. Customers are experiencing the full incremental impact of adding new generation and transmission facilities to the Company's system. The Building Contractors want the Commission to ignore the current situation and isolate distribution costs from other costs of growth experienced by customers even though promotional provisions of the past may have

been established in light of total costs of serving customers. Now is not the time to continue promotional activity at the expense of existing customers.

The Building Contractors suggest that the proposed Rule H is discriminatory against new customers. Rule H addresses the costs that must be paid by individuals who are not currently customers of Idaho Power for the opportunity to become customers. If the new line installation investment is solely to provide service to new customers, the Commission is authorized by law to require that the new customers bear the cost of that new investment. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984). So long as all potential new customers are treated in a like manner, there is no unlawful discrimination.

In general, the Building Contractors and Mr. Slaughter imply that customers are not paying for the full value of the product they receive. In order to move toward more appropriate pricing, he wants the Commission to continue to require that the Company spend significant amounts of capital on distribution facilities so that customers will experience the impacts of inflation as it occurs. The Building Contractors are silent as to the impacts their recommendation has on the Company's ability to replace and upgrade service to existing customers. If Idaho Power had unlimited access to capital, the Building Contractors' recommendation might not impact the Company's ability to replace or upgrade existing facilities. However, Idaho Power does not have unlimited access to capital. To the extent that the Company must invest in new distribution facilities for the benefit of new customers, the Company will have less capital available for other capital projects. The Building Contractors, through Mr. Slaughter, argue that new investment benefits existing customers by lowering average costs, but those

benefits must be examined from a wider perspective and compared to the benefits that may be derived if the limited capital resources are utilized for other purposes. Now is the time for the Commission to reduce Company investment in new distribution facilities in order to allow for investment in other infrastructure that is more valuable to customers.

X. CONCLUSION

Idaho Power respectfully requests that the Commission issue an Order approving the proposed Rule H modifications as set forth in the Application and these Reply Comments to become effective 120 days after the Order is issued. Because of the extended effective date, Idaho Power would like to point out that all customers, builders, and developers affected by any and all approved Rule H modifications will have ample time to modify their planning and construction decisions prior to the effective date. In addition, all Idaho Power construction work orders signed and paid in full before the effective date will be subject to the provisions of the existing Rule H tariff.

DATED at Boise, Idaho, this 1st day of May 2009.

Lisa D. Nordstrom

LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of May 2009 I served a true and correct copy of IDAHO POWER COMPANY'S REPLY COMMENTS upon the following named parties by the method indicated below, and addressed to the following:

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Lisa D. Nordstrom

Lisa D. Nordstrom

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-08-22

IDAHO POWER COMPANY

ATTACHMENT NO. 1

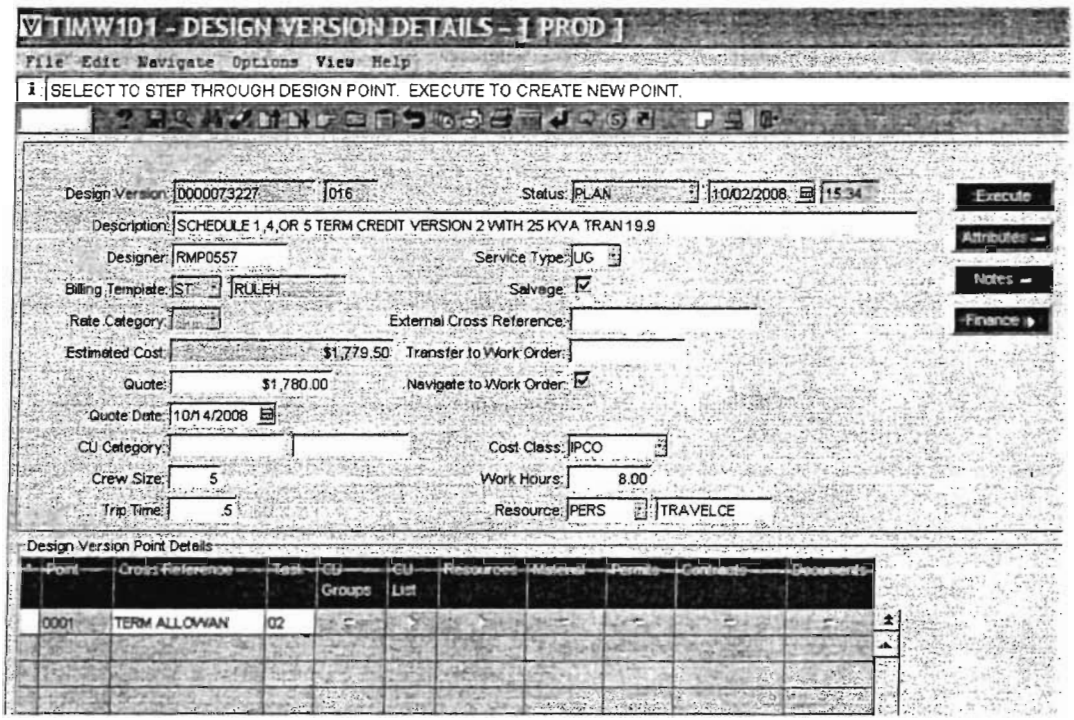
Section 7: Line Installation and Service Attachment Allowances

Allowances were calculated based on standard overhead terminal facilities installation costs for single and three phase customer needing 200 amperage of connected load at their meter base.

Residential Allowances
Schedule 1, 4, and 5

Single phase terminal facilities were based on:

Travel cost -	5 man line crew & ½ hour of travel time	
Labor cost-	Installing material	
Material cost -	Primary line hot clamp	(DHTAA)
	Switch Arm	(DBK18)
	Switch	(DSCS351)
	Transformer	(DT25R1)
	Transformer Bussing	(DYS25)
	Service	(D3P2)
	Ground rod	(DGRO)

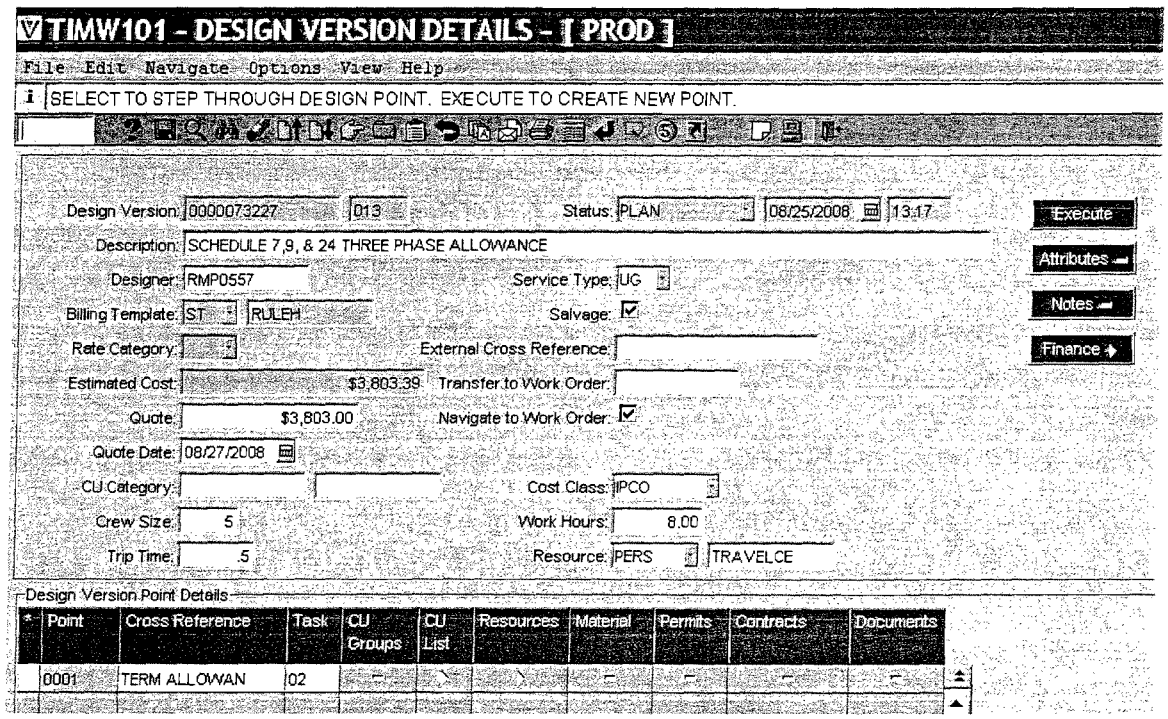


The transformer used was for the highest distribution voltage that Idaho Power uses so that all allowances would be adequate for all customer needing terminal facilities only.

Non-Residential Allowances
Schedule 7, 9, 24

Three phase terminal facilities were based on:

Travel cost -	5 man line crew & ½ hour of travel time	
Labor cost-	Installing material	
Material cost -	Primary line hot clamp	(3) (DHTAA)
	Switch Arm	(1) (DAA3D)
	Switch	(3) (DSC151)
	Arrester	(3) (DLAR15)
	Transformer Mount	(1) (DCMB)
	Transformer	(3) (DT15A1)
	Transformer Bussing	(1) (DYY151)
	Service	(1) (D4P2)
	Ground rod	(1) (DGRO)



Attachment No. 1
Case No. IPC-E-08-22
Idaho Power Reply Comments
Page 2 of 2

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-08-22

IDAHO POWER COMPANY

ATTACHMENT NO. 2

REQUEST NO. 23: Please provide a cost breakdown of $1,780 Standard Terminal Facilities allowance for single phase line installations and service attachments showing how much of that cost is the transformer, service conductor, etc.

RESPONSE TO REQUEST NO. 23: The single phase standard terminal facilities allowance is based on three components: (1) travel time and vehicle costs for a crew of five, (2) materials costs, and (3) labor and equipment costs. The breakdown of this allowance is as follows:

Travel and Vehicle cost	$ 134.50
Material Cost	$1,435.39
Labor and Equipment	$ 209.61
Total	$1,779.50

The material components include:

Hot Line Clap – connect to the main line	$ 16.78
Pole mount bracket for the switch	$ 37.71
Switch (Non Load Break)	$ 89.95
25 KVA Transformer	$1,096.69
Transformer wiring and connectors	$ 46.80
125 feet of #2 triplex service wire	$ 100.95
Transformer ground rod	$ 22.23
Power Meter	$ 24.28
Total Material Cost	$1,435.39

The response to this Request was prepared under the direction of Scott Sparks, Senior Pricing Analyst, Idaho Power Company, in consultation with Barton L. Kline, Lead Counsel, Idaho Power Company.

REQUEST NO. 24: Similarly, please provide a cost breakdown of $3,803 Standard Terminal Facilities allowance for three phase installations and service attachments showing how much of that cost is the transformer, service conductor, etc.

RESPONSE TO REQUEST NO. 24: The three phase standard terminal facilities allowance is based on three components: (1) travel time and vehicle costs for a crew of five, (2) materials costs, and (3) labor and equipment costs. The breakdown of this allowance is as follows:

Travel and Vehicle cost	$ 269.00
Material Cost	$ 2,540.90
Labor and Equipment	$ 993.48
Total	$ 3,803.38

The material components include:

Hot Line Clap – connect to the main line	$ 50.34
Wood cross arm for switch	$ 134.17
Lighting arresters	$ 142.65
Switch (Non Load Break)	$ 149.46
Transformer mounting Wing	$ 233.94
25 KVA Transformer	$ 1,376.88
Transformer wiring and connectors	$ 98.76
125 feet of #2 triplex service wire	$ 146.03
Transformer ground rod	$ 22.23
Power Meter	$ 186.44
Total Material Cost	$2,540.90

The response to this Request was prepared under the direction of Scott Sparks, Senior Pricing Analyst, Idaho Power Company, in consultation with Barton L. Kline, Lead Counsel, Idaho Power Company.

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-08-22

IDAHO POWER COMPANY

ATTACHMENT NO. 3

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Rule H Filing IPC-E-08-22
Summary of Comments

	Allowances	Lot Refunds	Misc. Costs	Vesting	General Overheads	Formatting and Definitions	Highway Relocations
Idaho Power Existing Tariff	**Rate 01** – Subdivision: overhead(OH) terminal facilities(TF) + $800/lot Non-electric: OH TF + $1,000 All-Electric: OH TF + $1,300 Non-Residence – meter only **Rate 07 & Multiple Occupancy** 1 phase: OH TF 3 phase: 80% of OH TF **Rate 09** – 1 phase: $1,726 3 phase: $80% of OH TF **Rate 24** – 1 phase: $1,726 3 phase: 100% of OH TF **Rate 19** - Case-by-case basis	$800 per lot	Outdated	5 years	1.5% cap	Outdated	No section
Idaho Power Proposed Tariff	1 phase: $1,780 3 phase: $3,802 **Rate 19** - case-by-case	No lot refunds	Update all	4 years	Update to actual rate as proposed.	In response to Staff, propose 90 day refund period for unusual conditions.	Add section
IPUC Staff	**Rate 01** – 100% OH TF **Rate 07** – 1 phase: 60% OH TF, 3 phase: 25% OH TF **Rate 09 & 24** – 100% OH TF **Rate 19** – no change, case-by-case	No lot refunds. Refund costs of terminal facilities to developer as customers connect.	Update all	5 years	Update at next general rate case	Agree with proposed. Clarify "Unusual Conditions" definition. Require refunds within 30 days for unusual conditions.	Agree with proposed section.
BCA of SW Idaho	100% of Terminal facilities	Increase to $1,000 per lot	Not addressed	10 years	Update at next general rate case	Not addressed	Not addressed
Idaho Irrigation PA	Suggested cost/benefit analysis. Should not penalize larger customers. Should not ignore economies of scale.	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed
ACCHD **City of Nampa** **ACHD**	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	Not addressed	IPUC does not have jurisdiction. Have problems with "third party" definition and constitutional concerns.

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OH – Overhead
TF – Terminal facilities

Attachment No. 3
Case No. IPC-E-08-2
Idaho Power Reply Comment

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-08-22

IDAHO POWER COMPANY

ATTACHMENT NO. 4

Idaho Power Line Extension Allowances

Clarification of Staff's Attachment 8

(Clarifications Underlined)

		Existing Allowance	IPC Proposal	STAFF PROPOSAL
Schedule 1				
	Subdivision	Overhead Terminal Facilities + $800/lot	$1,780/ transformer	Overhead Terminal Facilities
	Non-electric heat	Overhead Terminal Facilities + $,1000	$1,780	Overhead Terminal Facilities
	All-electric heat	Overhead Terminal Facilities + $1,300	$1,780	Overhead Terminal Facilities
	Non-residence	Meter only	Meter Only	Not addressed
	Multiple Occupancy			
	Single Phase	Overhead Terminal Facilities	$1,780/transformer	Not addressed
	Three Phase	80% of Terminal Facilities	$3,803/transformer	Not addressed
Schedule 7				
	Single Phase	Overhead Terminal Facilities	$1,780	60% of Overhead Terminal Facilities
	Three Phase	80% of Terminal Facilities	$3,803	25% of Overhead Terminal Facilities
Schedule 9				
	Single Phase	$1,726	$1,780	Overhead Terminal Facilities
	Three Phase	80% of Terminal Facilities	$3,803	Overhead Terminal Facilities
Schedule 24				
	Single Phase	$1,726	$1,780	Overhead Terminal Facilities
	Three Phase	Overhead Terminal Facilities	$3,803	Overhead Terminal Facilities
Schedule 19		Case-by-case	Case-by-case	Case-by-case

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-08-22

IDAHO POWER COMPANY

ATTACHMENT NO. 5

REQUEST NO. 22: If lot refunds in subdivisions are discontinued, please explain whether Idaho Power believes it will be at risk for recovering the cost of facilities installed in the subdivision if the subdivision does not fully build out.

RESPONSE TO REQUEST NO. 22: No. Lot refunds represent additions to rate base at the time of the refund. If refunds are eliminated, rate base no longer grows by refunded amounts. Instead, a customer's contribution in aid of construction remains an offset to rate base. If lot refunds are discontinued, the Company will not be required to refund any portion of installation costs related to subdivision work orders. In turn, CIACs paid up front on work orders for facilities installed within subdivisions will not be offset by the costs of providing lot refunds.

The response to this Request was prepared under the direction of Scott Sparks, Senior Pricing Analyst, Idaho Power Company, in consultation with Barton L. Kline, Lead Counsel, Idaho Power Company.

BEFORE THE

IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-08-22

IDAHO POWER COMPANY

ATTACHMENT NO. 6

REQUEST NO. 9: Please provide an analysis for the cost of the distance charge (per foot) for Company installed facilities with 1/0 underground cable, 4/0 underground cable, and 350 underground cable, and for each service:

a. How the Company determines the appropriate size of the crew for each type of service attachment;

b. How the Company determines the amount of trip time;

c. How the Company calculated the labor cost and what is included in that cost for each type of service attachment;

d. If applicable, please provide the cost of each required material for each type of service attachment;

e. A breakdown of costs showing how much of that price is travel cost, labor cost, material cost, or any other costs that contribute to the final proposed cost.

RESPONSE TO REQUEST NO. 9: Idaho Power's analysis on construction costs is based on travel time, equipment, labor, and materials. The Company construction costs are determined by the standard construction staffing level, the equipment that is required to complete the work, the time it takes to safely finish a project, and the travel time to the construction destination. Currently, Idaho Power uses a computer software system called "Asset Suite" to track material expenses and determine construction costs.

a. The crew size for an underground service is a 2 person crew, determined by the Company's standard construction staffing level.

b. Travel time is based on average travel time, which is 0.5 hours. In urban areas, traffic constraints may cause delays greater than 0.5 hours, and in rural areas,

remote location may require travel time greater than 0.5 hours, but, on average, travel time to jobs is approximately 0.5 hours.

c. Labor cost is a combination of travel time and "wrench time." Wrench time includes time spent doing the work and vehicles used. Wrench time has been calculated using time and motion studies that have been integrated into the work order construction and inventory system.

d. Underground service cable charges are for material only, based on 100 feet, and are as follows:

	1/0 Wire	$173.26
	4/0 Wire	$229.91
	350 Wire	$415.70

e.

1/0 service includes:	Travel and vehicles	$134.50
	Materials	$173.26
	Labor & Equipment	$568.37
	Overhead Service Differential	<$155.00>
	Total	$721.13
4/0 service includes:	Travel and vehicles	$134.50
	Materials	$229.91
	Labor & Equipment	$569.65
	Overhead Service Differential	<$155.00>
	Total	$799.06
350 service includes:	Travel and vehicles	$134.50
	Materials	$415.70
	Labor & Equipment	$603.95
	Overhead Service Differential	<$155.00>
	Total	$999.15

The response to this Request was prepared under the direction of Scott Sparks, Senior Pricing Analyst, Idaho Power Company, in consultation with Barton L. Kline, Lead Counsel, Idaho Power Company.

REQUEST NO. 10: Please provide an analysis for the cost of the distance charge (per foot) for customer provided trench and conduit with 1/0 underground cable, 4/0 underground cable, and 350 underground cable, and for each service:

a. How the Company determines the appropriate size of the crew for each type of service attachment;

b. How the Company determines the amount of trip time;

c. How the Company calculated the labor cost and what is included in that cost for each type of service attachment;

d. If applicable, please provide the cost of each required material for each type of service attachment;

e. A breakdown of costs showing how much of that price is travel cost, labor cost, material cost, or any other costs that contribute to the final proposed cost.

RESPONSE TO REQUEST NO. 10: Idaho Power's analysis on construction costs is based on travel time, equipment, labor, and materials. The Company construction costs are determined by the standard construction staffing level, the equipment that is required to complete the work, the time it takes to safely finish a project, and the travel time to the construction destination. Currently, Idaho Power uses a computer software system called "Asset Suite" to track material expenses and determine construction costs.

a. The crew size for an underground service is a 2 person crew, determined by the Company's standard construction staffing level.

b. Travel time is based on average travel time, which is 0.5 hours. In urban areas, traffic constraints may cause delays greater than 0.5 hours, and in rural areas,

remote location may require travel time greater than 0.5 hours, but, on average, travel time to jobs is approximately 0.5 hours.

c. Labor cost is a combination of travel time and "wrench time." Wrench time includes time spent doing the work and vehicles used. Wrench time has been calculated using time and motion studies that have been integrated into the work order construction and inventory system.

d. Underground service cable charges are for material only, based on 100 feet, and are as follows:

	1/0 Wire	$ 94.97
	4/0 Wire	$151.58
	350 Wire	$262.56

e.

1/0 service includes:	Travel and vehicles	$ 53.80
	Materials	$ 94.97
	Labor & Equipment	$217.79
	Overhead Service Differential	<$155.00>
	Total	$211.56
4/0 service includes:	Travel and vehicles	$ 53.80
	Materials	$151.58
	Labor & Equipment	$215.23
	Overhead Service Differential	<$155.00>
	Total	$265.61
350 service includes:	Travel and vehicles	$ 53.80
	Materials	$262.56
	Labor & Equipment	$245.64
	Overhead Service Differential	<$155.00>
	Total	$407.00

The response to this Request was prepared under the direction of Scott Sparks, Senior Pricing Analyst, Idaho Power Company, in consultation with Barton L. Kline, Lead Counsel, Idaho Power Company.

BEFORE THE

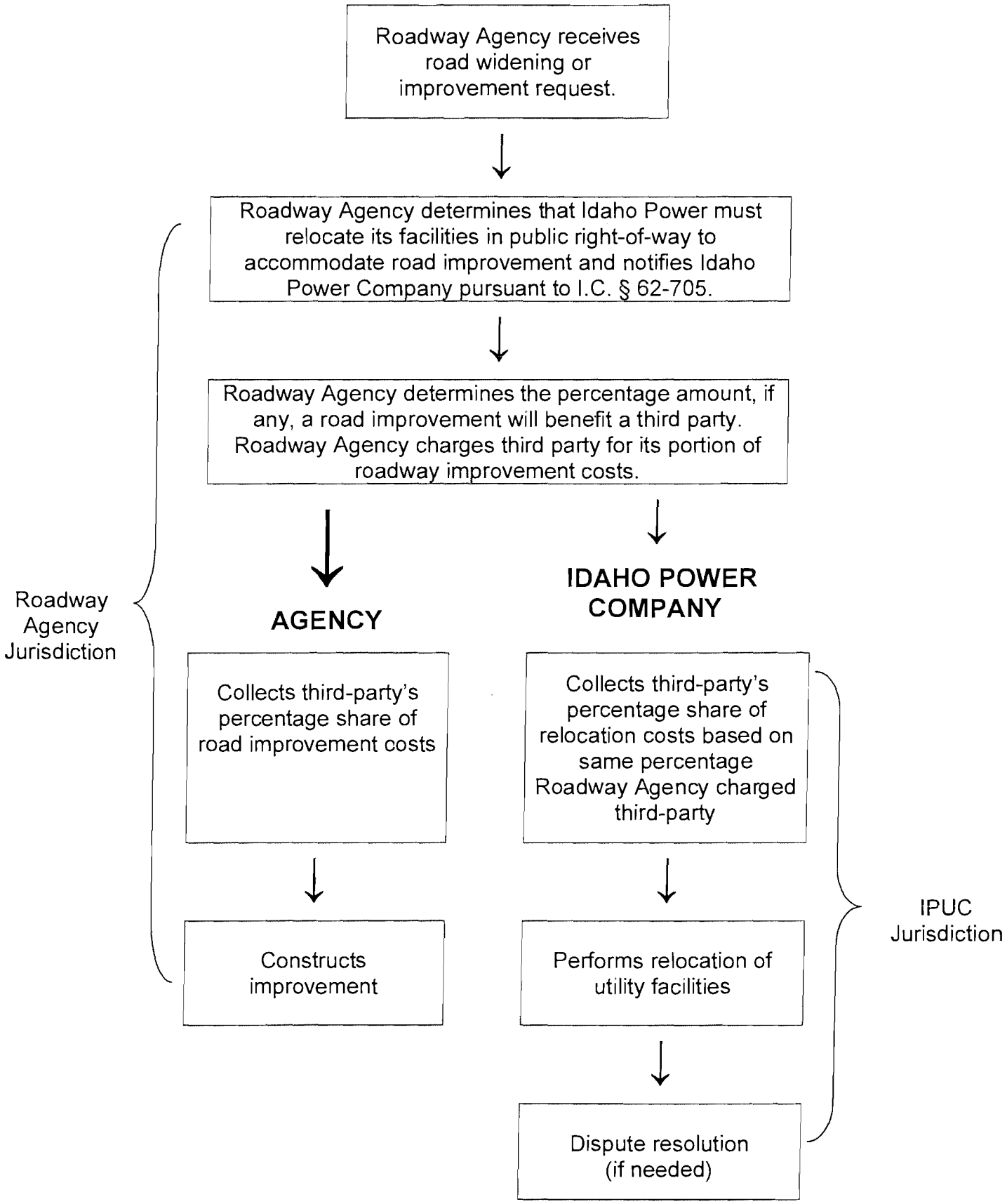
IDAHO PUBLIC UTILITIES COMMISSION

CASE NO. IPC-E-08-22

IDAHO POWER COMPANY

ATTACHMENT NO. 7

RELOCATIONS FLOWCHART



Office of the Secretary
Service Date
July 1, 2009

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS.	CASE NO. IPC-E-08-22 ORDER NO. 30853

On October 30, 2008, Idaho Power Company filed an Application seeking authority to modify its Rule H tariff relating to charges for installing or altering distribution lines. Specifically, the Company sought to increase the charges for new service attachments, distribution line installations and alterations. After reviewing the record in this case, we approve Idaho Power's Application as modified below. We approve the Company's proposed allowances, miscellaneous costs, language regarding highway relocations, and the requested changes to format and definitions. We further approve a "cap" of 1.5% on general overhead costs and maintain the existing five-year period for Vested Interest Refunds. These changes to Rule H shall become effective on November 1, 2009.

I. THE APPLICATION

Idaho Power proposes modification to its existing Rule H tariff that reorganizes sections, adds or revises definitions, updates charges and allowances, modifies refund provisions, and deletes the Line Installation Agreements section. Section titles were arranged to more closely reflect the manner in which customers are charged and to better match the arrangement of the Company's cost estimation process. Definitions have been added or revised to provide clarity.

Idaho Power proposes separate sections for "Line Installation Charges" and "Service Attachment Charges." Within the Service Attachment Charges section, Idaho Power separates the overhead and underground service attachments, updates the charges for underground service attachments less than 400 amps, and outlines the calculation for determining the charges for underground service greater than 400 amps. The "Vested Interest Charges" section was reworded and some definitions were removed. The available options and calculations in this section were not changed. Engineering charges, temporary service attachment charges, and return trip charges were updated in the "Other" Charges section.

The Company asserts that the Line Installation and Service Attachment Allowances section was modified and updated to reflect current costs associated with providing and installing "standard terminal facilities" for single-phase and three-phase service and line installations. The Company's proposal to provide customer allowances equal to the installed costs of "standard" overhead terminal facilities is intended to provide a fixed credit toward the cost of constructing terminal facilities and/or line installations for customers requesting service under Rule H. The fixed allowance is based upon the cost of the most commonly installed facilities and attempts to mitigate intra-class and cross-class subsidies by requiring customers with greater facilities requirements to pay a larger portion of the cost to serve them. The proposal also modifies Company-funded credit allowances inside subdivisions. Idaho Power maintains that these significant revisions to the tariff specifically address the Company's and Commission's desire for customers to pay their fair share of the cost for providing new service lines or altering existing distribution lines.

Idaho Power proposes Vested Interest Refunds for developers of subdivisions and new applicants inside subdivisions for additional line installations that were not part of the initial line installation.[1] The Company also proposes to change the availability of Vested Interest Refunds from a five-year period to a four-year recovery period and discontinue all subdivision lot refunds.

Idaho Power also seeks authority to add a section entitled "Relocations in Public Road Rights-of-Way" to address funding of roadway relocations required under *Idaho Code* § 62-705. The section would identify when and to what extent the Company would fund roadway relocations. Specifically, this section would outline road improvements for the general public benefit, road improvements for third-party beneficiaries, and road improvements for a joint benefit.

The Company asserts that it has undertaken a special communications effort to advise builders and developers in its service territory of the proposed changes. Idaho Power requests that the Commission's Order set an effective date 120 days beyond the date of the final Order to allow the Company time to train employees, reprogram computerized accounting systems, and reconstruct internal processes.

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[1] Subdividers and new applicants will continue to be eligible for Vested Interest Refunds outside of subdivisions.

II. PROCEDURAL HISTORY

On November 26, 2008, the Commission issued a Notice of Application and Intervention Deadline. Order No. 30687. Four parties petitioned to intervene. The Building Contractors Association of Southwestern Idaho (BCA), the City of Nampa, The Kroger Company, and Association of Canyon County Highway Districts (ACCHD) were granted intervention. The Commission issued its Notice of Parties on December 30, 2008. Pursuant to Order No. 30687, the parties met on January 14, 2009, to discuss the processing of this case.[2]

The participating parties recommended that the case be processed under Modified Procedure with comments due no later than March 20, 2009.[3] The comment deadline was subsequently extended until April 17, 2009, with response comments due no later than May 1, 2009.

THE COMMENTS

Written comments were filed by Commission Staff and all intervenors with the exception of Kroger. In addition, more than 40 public comments were received, including comments filed by the Ada County Highway District and the Idaho Irrigation Pumpers Association. A great number of the public comments were submitted by contractors, many of whom submitted identical form letters stating their concern regarding: (1) the timing of Idaho Power's Application and the processing of the case; (2) the undue hardship that will be created on the construction industry; and (3) their opposition to any increase in fees that would ultimately be passed on to home buyers. Idaho Power and the Building Contractors Association filed reply comments.

1. Ada County Highway District. Although not an intervenor in this case, Ada County Highway District (Highway District) filed comments asserting that Idaho Power's proposed Section 10 is beyond the jurisdictional authority of the Commission, is potentially unconstitutional, and includes an overly broad definition of "third party beneficiary." The Highway District argues that Section 10 is "an illegal usurpation of the highway districts'

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[2] Although notified of the meeting, no representatives for Kroger or the Building Contractors Association were in attendance.

[3] On February 27, 2009, BCA filed a motion to extend the comment period based on the complexity and nature of the issues involved. The Commission granted BCA's request on March 11, 2009. The suspension of the proposed changes to Rule H was extended until July 1, 2009, commensurate with the comment extension deadlines. Order No. 30746.

exclusive general supervision and jurisdiction over all highways and public rights-of-way because it purports to regulate and control electric utility relocations by assigning financial liability for such relocations." Highway District Comments at 1 (emphasis in original). The Highway District requests that the Commission strike anything in Idaho Power's proposed Rule H tariff that attempts to regulate in any manner the relocation of utilities in the public rights-of-way.

2. Idaho Irrigation Pumpers Association. Idaho Irrigation Pumpers Association, Inc. (IIPA) filed comments which generally supported Idaho Power's Application. However, IIPA maintains that Idaho Power's "standard terminal facility" concept does little to spread the cost of growth to those causing such costs because it fails to ensure that the most expensive customers pay additional costs for their new service. IIPA Comments at 2-3. IIPA asserts that larger customers should not be penalized for simply being larger, especially considering economies of scale that allow Idaho Power to serve its larger customers at less cost than its smaller customers. In addition, IIPA points out that the proposed Rule H changes do not address the incremental costs of growth as it applies to associated transmission and generation costs.

3. Commission Staff. Staff agrees in principle with Idaho Power's rationale that growth should pay for itself and that new customer growth, combined with the effects of inflation, does indeed cause upward pressure on rates. However, Staff expressed concern that Idaho Power had not provided any analysis to determine specifically what amounts of allowances and refunds would alleviate upward pressure on rates. Staff supported line extension rules that provide a new customer installation credit or allowance that can be supported by electric rates paid by the new customer over time.

> If the line extension costs exceed that allowance, then the new customer would pay an up-front contribution for the difference rather than including the excess costs in electric rates paid by all customers. In order to properly establish an allowance, a refund and the potential for additional customer contribution, a detailed analysis of distribution investment embedded in existing electric rates must be conducted.

Staff Comments at 3-4.[4]

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[4] Staff's proposed allowances are based on the cost to provide customers with overhead service. Staff recommended that underground service for residential and small commercial customers be provided at no additional charge if the customer supplies the trench, conduit, backfill and compaction. Otherwise, Staff recommended that customers requesting underground service be required to pay the difference between the costs of providing underground service versus overhead service.

Staff next reviewed the cost allocation formula for current rates. Staff believes Rule H overhead costs are embedded in current electric rates to the extent they exceed the 1.5% limitation. Staff asserts that including the entire overhead rate in Rule H work orders would result in Idaho Power collecting the difference of 13.5 percent in both work orders and in current electricity rates. Staff maintains that this is a timing problem that can be resolved in the next general rate case. The case would set rates based on costs which do not include that portion of construction overhead belonging to Rule H work orders. The overhead rate for Rule H could include the 15%, effective on the same day as the new rates. This would shift costs from general rates to those requesting Rule H line extensions.

Staff does not support reducing the time period for receiving Vested Interest Refunds from five years to four years. Idaho Power reasoned that not enough refund requests are made in the fifth year to justify the administrative burden. Staff argues that more refunds will be made in the fifth year now that building activity has slowed and subdivisions are slower to fill. Staff does not object to Idaho Power's proposal that developers be eligible for Vested Interest Refunds inside subdivisions for additional line installations that were not part of the initial line installation.

Staff recommended that transformer costs inside subdivisions be refunded to the subdivider/developer as new homes connect for permanent service. Staff stated that making transformer costs subject to refund as individual lots are developed ensures that all residential customers receive equal allowances, but relieves the Company of the risk of bearing the cost of transformers should lots not be developed.

Staff agrees with Idaho Power's efforts to clarify existing Rule H language by addressing third party requests that affect utility facilities in public rights-of-way. Staff opined that cost shifting from developers to Idaho Power customers should be prevented whenever possible.

Idaho Power proposes to update several charges in Rule H including engineering charges, underground service attachment charges, overhead and underground temporary service attachment charges, and overhead and underground temporary service return trip charges. Staff reviewed the proposed updated charges and believes they are reasonable based on changes in labor rates, different installation procedures and changes in calculation methodology.

Finally, Staff supports Idaho Power's proposed definition, general provision and formatting changes. Staff, however, recommended the following revision to the Company's definition of "unusual conditions" in order to clarify the Company's current policy:

> Unusual Conditions are construction conditions not normally encountered, but which *the Company may encounter during construction which impose additional, project-specific costs*. These conditions may include, but are not limited to: frost, landscape replacement, road compaction, pavement replacement, chip-sealing, rock digging/trenching, boring, non-standard facilities or construction practices, and other than available voltage requirements. *Costs associated with unusual conditions are separately stated and are subject to refund.*

Staff Comments at 13-14. Staff further recommended that Idaho Power include a provision in its Unusual Conditions Charge, Subsection 6.h, declaring that, should anticipated unusual conditions not be encountered, the Company will issue the appropriate refund within 30 days of completion of the project.

4. City of Nampa and Association of Canyon County Highway Districts. The City of Nampa (Nampa, "intervenors" collectively) and Association of Canyon County Highway Districts (ACCHD, "intervenors" collectively) asserted the same concerns regarding Idaho Power's Application. Nampa and ACCHD argue that the Commission lacks jurisdiction to authorize Idaho Power's proposed Section 10 of its Rule H Tariff. The intervenors contend that municipalities have *exclusive* authority to determine whether relocation of utility facilities is necessary.

The intervenors maintain that Idaho Power's proposed Section 10 language places the Commission in the position of determining whether a project requiring utility relocation conveys a general public benefit, a third party benefit, or a shared benefit. In addition, Nampa and ACCHD argue that the definition of "third party beneficiary" is problematic and potentially overly broad. The intervenors suggest that the proposed definition be amended by deleting any reference to public entities or political subdivisions. Nampa and ACCHD further assert that including local improvement districts within the definition of third party beneficiary contravenes the exclusive authority of the municipality to require relocation of utilities to avoid incommoding the public use.

Nampa and ACCHD ultimately request that the Commission delete the entirety of Section 10 and any other parts of the proposed Rule H that attempt to regulate the relocation of utilities on municipal land.

5. Building Contractors Association. The Building Contractors Association (BCA) asserts that Idaho Power's approach in this Application is inconsistent with existing Commission policy established by Idaho Power's last Rule H tariff revision in 1995. According to BCA, the Commission at that time held that new customers were entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class, and that it was appropriate that some portion of the cost of new distribution be recovered through rates. BCA also argues that Idaho Power's current position is inconsistent with the Commission's policy that rates should send a stronger price signal to customers encouraging the efficient use of energy. Case No. IPC-E-08-10.

BCA alleges that inflation, not growth, is the actual source of increased costs to extend new distribution plant. BCA further asserts that Idaho Power's proposal would shield its existing customers from paying for the actual value of the service that they receive. According to BCA, the requested modifications are likely to stimulate/increase electricity demand because of the incorrect market signal that a subsidy would send.

BCA maintains that to shift the cost of providing service from Idaho Power and/or one class of customers to another will have adverse and unintended consequences to all homeowners that could exceed whatever arguable benefit they might receive from paying electric rates set below the cost of service. BCA urges the Commission to deny Idaho Power's Application, increase the terminal facilities allowances under its current tariff, provide for periodic true-ups of these allowances, and increase the vested interest period from five years to ten years.

6. Idaho Power's Response. Idaho Power insists that, by providing allowances equal to the "standard" and most common services installed, the Company can help ensure that the additional costs associated with larger "non-standard" services are recovered from those customers requesting the services rather than spreading those additional costs to all ratepayers. The Company emphasizes that the quantification of standard terminal facilities costs would be updated annually.

Idaho Power expressed concern that Staff's recommendation for allowances might cause allowances to be inflated by lack of equipment sizing equivalents. Also, the Company pointed out that Staff did not address allowances for Schedule 1, Non-Residential and Multiple Occupancy. The Company opposes what it interprets as a recommendation by BCA that all terminal facilities (overhead and underground) be provided and included in rate base.

Idaho Power disagrees with Staff's assertion that adjusting general overheads in the Company's current Application would amount to double counting. Idaho Power explains that because overhead costs do not become additions to electric plant in service until the work order they have been applied to is completed, any future overhead costs would not be included in electric plant in service, and therefore in rates, until the next general rate case.

Although Idaho Power's initial Application requested reducing the vested interest period from five years to four years, the Company does not oppose Staff's recommendation to retain a five-year vested interest period. The Company does, however, oppose BCA's recommendation to extend the vested interest period to ten years.

Idaho Power stands by its proposal to discontinue subdivision lot refunds in an effort to shift a greater portion of the cost for facilities installed inside subdivisions from the general rate base to those customers requesting new facilities. However, the Company is not opposed to Staff's recommendation that transformer costs inside subdivisions be refunded to the subdivider/developer as new homes connect for permanent service.

Idaho Power points out that BCA's method for developing its lot refund recommendation is flawed because the calculation erroneously includes the cost of distribution substations, terminal facilities and meters. Idaho Power also disputes BCA's assertion that updated Rule H charges and credits will have a direct impact on housing prices. The Company argues that the market sets housing prices – not home builders, suppliers, utilities or developers – and that builders and developers have the opportunity to adjust their construction practices to meet current demand.

Idaho Power states that its Rule H and predecessor rules have, for at least 30 years, required that parties who request the relocation of Company utility facilities be obligated to pay for the costs of the relocations. Idaho Power asserts that Ada County Highway District and intervenors City of Nampa and ACCHD misunderstand: (1) what the Company is requesting; (2) the scope of the Commission's authority to regulate utility rates and operations; and (3) how the

Commission's jurisdiction encompasses the allocation of costs arising out of relocation of utility facilities, including relocation in public road rights-of-way.

Idaho Power agrees that the aforementioned agencies have sole and complete jurisdiction to determine when relocation is required to avoid incommoding the public. However, Idaho Power contends that, in regard to allocating the costs of utility facility relocations to determine utility rates and charges, the Commission has exclusive jurisdiction. Idaho Power asserts that its proposed Section 10 of Rule H allows the Commission to exercise its jurisdiction concurrently with the other agencies in a way that does not contravene the important roles that the agencies play in constructing, operating, and maintaining the streets and highways within their jurisdictions. The Company agrees to clarify the definition of "local improvement district" within Section 10 of its proposed Rule H changes.

Finally, Idaho Power does not oppose Staff's recommendation to modify the definition of "unusual conditions," but suggests that the final sentence read, "Costs associated with unusual conditions are separately stated and are subject to refund if not encountered." The Company further proposed that if unusual conditions are not encountered, the Company issue the appropriate refund within 90 days of completion of the project due to contract constraints with subcontractors that would make a 30-day refund unworkable.

7. BCA's Response. BCA filed response comments disputing Staff's analysis and recommendations regarding its position on investment in distribution facilities. BCA maintains that Staff's analysis essentially concurs with BCA's position that the increased costs of distribution facilities are attributable to inflation, yet Staff supports a line extension tariff that disproportionately allocates the additional cost of facilities to new customers simply because they are new customers. BCA argues that Staff's position is inherently discriminatory and inconsistent with longstanding Commission policy.

DISCUSSION AND FINDINGS

Idaho Power is a public utility pursuant to *Idaho Code* §§ 61-119 and 61-129. The Commission has jurisdiction over this matter pursuant to Title 61 of the Idaho Code. Idaho Power last filed for major changes to its Rule H tariff in 1995. The Commission appreciates the considerable efforts expended by the intervenors and commenters to this case.

1. Allowances. The capital cost of installing new generation and transmission plant has always generally been recovered through rates paid by all customers. Indeed, fees cannot be

charged for new plant that cannot be attributed specifically to serving new customers.[5] However, in the case of distribution plant it is possible to associate specific facilities with specific customers who use them. As a result, the costs of new distribution plant have, throughout most of Idaho Power's history, been recovered in two ways – partially through up-front capital contributions from new customers, and partially through electric rates charged to all customers. The portion collected through electric rates represents the investment in new facilities made by Idaho Power. It is often referred to as an installation or construction "allowance."

Idaho Power, Staff and the BCA hold differing views as to what is causing the upward pressure on rates and whether the increasing costs should be borne by all customers through a rate increase or by new customers through higher line extension charges. The Commission recognizes that multiple forces put upward pressure on utility rates. In this case, we are addressing one of them.

The Commission finds that Idaho Power's proposed fixed allowances of $1,780 for single-phase service and $3,803 for three-phase service represent a fair, just and reasonable allocation of line extension costs. These allowances are larger than existing allowances. Therefore, the Commission approves allowances for overhead and underground line installations and overhead service attachments as follows:

Class of Service	Maximum Allowance per Service
Residential:	
Schedules 1, 4, 5	$1,780
Non-residence	Cost of new meter only
Non-residential:	
Schedules 7, 9, 24	
Single-Phase	$1,780
Three-Phase	$3,803
Large Power Service	
Schedule 19	Case-by-case

Developers of subdivisions and multiple occupancy projects will receive a $1,780 allowance for each single-phase transformer installed within a development and a $3,803 allowance for each three-phase transformer installed within a development.

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[5] *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984); *Building Contractors Association v. IPUC and Boise Water Corp.*, 128 Idaho 534, 916 P.2d 1259 (1996).

By updating line installation charges and increasing the allowances, the appropriate amount of contribution will be provided by new customers requesting these services. These changes relieve one area of upward pressure on rates. Moreover, the Company's proposal is impartial to customer class, minimizes subsidization of terminal facilities costs, and carries the added benefit of administrative simplicity. Idaho Power shall make an annual filing, no later than January 1 of each year, updating allowance amounts for single- and three-phase service to reflect current costs for "standard" terminal facilities.

2. General Overheads. The Commission finds that customers requesting Rule H line extensions should bear the overhead costs of those extensions. However, we find that the appropriate calculations and adjustments are best made during the Company's next general rate case to ensure that rates are set based on costs that do not include that portion of construction overhead belonging to Rule H work orders. Until then, we find that continuing the general overhead rate of 1.5% is fair, just and reasonable.

3. Vested Interest Refund Period. Idaho Power proposes to reduce the time limitation to receive Vested Interest Refunds from five to four years to reduce the administrative burden that accompanies such refunds. The Company noted that less than 2% of customers eligible for Vested Interest Refunds receive them in the fifth year.

If few refunds are actually requested in the fifth year, then the administrative burden should not be that great. In addition, as stated by Staff in its comments, it is reasonable to assume that more refunds may be made in the fifth year now that building activity has slowed from the rapid pace of the past several years and subdivisions are slower to fill. BCA's request to extend the refund period to ten years is not supported by documentation or cogent argument. Therefore, the Commission finds that maintaining a five-year timeframe for Vested Interest Refunds is fair, just and reasonable. In addition, and as requested by Idaho Power, we find it reasonable to include subdividers as eligible for Vested Interest Refunds for additional line installations inside subdivisions that were not part of the initial line installation.

4. Lot Refunds. Idaho Power seeks to discontinue subdivision lot refunds in an effort to reduce the growth of rate base that results from the refunds. Based on its calculations, BCA argues that lot refunds should be increased from $800 to $1,000 per lot.

Under the Rule H approved in 1995, lot refunds reimbursed a portion of the line extension costs that developers were required to advance to Idaho Power prior to construction.

The refunds were given as customers began taking permanent service. Developer line extension costs inside subdivisions do not include costs of distribution substations, drop wires or meters.

The BCA proposal to increase lot refunds to $1,000 rests on incorrect calculations that include costs that are not part of developer line extension costs. Therefore, the Commission rejects that proposal. The Commission finds that the overall distribution allowance provided to developers, whether in the form of a subsequent refund or an upfront reduction in developer contribution (*i.e.*, allowance), is properly based on the amount of distribution investment that can be supported by new customer rates. The Company has reasonably calculated that amount in its upfront, per lot distribution allowance. Any additional distribution cost refund to the developer would exceed the distribution investment that new customer rates could support. Therefore, the Commission finds it fair, just and reasonable to accept the Company's per lot distribution allowance and eliminate lot refunds.

BCA further argues that eliminating the lot refund will have a direct impact on housing prices, thereby pricing potential homeowners out of the market. The Commission is aware that this change in Rule H may impact the cost of a home. However, given the number of costs for building a new home and the relative size of this potential impact, we cannot draw any conclusions as to the significance of any impact on the ultimate price.

5. Section 10 - Highway Relocations. Generally, parties requesting the relocation of utility facilities are obligated to pay for the costs of the relocation. However, the State and its political subdivisions can require the relocation of utility facilities located within the public right-of-way pursuant to their police power. Utilities may use public rights-of-way so long as their facilities do not incommode the public use of such roads, highways, and streets. *Idaho Code* § 62-701; *State v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

Ada County Highway District, the City of Nampa, and the ACCHD argue that Idaho Power's proposed Section 10 of its Rule H revisions is an improper usurpation of the aforementioned agencies' authority and beyond the jurisdiction of this Commission. We find that Section 10 does not explicitly or implicitly usurp the public road agencies' authority to manage and control their rights-of-way.

Section 10 does not impede a public road agency's right to require Idaho Power to relocate facilities in the public right-of-way, at no cost to the public road agency, where the facilities incommode the public use. Section 10 simply creates a mechanism for determining

who is responsible for the costs of the relocation. Contrary to the arguments of the aforementioned agencies, the Idaho Constitution and existing case law are not violated because Section 10 in no way grants Idaho Power or this Commission authority to impose such costs on a public road agency. Section 10 addresses whether Idaho Power customers or a third party should pay for the relocation of utility facilities.[6] Just as the Commission cannot compel the highway agency to pay for the relocation of utility facilities in the public right-of-way made at the agency's request, the agency cannot restrict the Commission from establishing reasonable charges for utility services and practices. *Idaho Code* §§ 61-502 and -503.

Idaho Power proposed Section 10 of its Rule H tariff to address the situation that arises when highway improvements and the concurrent requirement to relocate utility facilities is caused by development adjacent to streets and highways. We find that the Section 10 provisions will properly allocate the utility costs of relocation so that Idaho Power customers pay only the appropriate amount of the cost. We further find it persuasive that when a public road agency obtains contributions from a third party toward the cost of a highway improvement project it is a reasonable and appropriate indication of cost responsibility for ratemaking purposes. Moreover, utilizing the public road agency's formula for the allocation of costs maintains consistency between agencies.

Therefore, we find the creation and inclusion of Section 10 to be fair, just and reasonable. As agreed to in its reply comments, we direct Idaho Power to clarify its use of the phrase "local improvement district" as it is used in Section 10.

6. Miscellaneous Costs. We find the proposed updates to Idaho Power's miscellaneous costs such as engineering charges; underground service attachment charges; overhead and underground temporary service attachment charges; and underground temporary service return trip charges are fair, just and reasonable. These updates are based on changes in labor rates, different installation procedures, and changes in calculation methodology.

7. Formatting and Definitions. We find Idaho Power's proposed changes to its definitions, general provisions and formatting of Rule H to be reasonable. We direct Idaho Power to modify its proposed definition of "unusual conditions" to include not only the recommendation of Staff but also the clarification of "if not encountered" provided by the

[6] We understand that some highway projects include funding to defray the costs of relocating utility facilities.

Company in its reply comments. We further direct the Company to include language addressing a 90-day refund period if unusual conditions are not encountered.

ORDER

IT IS HEREBY ORDERED that Idaho Power's Application for authority to modify its Rule H tariff related to new service attachments and distribution line installations and alterations is approved with modifications as enumerated above.

IT IS FURTHER ORDERED that Idaho Power shall file revised tariffs consistent with the Order.

IT IS FURTHER ORDERED that Idaho Power shall submit to the Commission, no later than January 1 of each year, updated allowance amounts for single- and three-phase service to reflect current costs for "standard" terminal facilities.

IT IS FURTHER ORDERED that the charges and credits authorized by this Order shall become effective for services rendered on or after November 1, 2009.

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 1st day of July 2009.

JIM D. KEMPTON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

MACK A REDFORD, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

O:IPC-E-08-22_ks4

Michael C. Creamer, ISB #4030
Conley E. Ward, ISB # 1683
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10495-1/610333_2.DOC

Attorneys for Intervenors The Building Contractors Association of Southwestern Idaho

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IDAHO PUBLIC UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS	**CASE NO. IPC-E-08-22** **BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO'S REQUEST FOR CONSIDERATION AND GRANTING OF LATE-FILED REQUEST FOR INTERVENOR FUNDING**

The Building Contractors Association of Southwestern Idaho ("Building Contractors"), by and through its attorneys of record, Givens Pursley LLP, and pursuant to Idaho Code 61-617A and IDAPA 31.01.01.161 - 165, respectfully makes application to the Idaho Public Utilities Commission ("Commission") for intervenor funding in the above-captioned matter. This application is late-filed. For the reasons set forth below, however, Building Contractors request that the Commission exercise its discretion to waive the Commission Rule 164 filing deadline, accept this request as timely filed, and grant Building Contractors' request for intervenor funding.

GROUNDS FOR LATE-FILING

The reason for the Building Contractor's late-filing of this application is the inadvertent and unintentional oversight by its legal counsel with respect to the correct timing for submission of requests for intervenor funding. Counsel for Building Contractors was under the misapprehension that such applications would be filed after issuance of the Commission's decision on the merits. This would have been consistent with counsel's experience in civil litigation and the assumption that the materiality of Building Contractors' contribution to the decision rendered by the Commission would best be discerned by review of the decision itself.

Counsel was mistaken. Commission Rule 164 requires filing of a request for intervenor funding no later than fourteen days after the last evidentiary hearing or deadline for submitting briefs, proposed orders or statements of position. Although this matter was under modified procedures and intervenors submitted comments as opposed to briefs, orders or statements of position, a strict reading of the rule would make the deadline for submitting this request May 15, 2009, which was fourteen days after the May 1 deadline for filing of reply comments.

Building Contractors submit that whether to accept its late-filed intervenor funding request is a matter of the Commission's discretion. Idaho Code § 61-617A does not impose a jurisdictional deadline that would constrain the Commission's consideration of the Building Contractors' request, and the Idaho Supreme Court has deemed the consideration of intervenor funding requests as a matter for the Commission's discretion. *See Idaho Fair Share v. Idaho Public Utilities Commission*, 113 Idaho 959, 751 P.2d 107 (1988). As discussed below, the Building Contractors satisfy the criteria in I.C. § 61-617A and Commission Rule 165 for an award of intervenor funding. Building Contactors submit that neither Idaho Power Company ("Idaho Power" or the "Company") nor its ratepayers would be prejudiced by consideration and

granting of this request, and that equity warrants the same, given that this late-filing was unintentional.

REQUEST FOR INTERVENOR FUNDING

1. A summary and itemized statements of the Building Contractors' legal and consultant expenses for which it seeks recovery is attached as Exhibit A.

2. The Building Contractors' Developer's Council Subcommittee and staff were actively involved with legal counsel and Dr. Richard Slaughter in evaluating Idaho Power's proposed changes to its line extension tariff, and the economic impacts those changes would have on both the Building Contractors' members and the public in southwest Idaho. Although this case involved only one set of tariffs, the factual and policy issues raised were complex and important. Dr. Slaughter was retained as the Building Contractors' consultant due to his familiarity with Idaho Power's rate structure generally and its line extension tariff specifically, having testified before the Commission in Case No. IPC-E-95-18. This helped to reduce the time and expense required to establish a foundation of understanding of the Rule H tariff, to analyze the proposed amendments and to generate reasoned comments for the Commission's consideration.

Dr. Slaughter presented reasonable and factually supported arguments on the Building Contractors' behalf as to why the proposed reallocation of costs for new distribution was inconsistent with policies that promote more efficient use of energy and would have significant adverse effects on the commercial and residential construction and real estate markets. Beyond merely criticizing the proposed tariff, Dr. Slaughter offered reasonable alternatives for the Commission's consideration. Dr. Slaughter challenged the Staff's calculations of Idaho Power's proposed investment in distribution facilities. He argued that the proposed investment to serve

new residential customers—approved by Staff—falls far short of the Company's investment to serve existing residential customers for all but the smallest developments. Dr. Slaughter also distinguished the difference between inflation and growth as they affect Company costs.

The Building Contractors' comments and testimony emphasized an issue of public policy affecting the general body of electric consumers—namely the extent to which growth does or ought to pay for itself through electric rates. Building Contractors urged the Commission to look beyond the phrase "growth should pay for itself," to inquire into the real causes of increased costs, and to critically evaluate the extent to which new customers are being asked to pay more than existing customers, and whether such a policy encourages existing customers to consume more energy rather than conserve it. No other party, including Staff, addressed these issues squarely.

In the end, the Commission did not agree with the Building Contractors' position. Its July 1st decision by and large accepts Idaho Power's proposed tariff, as modified by Staff's recommendations. But neither the Commission's Rule nor the statute require the Commission to agree with an intervenor in order to award them funding. The intervenor funding statute is intended to encourage participation in proceedings so that affected customers receive fair representation before the Commission. Idaho Code § 61-617A. A "prevailing party" standard does not apply. Here, where the Building Contractors, through its comments and Dr. Slaughter's testimony, provided reasoned analysis for the alternatives it offered, and that analysis was different from the Staff's, it must be assumed that Building Contractors contributed materially to this case and to the Commission's decision.

3. The Building Contractors' expenses and costs incurred in this case, as summarized in Exhibit A, total $28,386.35.[1] This includes $16,567.50 for legal fees (71.6 hours), $11,462.50 for consultant fees (65.3 hours) and $356.35 in copy charges. These expenses were reasonable and necessary. They include expenses incurred to retrieve and review Commission files for the Company's last Rule H tariff revision case that had been moved to the State Archives. They also include time and expense reviewing comments, testimony and documents submitted by other parties and the drafting of Building Contractors' own testimony and comments. This time and effort permitted the Building Contractors to meaningfully participate in these proceedings.

4. Building Contactors is a non-profit association that relies on voluntary membership and voluntary contributions to fund its operations and promote the interests of its member builders, contractors and developers. All of the Building Contractors' operations expenses, including building, employees, member mailings and participation in legal or administrative proceedings such as this case, are paid from these voluntary contributions.

The costs and expenses summarized in Exhibit A have been a significant financial burden for Building Contractors. Currently, voluntary contributions have dropped significantly due to the struggling economy generally and the depressed local real estate sector specifically. Because of the reductions in Building Contractors' income, it recently has had to impose significant budget cuts and mandatory days off for its staff. Building Contractors continues to solicit member contributions to cover its general operating costs and the costs of its intervention in this proceeding.

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[1] Building Contractors recognizes that Idaho Code § 61-617A limits the amount awardable as intervenor funding to $25,000.

The Commission previously recognized Building Contractors as eligible for intervenor funding in Case No. IPC-E-95-18 (involving a Rule H Tariff amendment), where the Building Contractors incurred $14,250.00 in legal fees and $12,207.50 in consultant fees. There the Commission authorized intervenor funding in the maximum statutory amount of $25,000 payable from rates charged to the class that it deemed was primarily benefitted—namely, lots within subdivisions that require line extensions. Building Contractors submits that its appearance in this case was for the benefit of owners of lots within commercial and residential subdivisions requiring line extensions.

CONCLUSION

This request for intervenor funding is late-filed given a strict application of Commission Rule 164, which requires such applications to be filed within fourteen days of the filing of the last brief (or, in this case, comments). It has, however, been filed within fourteen days of the Commission's issuance of its Order in this case and at the earliest opportunity after counsel's discovery of the actual deadline. The costs that Building Contractors have incurred are reasonable given its substantial level of effort and participation in these proceedings. These costs were incurred to advance policies that benefit Building Contractors' members and the public at large. Building Contractors have materially contributed to the decision in this case and to the public debate about issues of population growth and energy costs.

Participation in this case has been, and continues to be, a financial hardship for Building Contractors. Building Contractors and its legal counsel request that the inadvertence of misapprehending the filing deadline should not result in further financial hardship, and they respectfully request that the Commission exercise its broad discretion to accept and grant this request for intervenor funding, to be paid from the class of customers primarily affected and

benefitted—namely, lots within subdivisions that require line extensions. Inasmuch as Idaho Code § 61-617A allows this cost to be a business expense in the Company's next rate case, Building Contractors respectfully submits that granting this request is not prejudicial to the Company.

DATED this 13th day of July, 2009.

GIVENS PURSLEY, LLP

By: _____
Michael C. Creamer
Attorneys for Intervenor The Building Contractors Association of Southwestern Idaho

EXHIBIT A
SUMMARY OF EXPENSES INCURRED BY
BUILDING CONTRACTORS ASSOCATION OF SOUTHWESTERN IDAHO
IN CASE NO. IPC-E-08-22

		Hours	
1	Legal Fees		
	Michael C. Creamer (Partner)	60.7	$ 15,175.00
	Elizabeth M. Donick (Associate)	5.5	$ 852.50
	Tami Kruger (Paralegal)	5.4	$ 540.00
	Subtotals	71.6	$ 16,567.50
	Costs:		
	Copies		$ 356.35
	Total Work and Costs		$ 16,923.85
2	Consultant Richard Slaughter	65.3	$11,462.50

TOTAL FEES AND EXPENSES: **$ 28,386.35**

Building Contractors Association of Southwestern Idaho
Line Extension Tariff (10495 / 1)

Date	ID	Type	Hours	Amount	Description
2/9/2009	MCC	Fee	0.50	125.00	Meeting with J. Risch and J. Kunz.
2/10/2009	MCC	Fee	2.30	575.00	Review IPUC pleadings; research prior tariff proceedings and testimony; review and edit notice of substitution of counsel.
2/11/2009	MCC	Fee	4.40	1,100.00	Continued review of IPUC orders on prior IPCo tariff revisions; review staff and party testimony in prior proceedings; forward documents to J. Kunz; coordinate obtaining old files on line extensions from state archives; file notice of substitution of counsel.
2/11/2009	TLK	Fee	3.80	380.00	Conference with M. Creamer regarding files; travel to/from Idaho State Historical Society; review files; obtain copies of same; conference with M. Creamer; call to R. House (archivist).
2/12/2009	MCC	Fee	4.00	1,000.00	Review IPUC documents; prepare for and attend meeting with clients.
2/12/2009	TLK	Fee	1.60	160.00	Travel to/from Idaho Historical Society to review documents.
2/13/2009	MCC	Fee	0.70	175.00	Review and forward IPCo supplemental discovery responses; telephone call to Kroger counsel; telephone call to C. Ward.
2/17/2009	MCC	Fee	0.40	100.00	Initial review of discovery responses from IPCo/IPUC; correspondence with J. Kunz re same.
2/18/2009	MCC	Fee	1.50	375.00	Telephone conference with K. Sasser; telephone conference with C. Ward; telephone conference with J. Kunz; telephone conference with R. Slaughter; forward documents; telephone conference with R. Slaughter.
2/19/2009	MCC	Fee	2.40	600.00	Prepare for meeting and meet with R. Slaughter to outline issues/analysis to respond to IPCo tariff filing.
2/23/2009	MCC	Fee	0.30	75.00	Review IPUC/IPCo documents/discovery responses.
2/24/2009	MCC	Fee	0.80	200.00	Review economic reports; correspond with R. Slaughter; correspond with J. Kunz.
2/25/2009	MCC	Fee	1.10	275.00	Telephone conference with R. Slaughter; coordinate preparation of requests for production; further review of NAHB economic reports; review status of pending legislation.
2/27/2009	MCC	Fee	3.60	900.00	Telephone conference with R. Slaughter; draft requests for production; telephone conference with L. Nordstrom, attorney for IPCo; telephone conference with K. Sasser at IPUC; telephone conference with Intervenor counsel; draft and file request for extension of time.
3/5/2009	MCC	Fee	0.40	100.00	Review IPUC website; office conference re large ag pumper position on line extension tariff.
3/10/2009	MCC	Fee	0.50	125.00	Review ACHD comments; review staff decision memo; telephone conference with K. Sasser; draft correspondence to J. Kunz and R. Slaughter re: extension of comment period.
3/20/2009	MCC	Fee	0.50	125.00	Review and forward Idaho Power Company's response to Building Contractors Association's Request for Production of Documents.
3/31/2009	LMD	Fee	1.10	170.50	Research Idaho Power case regarding August 25th fires.
3/31/2009	MCC	Fee	0.40	100.00	Correspondence with R. Slaughter; coordinate research re: Idaho Power Company--Oregon Trail Fire.
4/2/2009	LMD	Fee	1.30	201.50	Continue researching Idaho Power case regarding August 25th fire.
4/2/2009	MCC	Fee	3.80	950.00	Telephone conference with R. Slaughter; review pleadings and discovery response.
4/3/2009	LMD	Fee	0.60	93.00	Meet with M. Creamer to discuss research results; continue researching Idaho Power case regarding August 25th fires.
4/3/2009	MCC	Fee	2.80	700.00	Meeting with R. Slaughter; review IPUC orders.
4/3/2009	MCC	Fee	2.60	0.00	Meeting with R. Slaughter to outline comments.
4/6/2009	LMD	Fee	2.50	387.50	Review tort claims files at the courthouse for claims regarding Idaho Power and August 25th fire; meet with M. Creamer to discuss; draft research summary.
4/6/2009	MCC	Fee	0.20	50.00	Telephone conference with R. Slaughter.
4/10/2009	MCC	Fee	1.10	275.00	Review and edit R. Slaughter testimony telephone conference with R. Slaughter; forward housing price-out information to R. Slaughter.
4/11/2009	MCC	Fee	6.00	1,500.00	Review and edit draft testimony.
4/13/2009	MCC	Fee	3.90	975.00	Telephone conference with R. Slaughter; review revised testimony; meeting with R. Slaughter; telephone conference with C. Ward; further review of Slaughter testimony.
4/14/2009	MCC	Fee	0.40	100.00	Review pleadings.
4/16/2009	MCC	Fee	2.70	675.00	Review and forward draft testimony; coordinate finalizing same.
4/17/2009	MCC	Fee	6.80	1,700.00	Review and finalize Slaughter testimony; draft comments supporting/transmitting same; review highway districts' comments.

4/20/2009	MCC	Fee	0.50	125.00	Review and forward IIPA and Highway Districts' comments; review IPUC docket sheet.
4/21/2009	MCC	Fee	0.80	200.00	Review IPUC staff comments; telephone call to R. Slaughter.
4/26/2009	MCC	Fee	0.40	100.00	Telephone conference with R. Slaughter.
4/27/2009	MCC	Fee	0.40	100.00	Review and respond to correspondence re response to staff comments.
4/29/2009	MCC	Fee	0.90	225.00	Review and forward draft comments; telephone conference with R. Slaughter; begin drafting response.
4/30/2009	MCC	Fee	3.90	975.00	Review and edit draft comments; forward to C. Ward and R. Slaughter; telephone conference with R. Slaughter.
5/1/2009	MCC	Fee	0.80	200.00	Review IPCo reply comments and forward to client and to R. Slaughter.
5/11/2009	MCC	Fee	0.30	75.00	Review and respond to correspondence from J. Kunz; telephone call to K. Sasser at IPUC (twice).
5/19/2009	MCC	Fee	0.30	75.00	Telephone conference with R. Slaughter.
5/20/2009	MCC	Fee	0.40	100.00	Review R. Slaughter correspondence.
7/2/2009	MCC	Fee	0.50	125.00	Review order.
Total of Fees:				**$ 16,567.50**	

Date	ID	Type	Quantity	Amount	Code
2/11/2009	ch1	Cost	56	$8.40	Photocopies
2/11/2009	MCC	Cost	1	$10.00	Messenger Service [PUC]
2/11/2009	TLK	Cost	1	$33.00	Copy Expense [Idaho Historical Society Copies]
2/12/2009	MCC	Cost	1	$10.00	Messenger Service [PUC]
2/12/2009	TLK	Cost	1	$40.80	Copy Expense [Idaho Historical Society Copies]
2/13/2009	MCC	Cost	1	$0.15	Long Distance
2/19/2009	ch1	Cost	68	$10.20	Photocopies
2/27/2009	bt1	Cost	55	$8.25	Photocopies
2/27/2009	MCC	Cost	1	$0.22	Long Distance
2/27/2009	MCC	Cost	1	$10.00	Messenger Service [Messenger Service PCU]
3/4/2009	ch1	Cost	3	$0.45	Photocopies
3/20/2009	ch1	Cost	44	$6.60	Photocopies
4/17/2009	ch1	Cost	462	$69.30	Photocopies
4/17/2009	ch1	Cost	90	$13.50	Photocopies
4/17/2009	ch1	Cost	462	$69.30	Photocopies
4/17/2009	ch1	Cost	90	$13.50	Photocopies
4/17/2009	MCC	Cost	1	$10.00	Messenger Service [PUC]
4/21/2009	ch1	Cost	38	$5.70	Photocopies
4/30/2009	CASSIE	Cost	1	$25.00	Copy Expense [Clerk of the Court - Copies]
5/1/2009	MCC	Cost	1	$10.00	Messenger Service [Jean Jewell - PUC]
5/1/2009	TINA	Cost	135	$20.25	Photocopies
7/2/2009	ch1	Cost	14	$2.10	Photocopies
Total Cost:				**$406.72**	

RSA, Inc.

Richard Slaughter Associates
907 Harrison Blvd
Boise, Idaho 83702

208 854-1223
Fax 208 345-9633
email: richard@rsaboise.com
EIN: 82-0464626

Invoice

Mr. Joe Kunz
BCASWI
6206 N Discovery Way, Suite A
Boise, ID 83713

May 20, 2009

Time billed at $175 per hour

Date	Item	Time	Fee
IPC-E-08-22 (Rule H)			
2/16/2009	Review filings and prior testimony	2:00	350.00
2/17/2009	Review IPCo proposal	1:12	210.00
2/17/2009	Meeting with BCASWI	1:15	218.75
2/18/2009	Company testimony	4:18	752.50
2/19/2009	Prepare for meeting M. Creamer/ meeting	2:48	490.00
2/19/2009	T. Jones, data on Dist. costs; R. Sterling	1:12	210.00
2/19/2009	IPCo workpapers	0:42	122.50
2/20/2009	Production requests	1:06	192.50
2/20/2009	Indexation of contribution to rate base	1:00	175.00
2/21/2009	Staff production requests	1:00	175.00
2/23/2009	Data for refund indexation; preliminary scoping of argument	2:00	350.00
2/25/2009	Meeting with Rick Sterling; plan production request	1:36	280.00
2/26/2009	Production request	1:24	245.00
2/27/2009	Conf. on production request, M. Creamer; edit request	0:48	140.00
2/27/2009	Info request, Joe Kunz	0:06	17.50
3/10/2009	ACHD Comments	0:18	52.50
3/11/2009	Line extension contracts	0:42	122.50
3/12/2009	Line extension contracts	0:48	140.00
3/17/2009	Draft comments	0:32	93.33
3/20/2009	IPCO Prod. Request response - staff	0:24	70.00
3/23/2009	IPCO Prod. request response - IBC	0:36	105.00
3/23/2009	Digitize IPCo spreadsheet	0:30	87.50
3/27/2009	Comments draft	0:42	122.50
3/30/2009	IPCo cost data	2:42	472.50
3/31/2009	Cost allocation IPC-E-08-10	1:54	332.50
3/31/2009	Consult on IPC-E-08-10; D. Reading	1:30	262.50
4/1/2009	Write comments	1:00	175.00
4/2/2009	Inflation section	0:18	52.50
4/3/2009	Conference w/ M. Creaemer	2:57	516.25
4/4/2009	Draft testimony	0:35	102.08
4/6/2009	Testimony	4:34	799.17
4/10/2009	Testimony	2:30	437.50

4/13/2009	Testimony edits/addition; meet w/ Creamer	3:48	665.00
4/14/2009	Edits; call to IPUC	2:12	385.00
4/15/2009	Edits and draft final to GP	3:24	595.00
4/16/2009	Proof testimony and exhibits	2:18	402.50
4/17/2009	Final changes, Mike Creamer	1:00	175.00
4/24/2009	Staff comments	1:36	280.00
4/26/2009	Review staff again for errors; call M. Creamer	0:36	105.00
4/27/2009	Draft response to staff	4:18	752.50
4/30/2009	Revisions to comments; conference with M. Creamer	0:48	140.00
5/19/2009	IPCo reply comments	0:06	17.50
5/19/2009	Review IPCo reply comments	0:25	72.92
5/20/2009	Email on IPCo comments	0:30	n/c
	Total	65:30	$11,462.50
	Please remit		$11,462.50

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2009, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS.	**CASE NO. IPC-E-08-22** **PETITION FOR RECONSIDERATION/ CLARIFICATION BY ADA COUNTY HIGHWAY DISTRICT**

The ADA COUNTY HIGHWAY DISTRICT (hereinafter "ACHD") hereby submits the following PETITION FOR RECONSIDERAITON/CLARIFICATION in the above-captioned matter pursuant to the Idaho Public Utilities Commission's (hereinafter "IPUC") *Order No. 30853*, dated July 1, 2009, and Idaho Code § 61-626.

I.

HIGHWAY DISTRICTS POSSESS EXCLUSIVE JURISDICITION OVER THE PUBLIC RIGHTS-OF-WAY AND FULL POWER TO ESTABLISH USE STANDARDS

Pursuant to Idaho law, highway districts have ***exclusive*** general supervision and jurisdiction over all highways and public rights-of-way within their highway system and full power to establish design standards and to establish use standards.

Idaho Code § 40-1310(1) & (8) provide as follows:

> 40-1310. POWERS AND DUTIES OF HIGHWAY DISTRICT COMMISSIONERS.
> (1) The commissioners of a highway district have ***exclusive general supervision and jurisdiction over all highways and public rights-of-way within their highway system, with full power to construct, maintain, repair, acquire, purchase and improve all highways within their highway system***, whether directly or by their own agents and employees or by contract. Except as otherwise provided in this chapter in respect to the highways within their highway system, a highway district shall have all of the powers and duties that would by law be vested in the commissioners of the county and in the district directors of highways if the highway district had not been organized. Where any highway within the limits of the highway district has been designated as a state highway, then the board shall have exclusive supervision, jurisdiction and control over the designation, location, maintenance, repair and reconstruction of it. The highway district shall have power to manage and conduct the business and affairs of the district; establish and post speed and other regulatory signs; make and execute all necessary contracts; have an office and employ and appoint agents, attorneys, officers and employees as may be required, and prescribe their duties and fix their compensation. Highway district commissioners and their agents and employees have the right to enter upon any lands to make a survey, and may locate the necessary works on the line of any highways on any land which may be deemed best for the location.
> (Emphasis added.)

> (8) The highway district board of commissioners shall have the ***exclusive general supervisory authority over all public highways, public streets and public rights-of-way under their jurisdiction, with full power to*** establish design standards, ***establish use standards***, pass resolutions and establish regulations in accordance with the provisions of title 49, Idaho Code, and control access to said public highways, public streets and public rights-of-way. (Emphasis added.)

Pursuant to Idaho Code § 40-1312, this grant of power to the highway districts is to be liberally construed and all necessary powers are to be implied.

> 40-1312. GRANT OF POWERS TO BE LIBERALLY CONSTRUED. The grant of powers provided in this chapter to highway districts and to their officers and agents, shall be ***liberally construed, as a broad and general grant of powers***, to the end that the control and administration of the districts may be efficient. The enumeration of certain powers that would be implied without enumeration shall

not be construed as a denial or exclusion of other ***implied powers*** necessary for the free and efficient exercise of powers expressly granted. (Emphasis added.)

In *Worley Highway District v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Idaho App.,1983), the Idaho Court of Appeals considered powers and authorities granted to highway districts under the predecessors to Idaho Code § 40-1310 and Idaho Code § 40-1312 and stated as follows:

> It is clear to us that [Idaho Code § 40-1310] together with [Idaho Code § 40-1312] gives highway commissioners broad powers to administer highways within their districts. Their domain includes not only the "exclusive general supervision and jurisdiction over all highways," but also "full power to construct, maintain, repair, and improve all highways within the district." ***This language makes the legislature's intent clear that in the area of construction, maintenance, and day-to-day operation of highways, the prerogative of the highway commissioners is exclusive.*** (Emphasis added.) *Worley Highway District v. Kootenai County*, 104 Idaho at 835.

Additionally, Idaho Code § 40-1406 provides in pertinent part:

> 40-1406. POWERS AND DUTIES OF HIGHWAY COMMISSIONERS -- ONE HIGHWAY DISTRICT IN COUNTY -- HIGHWAY POWERS OF CITIES IN COUNTY ABOLISHED -- LAWS IN CONFLICT SUPERSEDED. The highway commissioners of a county-wide highway district shall exercise ***all of the powers and duties provided in chapter 13 of this title***, and are empowered to make highway ad valorem tax levies as provided by chapter 8, of this title.
>
> * * *
>
> Wherever ***any provisions*** of the existing laws of the state of Idaho are ***in conflict*** with the provisions of this chapter, the provisions of ***this chapter shall control and supersede*** all such laws. (Emphasis added.)

Therefore, to the extent that ***any*** law of the state of Idaho is in conflict with the highway districts' exclusive jurisdictional authority over the public rights-of-way as granted in Code §§ 40-1310(1), 40-1310(8), 40-1312, and 40-1406, such laws are superseded by these provisions of Idaho law.

In *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956), the Idaho Supreme Court said, "[i]n the exercise of its powers and duties with respect to its streets and alleys, the municipality [highway district] acts as agent of the state. In discharging a mandatory duty imposed by the state, the municipality performs a governmental function [cites omitted] within the police power conferred by the state." *Village of Lapwai v. Alligier,* 78 Idaho at 128.

The highway district's exclusive control and jurisdiction over the public rights-of-way includes the unqualified ability to demand that electric utility facilities within the public rights-of-way relocate per Idaho Code § 62-705. Pursuant to Idaho Code § 62-705, utility use of public lands is permissive and remains subject to the authority of a city, county or highway district. It is noteworthy that Idaho Code § 62-705 does not provide express or implied authority for utilities to charge for relocations. Local governing entities, such as highway districts, hold such land in trust for the public and must protect the public use. *State v. Idaho Power Company*, 81 Idaho 487, 346 P.2d 596 (1959). Highway districts have the exclusive authority to determine whether and when relocation of utility facilities within the public right-of-way is necessary so as to not incommode the public use. In *State v. Idaho Power Company*, the Idaho Supreme Court stated:

> The permissive use of public highways, which the legislature by I.C. §§ 62-701 and 62-705 accords to utilities, is in recognition of the time honored rule existing in this state, that streets and highways, belong to the public and are ***held by the governmental bodies and political subdivisions of the state in trust*** for the use by the public, and that only a permissive right to use, and no permanent property right can be gained by those using them. . . . This is but a recognition of the fundamental proposition that [Idaho Power's and Mountain States Telephone's] ***permissive use of the public thoroughfares is subordinate to the paramount use thereof by the public***. (Emphasis added.) 81 Idaho at 498, 515.

See also, *Mountain States Telephone and Telegraph Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 32, 607 P.2d 1084 (1980).

Under the common law rule, "utilities bear the expense of relocating their facilities in public rights of way when necessary to make way for proper governmental use of the streets." *Mountain States Telephone and Telegraph Co.,* 101 Idaho at 32. As noted by the Idaho Supreme Court in *State v. Idaho Power Company*, "[l]ong before the adoption of our Constitution, the people adopted the common law as the rule of decision in all cases not otherwise provided by law. . . . Under the common law, a utility, placing its facilities along streets and highways, gains no property right and upon demand must move its facilities at its expense." 81 Idaho at 501. The highway district's exclusive authority and jurisdiction over the public right-of-way necessarily includes the exclusive power to determine who pays for the utility relocation. This is consistent with, and supported by Idaho Code §40-1312 which, as noted above, is an affirmative statement by the Idaho legislature that the power to the highway districts is to be liberally construed with all necessary powers to be implied.

Acting in its role as agent of the state per *Village of Lapwai v. Alligier*, and performing its governmental function with police power conferred by the state, ACHD exercised its exclusive jurisdiction over utility relocations (including financial liability for utility relocations) with the adoption of Resolution 330 in September 1986. Resolution 330 reflected the work of representatives of ACHD, the Boise City Department of Public Works and various utility organizations and establishes guidelines for utility and sewer relocations within the public rights-of-way under the jurisdiction of ACHD. Resolution 330 addresses utility and sewer relocations in a comprehensive fashion including assignment of financial responsibility, and establishment of operational procedures, in three different scenarios: 1) utility and sewer relocations are required because improvements in the public right-of-way are sponsored or funded by ACHD; 2) utility and sewer relocations are required because improvements in the public right-of-way are

partially funded by ACHD and partially funded by another party; and 3) utility and sewer relocations are required because improvements in the public right-of-way do not involve the participation or funding of ACHD.

II.

SECTION 10 OF RULE H IS BEYOND THE JURISDICTIONAL AUTHORITY OF IPUC

The jurisdiction of the IPUC is limited to that expressly granted by the legislature. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875 (1979). In *Alpert v. Boise Water Corporation*, 118 Idaho 136, 795 P.2d 298 (1990), the Idaho Supreme Court cited *Washington Water Power Co. v. Kootenai Environmental Alliance* and other Idaho precedent reaching back to 1963 stating:

> The Idaho Public Utilities Commission exercises limited jurisdiction and has ***no authority other than that expressly granted to it by the legislature***. [cite to *Washington Water Power Co.]*. The Idaho Public Utilities Commission has ***no authority*** other than that given to it by the legislature. It exercises a limited jurisdiction and ***nothing is presumed*** in favor of its jurisdiction. *United States v. Utah Power & Light Co.*, 98 Idaho 665, 570 P.2d 1353 (1977); *Lemhi Tel. Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692 Idaho 692, 571 P.2d 753 (1977); *Arrow Transp. Co. v. Idaho Public Utils. Comm'n.*, 85 Idaho 307, 379 P.2d 422 (1962). As a general rule, administrative authorities are tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the statutes reposing power in them and ***they cannot confer it upon themselves***, although may determine whether they have it. If the provisions of the statutes are not met and compliance it not had with the statutes, no jurisdiction exists. (Emphasis added.) *Alpert v. Boise Water Corporation*, 118 Idaho at 140

Additionally, in *Utah Power & Light Co. v. Idaho Public Utilities Commission*, 107 Idaho 47, 685 P.2d 276 (1984) the Idaho Supreme Court said, "[t]he Idaho Public Utilities Commission has no authority other than that given to it by the legislature. It exercises a limited jurisdiction and nothing is presumed in favor of its jurisdiction. *Utah Power & Light Co. v. Idaho Public Utilities Commission*, 107 Idaho at 52.

The IPUC is not granted authority to determine what may or may not incommode the public use as it pertains to public rights-of-way. In *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956), the Idaho Supreme Court established clear lines of authority over the public rights-of-way and the relocation of utility facilities within public rights-of-way, stating:

> ". . . ***the [Public Utilities Law] does not contain any provision diminishing or transferring any of the powers and duties of the municipality to control and maintain its streets and alleys.*** Moreover, the legislature, in providing for the use of streets and alleys by utilities, expressly required the consent of the municipal authorities, and authorized the municipal authorities to impose reasonable regulations upon such use. The legislature recognizing the duty it imposes upon the municipality to control and maintain its streets and alleys, ***has preserved to the municipality the power*** to deny their use to a utility, or to impose reasonable regulations thereon, when necessary to the use of such streets and alleys by the public in the usual manner. . . we conclude that the ***village was not required to procure the consent of the [public utilities] commission*** as a condition to discontinuance of appellants' service and their ouster from its streets and alleys." (Emphasis added) *Village of Lapwai v. Alligier,* 299 P.2d at 478.

Section 10, Rule H is beyond the jurisdictional authority of the IPUC because it seeks to affirmatively regulate the state's public road agencies, entities of government, third parties, and developers and impose upon them the duty to pay for mandatory utility relocations in an unreasonable, one size fits all approach. The state's public road agencies, entities of government, third parties and developers are not "public utilities" as defined in Idaho Code § 61-129. Idaho Code § 61-101 provides, "[t]his act shall be known as "The Public Utilities Law" and shall apply to the public utilities and public services herein described and the commission herein referred to."

In *Order No. 30853* at page 13, the IPUC asserts jurisdiction via Idaho Code §§ 61-502 and 61-503. It is erroneous for the IPUC to find that these provisions of the Idaho Code, which relate to rates and charges for services, products or commodities, provide the IPUC the jurisdiction and authority it has exercised in this matter. Mandatory relocation of utility facilities

from the public rights-of-way is not a service, product or commodity. It is only by an unreasonable and irrational stretch of logic that the IPUC characterizes a mandatory relocation of utility facilities located in the public right-of-way permissively and subordinately to the public, to be "services". Certainly, per *Washington Water Power Co. v. Kootenai Environmental Alliance,* Idaho Code §§ 61-502 and 61-503 authorize the IPUC to determine whether utility costs associated with mandatory relocations may be included in a utility's rate base, but this is the limit of the IPUC's jurisdiction and authority in this matter. Idaho Code §§ 61-502 and 61-503 in no way, express or implied, provide the IPUC with the jurisdiction or authority to affirmatively intervene in the exclusive jurisdiction of the state's highway districts and thereby impose upon public road agencies, entities of government, third parties, and developers the duty to pay for such relocations. Moreover, the IPUC's jurisdiction and authority to determine whether utility charges, services or practices are unjust, unreasonable, discriminatory or preferential does not expressly or impliedly provide the IPUC with the jurisdiction or authority to affirmatively intervene in the exclusive jurisdiction of the state's highway districts and thereby impose upon public road agencies, entities of government, third parties, and developers the duty to pay for such relocations.

It is noteworthy that Idaho Code § 62-705 does not provide express or implied authority for utilities to charge for relocations and no such authority is granted to the IPUC in Idaho Code § 62-705. That the people have reserved the common law right to require the utilities to relocate facilities permissively located within the public right-of-way cannot mean to give utilities or the IPUC the authority to decide who pays for the relocation. Clearly, with the adoption of Section 10, Rule H, the IPUC has overstepped its jurisdictional bounds.

Section 10 of Rule H is an unprecedented illegal usurpation of the highway districts' ***exclusive*** general supervision and jurisdiction over all highways and public rights-of-way. Through the adoption of Section 10 of Rule H, the IPUC will effectively regulate and control electric utility relocations by assigning financial liability for such relocations. Such is strictly in the power and authority of the highway districts and should be left in the hands of the highway districts, working in a coordinated effort with local government officials and utility companies to develop an approach that is mutually beneficial. ACHD is unaware of any similar move by the IPUC since its formation in nearly 100 years ago. ACHD questions this aggressive and unprecedented move now, at this time.

ACHD requests that the IPUC reconsider and clarify its clearly erroneous finding that "Section 10 does not explicitly or implicitly usurp the public road agencies' authority to manage and control their rights-of-way." (*Order No. 30853,* page 12).

In *Order No. 30853* at page 9, the IPUC notes Idaho Power's acknowledgement that local road agencies such as ACHD have "sole and complete [exclusive] jurisdiction to determine when relocation is required to avoid incommoding the public" and that "in regard to the costs of utility facility relocations to determine utility rates and charges, the Commission has exclusive jurisdiction", but that somehow, with regard to utility relocations, the local road agencies and the IPUC will "exercise jurisdiction concurrently". Unfortunately, it appears in *Order No. 30853* at page 13 that the IPUC has accepted Idaho Power's unfounded and incongruous position that two entities, each with exclusive jurisdiction, can exercise jurisdiction concurrently.

As previously stated, acting in its role as agent of the state per *Village of Lapwai v. Alligier*, and performing its governmental function with police power conferred by the state, ACHD exercised its exclusive jurisdiction over utility relocations (including financial liability

for utility relocations) with the adoption of ACHD Resolution 330 in September 1986. Section 10, Rule H usurps ACHD Resolution 330 and ACHD's exclusive jurisdiction as outlined above. Additionally, Section 10, Rule H is in conflict with ACHD Resolution 330. As stated by the Idaho Supreme Court in *State v. Poynter*, 70 Idaho 438, 220 P.2d 386 (1950), "[t]he state and a municipal corporation may have concurrent jurisdiction over the same subject matter and in which event the municipality may make regulations on the subject notwithstanding the exercise of state regulations thereon, ***provided the regulations or law are not in conflict***." (Emphasis added.) *State v. Poynter*, 70 Idaho at 441. Thus, pursuant to *State v. Poynter* concurrent jurisdiction as proposed by Idaho Power and accepted by the IPUC cannot exist with regard to utility relocations from the public rights-of-way.

Additionally, in adopting Section 10, Rule H, the IPUC erroneously assumes that the public (rate payers) does not benefit from road projects funded by entities of government, third parties, and developers; in fact, the opposite is quite true. The public (rate payers) benefits tremendously from road projects funded by entities of government, third parties, and developers; this is evidenced by the fact that upon completion, such road projects are commonly accepted for the public by highway districts for ownership and maintenance as public right-of-way per Idaho Code § 40-1310.

Moreover, the Idaho Supreme Court has clearly stated that the permissive use of the public right-of-way is a benefit which utilities and their rate payers enjoy and they and their rate payers should bear the burden of relocation from the public right-of-way when requested:

> A further answer to the argument that relocation costs should be paid by highway users is, that [Idaho Power's and Mountain States Telephone's] permissive use of the highways is for the benefit of the utilities and their subscribers and relocation costs should therefore be paid by them as an incident of such benefit; . . . *State v. Idaho Power Company*, 81 Idaho at 505.

ACHD requests that the IPUC reconsider and clarify its clearly erroneous finding that Idaho Code §§ 61-502 and 61-503 expressly or impliedly provide the IPUC with the concurrent jurisdiction or authority to affirmatively intervene in the exclusive jurisdiction of the state's highway districts and thereby impose upon public road agencies, entities of government, third parties, and developers the duty to pay for such relocations.

ACHD also questions the wisdom of singling out electric utilities for treatment. In *Order No. 30853,* at page 13, the IPUC praises the concept of maintaining "consistency between the agencies", yet, with the adoption of Section 10 of Rule H, the IPUC has singled out electric utilities. This creates a lack of consistency between and among the public utilities in Idaho.

III.

SECTION 10 OF RULE H IS UNCONSTITUTIONAL

In *State v. Idaho Power Company*, the Idaho Supreme Court struck down as unconstitutional, Idaho Code § 40-120(27) which established upon the Idaho Board of Highway Directors (predecessor to the Idaho Department of Transportation) and affirmative obligation to pay for utility relocations associated with state highway projects. The Idaho Supreme Court ruled that Idaho Code § 40-120(27) violated both Article 8 § 2 and Article 7 § 17 of the Idaho Constitution. *State v. Idaho Power Company*, 81 Idaho at 515.

In *Order No. 30853,* at pages 12 and 13, the IPUC makes the clearly erroneous findings: "Section does not impede a public road agency's right to require Idaho Power to relocate facilities in the public right-of-way, at no cost to the public road agency, where the facilities incommode the public use"; "the Idaho Constitution and existing case law are not violated because Section 10 in no way grants Idaho Power or this Commission authority to impose such

costs on a public road agency". ACHD directs the IPUC to Subsection d of Section 10 which states: ". . . where the Company has a private right of occupancy for its power line facilities within the public road right-of-way, such as an easement or other private right, the costs of the relocation is borne by the Public Road Agency." Applying *State v. Idaho Power Company*, it is clear that Subsection d of Section 10 clearly imposes a duty upon the state and local road agencies such as cities, counties or highway districts to pay for utility relocations associated with road projects, and therefore violates Article 8 § 2 and Article 7 § 17 of the Idaho Constitution (state) Article 8 § 4 of the Idaho Constitution (local road agencies).

Additionally, the principles of *State v. Idaho Power Company* equally apply to other entities of local government including but not limited to, local improvement districts. The inclusion of any entity of local government, including but not limited to local improvement districts, in the definition of third party beneficiary is yet another violation of Article 8 § 4 of the Idaho Constitution.

ACHD requests that the IPUC reconsider and clarify its erroneous finding that Section 10 does not violate the Idaho Constitution. (*Order No. 30853,* page 12).

IV.

SECTION 10 OF RULE H IS AN ILLEGAL ATTEMPT TO ABROGATE OR AMEND THE COMMON LAW RULE

In *State v. Idaho Power Company*, the Idaho Supreme Court discussed the common law rule as follows: "[l]ong before the adoption of our Constitution, the people adopted the common law as the rule of decision in all cases not otherwise provided by law. . . . ***Under the common law, a utility, placing its facilities along streets and highways, gains no property right and upon demand must move its facilities at its expense.***" (Emphasis added) 81 Idaho at 501. As

noted above, in *State v. Idaho Power Company*, the Idaho Supreme Court struck down as unconstitutional, Idaho Code § 40-120(27) which established upon the Idaho Board of Highway Directors (predecessor to the Idaho Department of Transportation) an affirmative obligation to pay for utility relocations associated with state highway projects. In addition to finding Idaho Code § 40-120(27) to be a violation of Article 8 § 2 and Article 7 § 17 of the Idaho Constitution as discussed in the preceding section *III*, the Idaho Supreme Court also indicated that Idaho Code § 40-120(27) was an unconstitutional abrogation of the common law rule.

> We are aware of the basic rule that, inasmuch as our Constitution is a limitation and not a grant of power, the legislature has plenary power in all matters except those prohibited by the Constitution. [cite omitted] Expressions of this rule, as it relates to the power of the legislature to change the common law obligation of utilities to pay the cost of relocation of their facilities, recognize that the legislature is powerless in the premises if there is a constitutional limitation upon the exercise of such power. ***As [Idaho Power's and Mountain States Telephone's] assertion that the legislature may abrogate the common law rule must be so circumscribed.*** The constitutional limitation upon the exercise of such legislative power is expressed [cites omitted] as follows: 'The common-law obligation of a utility to relocate its own structures * * * in connection with a grade crossing * * * program continues until the *Constitution* and statute *expressly provide otherwise*.' (Emphasis added.) (Emphasis supplied.) *State v. Idaho Power Company*, 81 Idaho at 503-504.

If Idaho Code § 40-120(27), a ***statute*** attempting to abrogate or modify the common law rule was contrary to the Idaho Constitution's limitation on power, then Section 10, Rule H, an ***administrative rule*** of the IPUC is certainly contrary to the Idaho Constitution's limitation on power. Clearly, Section 10, Rule H is a violation of the Idaho Constitution's limitation on power to abrogate or amend the common law rule that utilities pay the cost of relocation of their facilities from the public rights-of-way.

Supporting the conclusion that the common law rule applies any time a utility is requested to relocate its facilities from the public rights-of-way, is *Mountain States Telephone*

and Telegraph Co. v. Boise Redevelopment Agency, 101 Idaho 30, 607 P.2d 1084 (1980), in which the Idaho Supreme Court found that the common law rule prohibited the utilities from obtaining reimbursement of their relocation costs from an urban renewal agency. Citing to *State v. Idaho Power Company*, the Idaho Supreme Court said:

> The rule at common law that utilities must relocate at their own expense is not an absolute, however, but is subject to legislative provision to the contrary, and also subject to any constitutional prohibition or requirement. [cite to *State v. Idaho Power Company*] We must thus decide whether the legislature has provided that the B.R.A must pay the costs of relocation. While I.C. §§ 50-2007(h) and 50-2018(j)(3) permit payment of such costs, they do not appear to be mandatory. ***In the absence of clear legislative direction we decline to abolish the common law rule and establish a rule requiring relocation costs to be paid to permissive users such as utilities.*** (Emphasis added.) *Mountain States Telephone and Telegraph Co. v. Boise Redevelopment Agency*, 101 Idaho at 34-35.

As demonstrated above in Section *II.*, Idaho Code §§ 61-502, 61-503, and 62-705 in no way, express or implied, provide the IPUC with the jurisdiction or authority to affirmatively intervene in the exclusive jurisdiction of the state's highway districts and thereby impose upon public road agencies, entities of government, third parties, and developers the duty to pay for such relocations within the public rights-of-way. Moreover, Idaho Code §§ 61-502, 61-503, and 62-705 are completely absent of ***any*** legislative direction or intent that utilities should be entitled to recover their costs of relocation within the public rights-of-way. In the absence of "clear legislative direction" no such intent can be presumed or authority assumed by the IPUC.

ACHD requests that the IPUC reconsider and clarify its legal authority and jurisdiction to adopt and enforce Section 10, Rule H, in light of the clear constitutional limitation on power to abrogate the common law rule as expressed by the Idaho Supreme Court in *State v. Idaho Power Company* and in light of a complete lack of legislative direction or authority regarding

reimbursement of utility relocation costs in Idaho Code §§ 61-502, 61-503, and 62-705 per *Mountain States Telephone and Telegraph Co. v. Boise Redevelopment Agency.*

V.

THIRD PARTY BENEFICIARY

As currently written, the Section 10 of Rule H includes an overly broad and potentially troublesome definition of "third party beneficiary" which could be construed to include a highway district whose roadways are being improved strictly as a result of another political subdivision's public project. For example, a road improvement occurring as part of a city sewer project. From the highway district's perspective, road improvements benefit the general public as a whole, whether undertaken as a highway district planned and coordinated project or by another entity improving its own facilities.

As noted in the preceding section, the principles of *State v. Idaho Power Company* and *Mountain States Telephone and Telegraph Co. v. Boise Redevelopment Agency* apply equally to all other entities of local government including, but not limited to, local improvement districts. The inclusion of ***any*** entity of local government, including but not limited to local improvement districts, in the definition of third party beneficiary is yet another violation of Article 8 § 4 of the Idaho Constitution and the common law rule that utilities pay the cost of relocation of their facilities within the public rights-of-way.

ACHD requests that the IPUC reconsider and clarify its erroneous finding that Section 10 may include ***any*** local improvement districts. (*Order No. 30853,* page 13). Specifically, ACHD requests that unless overturned in its entirety, that Section 10 of Rule H be modified to expressly exclude public entities and political subdivisions from the definition of "third party beneficiary".

VI.

CONCLUSION:

As demonstrated above, Section 10, Rule H is an unauthorized usurpation of the clear and exclusive jurisdiction of Idaho's highway districts and local road agencies by the IPUC. To the extent that Section 10, Rule H is applicable to the state or any entity of local government, including but not limited to local road agencies and local improvement districts, it is a violation of the Idaho Constitution. Section 10, Rule H is also an unconstitutional and legally unauthorized abrogation or amendment of the common law rule that utilities pay the cost of relocation of their facilities within the public rights-of-way. ACHD hereby petitions and requests reconsideration/clarification of *Order No. 30853* as set forth herein by written briefs. If ACHD's Petition for Reconsideration/Clarification is granted, ACHD will provide additional argument on the issues raised herein.

Respectfully submitted this 22 day of July, 2009.

Scott D. Spears

SCOTT D. SPEARS, Attorney for the Petitioner,
Ada County Highway District

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of July, 2009, I caused to be delivered by hand or by e-mail and U.S. Mail (postage pre-paid) in the manner indicated, a true and correct copy of the foregoing PETITION FOR RECONSIDERATION/CLARIFICATION BY ADA COUNTY HIGHWAY DISTRICT upon the following parties:

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IDAHO PUBLIC UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS	**CASE NO. IPC-E-08-22** **BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO'S PETITION FOR RECONSIDERATION AND/OR IN THE ALTERNATIVE FOR CLARIFICATION AND PETITION FOR STAY**

Building Contractors Association of Southwestern Idaho ("Building Contractors"), by and through its attorneys of record, Givens Pursley LLP, and pursuant to Idaho Code § 61-626 and IDAPA 31.01.01.331, 325 and 324 respectively, petitions the Idaho Public Utilities Commission ("Commission") for reconsideration of its Order 30853 ("Order") in the above-captioned matter with respect to those Commission findings and conclusions regarding terminal facilities allowances, per-lot refunds and the time period in which vested interest refunds may be made. The Order approves an inherently discriminatory rate structure for line extensions by imposing unequal charges on customers receiving the same level and conditions of service. This

discrimination exists both as between existing customers and new customers *and* as among new customers depending only upon whether they receive service inside or outside of a subdivision and the number of new customers to be served by the requested facilities.

The Order does not acknowledge any grounds for not extending the vested-interest refund period from five to ten years other than that Staff opposes it. In its 1997 order concerning Idaho Power Company's ("Company") line extension tariff, the Commission approved a ten-year refund for platted, undeveloped subdivisions because it recognized the unique circumstances affecting those developments. The current economic climate also presents unique circumstances which, if they continue for any extended period, quite likely will result in a windfall to the Company and its existing customers and an additional unreimbursed line extension cost to developers. Building Contractors request a hearing at which parties may cross-examine those persons who filed testimony and examine member(s) of the Commission Staff with primary responsibility for preparing Staff's Comments.

If reconsideration is not granted, then for judicial economy, Building Contractors request in the alternative that the Commission clarify the Order to: 1) clearly confirm that the Commission now is rejecting its heretofore, longstanding policy that new customers are entitled to a Company level of investment equal to that made to serve existing customers in the same class; 2) to confirm that the Commission recognizes and intends the disparity in Company investment (and customer charges) as between existing and new customers and as among new customers inside and outside of subdivisions created by the Order; and 3) to enumerate the Commission's reasoning for its momentous change in policy.

Because imposition of the Order will have immediate and significant financial impacts on certain Building Contractors' members—namely those members who are, or will be, requesting

line extensions during the pendency of this matter—Building Contractors also request a stay of those portions of the Order affecting the current terminal facilities allowance, customer refunds and vested interest refunds.

GROUNDS FOR RECONSIDERATION

In its 1997 Order 26780 in Case No. IPC-E-95-18, the Commission considered the same Company line extension tariff at issue today. There, the Company sought to "shift more of the cost of new service attachments and distribution line installations or alterations from the system revenue requirement to new customers requesting the construction." Order 26780 at 3. The reason given by the Company for the proposed change was to "keep all customers on a level playing field [by ensuring] everyone pays the average rate base embedded in rates," and because "the anticipated revenues from the new customer are not sufficient to cover the costs of new distribution facilities." Order 26780 at 5 (summarizing Company position). The Commission Staff agreed with the Company's position that "the Company's investment in facilities for each new customer should be equal to the embedded costs of the same facilities used to calculate rates, and those costs in excess of embedded costs should be borne by the customers requesting service. . ..." Order 26780 at 5 (summarizing Staff position). Building Contractors opposed the proposed tariff amendments.

The Commission specifically concluded that

> new customers are entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class. Recovery of those costs in excess of embedded costs must also be provided for and the impact on rates of existing customers is an important part of our consideration.

Order 26780 at 13 (emphasis added). The Commission also acknowledged that "requiring the payment of all costs above embedded investment from new customers could have severe economic effects." *Id.*

Today the Company proposes a change to the Rule H tariff allowances and refunds simply to reduce Company expense and an alleged but undemonstrated upward pressure on rates without any pretense of maintaining a level playing field or crediting revenues from new customers. If that were the purpose, all that would be necessary is a relatively simple true-up of embedded distribution costs, current materials, labor and overhead costs and an allocation as between the terminal facilities and line extensions. *See* Order 26780 at 13 (whether the allowance is applied in exact proportions toward the terminal facilities component, the line extension component, or both, is not critical, but the amount is).

With little comment and no concession to prior precedent or policy or the disparate effect the Order will have on new customers, the Commission has approved a flat $1,780 terminal facilities allowance and discontinued per-lot refunds within subdivisions. Consequently, although the estimated per customer embedded cost for distribution ranges between $1,002 (2008 IPCo GRC cost of service study) and $1,232 (Staff estimate), the Company investment in distribution for new customers will vary from $1,780 for a customer requesting service to a single location outside a subdivision to as low as $149 for a customer receiving identical service within a sixty-lot subdivision. This is because the $1,780 terminal facilities allowance approved by the Commission, being the only allowance recognized, must be apportioned among the new customers who share those terminal facilities (i.e., the transformer), and a transformer serves anywhere from one to ten customers.

Staff overlooked this fact when it stated its support for line extension rules that "provide a new customer allowance that can be supported by electric rates paid by that customer over time,"[1] when it deemed the $1,444 cost of overhead terminal facilities (i.e., transformer) to be "fairly close" to the Company's average investment of $1,232 for existing customers, and then, for simplicity's sake, recommended that overhead terminal facilities become the surrogate for appropriate Company investment per new customer. In other words, Staff mistakenly categorized a $1,780 "per transformer" allowance as a "per new customer" allowance, which it clearly is not.

The effect this mischaracterization has on the Company investment per new customer (or conversely, on the charge to a new customer to receive service) is illustrated in the following table, which is derived from data provided in Attachment 9 to Staff's Comments.

Comparison of Existing Rule H with Company and Staff Proposals

Subdivision example	1	2	3	4	5
Design Number	61114	67186	60197	24482	27729
No. of Lots	3	10	32	60	101
Average embedded cost (Staff comments at 5)	**$ 1,232.44**	**$ 1,232.44**	**$ 1,232.44**	**$ 1,232.44**	**$ 1,232.44**
Total design cost per lot	$3,524	$1,512	$1,576	$1,209	$1,433
Total allowance (Company)/ Eligible for Refund (Staff)	$3,560	$1,780	$7,120	$8,900	$17,800
Company investment per lot					
Staff	$1,187	$178	$222	$149	$176
Company	$1,187	$178	$222	$149	$176
Existing Rule H	$1,959	$1,279	$1,159	$1,061	$1,050

[1] I.e., at least equal to embedded costs, whether that be $1,100 or $1,232.

Developer (Customer) investment per lot					
Staff	$2,337	$1,334	$1,354	$1,060	$1,257
Company	$2,337	$1,334	$1,354	$1,060	$1,257
Existing Rule H	$1,565	$233	$417	$148	$383
Total developer investment plus embedded cost per lot					
Staff	**$3,569**	**$2,566**	**$2,586**	**$2,292**	**$2,489**
Company	**$3,569**	**$2,566**	**$2,586**	**$2,292**	**$2,489**
Existing Rule H	**$2,797**	**$1,465**	**$1,649**	**$1,380**	**$1,615**
Over-recovery of cost					
Staff	**$45**	**$1,055**	**$1,010**	**$1,084**	**$1,056**
Company	**$45**	**$1,055**	**$1,010**	**$1,084**	**$1,056**
Existing Rule H	**($727)**	**($46)**	**$73**	**$172**	**$182**

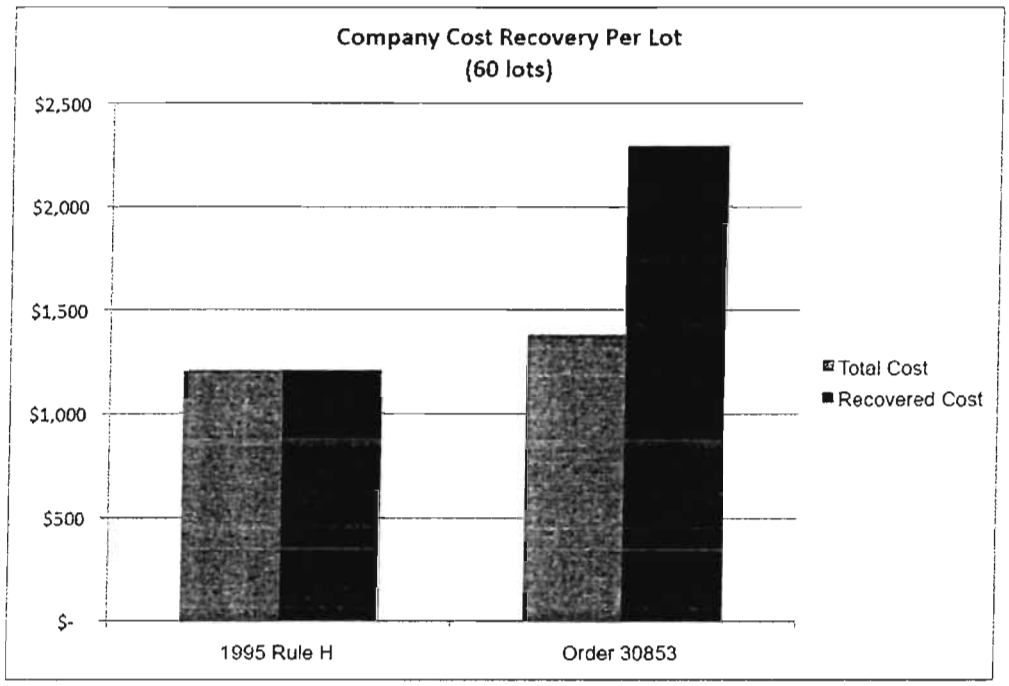
Source: Staff Attachment 9, Page 2 of 4; Staff comments at 5.

Company investment per lot is total design cost per lot less developer (customer) investment per lot

As the above table shows, depending on the subdivision example used, per customer Company investment in multiple-lot subdivisions ranges from $149 to $1,187. Only the three-lot subdivision example produces a per customer Company investment approximating its average embedded cost. Consequently, the Order raises the new customers' investment in distribution to make up the difference, except for new customers outside subdivisions who apparently will receive a windfall as compared to existing customers and new customers within subdivisions.[2]

[2] The data in the above table also shows that the approved new tariff results in the Company collecting from "new customers," through their contributions to line extension costs and rates, almost 200% of its line extension costs. If upward pressure on rates exists, it must be attributable to increased generation and transmission costs, which new customers now will be paying, in part through their line extension charges. This runs afoul of *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984) and *Boise Water Corp. v. Public Utilities Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996)

The extent of the increased cost to new customers within subdivisions depends primarily on the number of platted lots receiving electrical service. What should be of particular interest to the Commission is the fact that the shift in costs to the new customers approved by the Order actually can result in the Company's recovered costs exceeding the actual new distribution facilities cost. This is illustrated in the chart below which compares total new customer investment to total facilities costs in a sixty-lot subdivision based on data from the above table.



That result should not be surprising since, as even Staff has observed

> . . . Idaho Power has done no analysis to prove that growth is not paying for itself, nor has the Company done any analysis to determine specifically what amounts of allowances and refunds can alleviate upward pressure on rates. . . The Company concludes that a reduction in Company investment in new distribution plant is necessary and proposes a reduction in allowances based strictly on policy without supporting analysis.

Staff Comments at 3. In other words, the Company's proposed allowance is a shot in the dark that is as likely to miss a "growth pays for itself" target as hit it.

The Commission perhaps did not apprehend the distinction between "per transformer" investment and "per new customer investment" when it found in the Order that

> . . . the overall distribution allowance provided to developers, whether in the form of a subsequent refund or an upfront reduction in developer contribution (i.e., allowances), is properly based on the amount of distribution investment that can be supported by new customer rates. The Company has reasonably calculated that amount in its upfront, per lot distribution allowance. Any additional distribution cost refund to the developer would exceed the distribution investment that new customer rates could support. Therefore, the Commission finds it fair, just and reasonable to accept the Company's per lot distribution allowance and eliminate lot refunds.

Order at 12. The Company's and Staff's $1,780 terminal facilities allowance patently is not a per lot distribution allowance.

If the Company's investment of $1,780 in distribution facilities to serve a single new customer outside a subdivision can be recovered through rates charged to that new customer (which for purposes of this Petition, Building Contractors concede), then on what factual or legal basis can new customers within subdivisions be charged as much as $1,631 more for electrical service than existing customers and the single new customer outside a subdivision?

From a factual standpoint, the Commission has acknowledged Staff's "concern that Idaho Power had not provided any analysis to determine specifically what amounts of allowances and refunds would alleviate upward pressure on rates," and that "to properly establish an allowance, a refund and the potential for additional customer contribution, a detailed analysis of distribution investment embedded in existing electric rates must be conducted." Order at 4. Despite Staff's concern, and the lack of any subsequent analysis by the Company, the Order, nevertheless, finds that "[t]he Company has reasonably calculated [the amount of distribution investment that can be

supported by new customer rates] in its upfront, per lot distribution allowance." Order at 12 (emphasis added). The lack of substantial evidence to support this finding, and the fact that the Company is not proposing a "per lot distribution allowance" renders the Commission's decision in this regard arbitrary and capricious. *See Oregon Short Line R.R. v. Idaho Public Utilities Comm'n*, 47 Idaho 482, 276 P. 970 (1920) (order based on finding made without evidence, or upon a finding made upon evidence which clearly does not support it, is an arbitrary act against which the courts afford relief).

A legal basis for the disparity in per new customer Company investment (and conversely, per new customer line-extension charges) is equally lacking. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984) and *Boise Water Corp. v. Public Utilities Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996) hold that any differences in rates and charges must be justified by a corresponding classification of customers that is based on factors such as cost of service, quantity of electricity used, differences in conditions of service or the time, nature or pattern of use. Neither the Company's nor Staff's comments nor the Commission's Order touch on these factors.

The current disparity in per customer Company investment and conversely per new customer line extension charges will not pass this test. Particularly not when the Commission acknowledges that new customers are entitled to a level of Company investment in distribution that can be supported by rates (i.e., the same level of investment as received by existing customers), and particularly not when the resulting variable level of Company investment is driven solely by whether the new customer is situated inside or outside a subdivision or within a relatively larger or smaller subdivision.

Granted, not all "discrimination" in rates and charges is improper, but where the Commission establishes the kind of discrimination present here, it must demonstrate that the differences in rates and charges are based on one or more of the factors enumerated in *Homebuilders*. Its decision also must be based on substantial, competent evidence and the Commission must explain the reasoning it employed. *Boise Water Corp.*, 128 Idaho at 537 (citing *Washington Water Power v. Idaho Public Utilities Comm'n*, 101 Idaho 567, 617 P.2d 1242 (1980). None of the enumerated factors have been acknowledged by the Order, let alone used to rationalize the new disparate line extension charges and allowances, or to explain why the highly variable Company investment/new customer charge is consistent with the principle that new customers are entitled to a level of distribution investment that can be supported by rates. Almost by definition, the Order in this regard is arbitrary and capricious, exceeds the Commission's authority, and violates the new customer's right to non-discriminatory rates and charges under *Homebuilders* and *Boise Water Corp.*

For the foregoing reasons, Building Contractors respectfully request the Commission's reconsideration of Order 30853, and that the Commission provide for an evidentiary hearing at which the parties' witnesses may be examined and/or cross-examined on their pre-filed testimony and all matters within the scope of same, the purpose of which would be to establish an appropriate value of current Company embedded costs for distribution facilities, a method to true up those costs over time, and a fair method for line extension costs, allowances and refunds to be paid going forward.

GROUNDS FOR REQUEST FOR CLARIFICATION

Commission Rule 325 allows a petition for clarification to be combined with a petition for reconsideration or to be stated in the alternative. Building Contractors seek clarification in

the alternative. If reconsideration is not granted because the Commission stands by the decision and resulting disparate charges for new customers, Building Contractors request that the Commission clarify for the record that the Commission now is rejecting its heretofore longstanding policy that new customers are entitled to a Company investment in distribution facilities equal to that made to serve existing customers in the same class, and that the Commission recognizes and intends the disparity in Company investment (and customer charges) as between existing and new customers and as among new customers inside and outside subdivisions created by the Order. Building Contractors also believe the Commission should enumerate its justification for the departure from existing policy and for the discriminatory effect on Company customers. Building Contractors believe this clarification is necessary to clearly define the basis for, and scope of, the new policy. This will be important to Building Contractors and its members not only in the context of this proceeding but also future Company applications to amend its Rule H tariff.

GROUNDS FOR PETITION FOR STAY

Building Contractors have submitted evidence by way of Exhibit 203, sponsored by Dr. Slaughter and prepared by NAHB based on research conducted in the Boise-Nampa Metropolitan Statistical Area. Exhibit 203 and Dr. Slaughter's testimony documented the adverse economic effects of increased housing costs on the number of households that can afford to purchase a home and, by implication, the adverse effects on new customers and Building Contractors' members of reducing the Company's investment in distribution facilities below embedded costs. For the sixty-lot subdivision example in the above table, assuming a Company embedded cost of $1,002, this imposes an approximately $51,000 additional cost to the developer. For the one hundred lot example, the additional cost is nearly $83,000. This in a

market where development capital is scarce and expensive, and the alleged impact of customer growth on rates has dropped significantly.

Building Contractors submit that the adverse impact on its members and the public of imposing the line extension tariff on terms approved by the Order far outweigh any prejudice to the Company and its existing customers that would occur if the Commission's Order were stayed pending a final decision on this Petition. Requests for line extensions likely are being or will be submitted to the Company in the next few months and would be subject to the lower Company contribution and higher developer contribution. Building Contractors therefore respectfully request the Commission grant a stay of the effective date of those portions of the Company's Rule H tariff relating to the calculation and payment of allowances and refunds, including vested interest refunds, pending a final decision on the merits.

CONCLUSION

Idaho Power Company's requested line extension tariff amendments and Order 30853 approving them are far more than an adjustment of rates and charges to address one factor putting upward pressure on utility rates. The tariff amendments, as approved, constitute a marked change in Commission policy by which new customers heretofore have been "entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class."

Under Order 30853 new customers are entitled only to a Company investment equal to whatever the quotient is when the revised terminal facilities allowance is divided by the number of new customers served. In other words, under Order 30853 Company investment (and new customer charges) now bear no relationship to embedded costs, increased facilities costs, inflation, or alleged upward pressure of growth on rates attributable to distribution facilities

serving new customers. Nor do the resulting variable rates and charges new customers pay as between themselves and existing or other new customers have any relationship to factors such as actual cost of service, quantity of electricity used, or differences in conditions of service or the time, nature or pattern of use. The result is an unlawful, arbitrary and discriminatory charge that is not based on any rational customer classification. The Order should be reconsidered.

If reconsideration is denied, Building Contractors is at least entitled to clarification of the basis for, and scope of, the Commission's decision—neither of which are currently included in the Order and part of the administrative record.

In the meantime, to avoid the likely adverse economic impacts of the approved tariff provisions on those Building Contractors members who may be requesting line extensions, the tariff provisions dealing with allowances and refunds should be stayed pending a final Commission order.

Respectfully submitted this 22nd day of July, 2009.

GIVENS PURSLEY LLP

By: _____
Michael C. Creamer
Attorneys for Intervenor Building Contractors Association of Southwestern Idaho

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2009, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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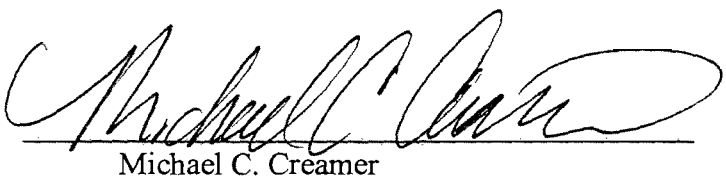

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July 22, 2009

IDAHO PUBLIC UTILITIES COMMISSION
P. O. Box 83720
Boise, ID 83720-0074

RE: Case No. IPC-E-08-22:
In the Matter of the Application of Idaho Power Company for Authority to Modify its Rule H Line Extension Tariff Related to New Service Attachments and Distribution Line Installations
Intervenors: (1) Association of Canyon County Highway Districts; and
(2) City of Nampa

Dear Commission:

Enclosures:

1. (original + 7 copies) *Petition for Reconsideration* – by Intervenor City of Nampa; and
2. (original + 7 copies) *Petition for Reconsideration* – by Intervenor Association of Canyon County Highway Districts; and

Enclosed for filing with the IPUC, please find two separate *Petitions for Reconsideration* in connection with the above referenced matter.

Please contact this office if you have any questions. Thank you.

Sincerely,
WHITE PETERSON
LeAnn Hembree
Legal Assistant to Matthew A. Johnson

Encls.
Cc: counsel of record
Clients
W:\Work\N\Nampa\Idaho Power - Rule H change\Letter to IPUC re filing Pet for Reconsideration 07-22-09 lh.doc

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS	CASE NO. IPC-E-08-22 **PETITION FOR RECONSIDERATION**

The ASSOCIATION OF CANYON COUNTY HIGHWAY DISTRICTS ("ACCHD") hereby petitions for reconsideration of Order No. 30853 in the above-captioned matter. This petition for reconsideration is brought pursuant to Idaho Code § 61-626 and IPUCRP 331.

Following is an identification and summary of the issues requested for reconsideration:

I. The Order is unlawful in that it exceeds the jurisdiction of the IPUC.

Under the Section 10 approach, as approved by the Order, the IPUC places itself in a position of overseeing and adjudicating disputes as to the validity of relocation requests made by a public agency with authority over highways. This will place the IPUC in the position of

judging whether or not a request was made due to a concern about incommoding the public use or whether there is a third party that directly benefits from the relocation request. Such a role is not within the jurisdiction of the IPUC.

The Order also fails to address the constitutional concerns raised by commenters.

II. The Order fails to clarify and specify the definitions of third-party beneficiaries and local improvement districts.

The Order provides no clarification on the definitions of third-party beneficiaries or local improvement districts as used in Section 10. Concern with these broad references was detailed in the City of Nampa Comments. Without further specification in the Order, the IPUC seems to be following the approach mentioned in Idaho Power Company's Reply Comments that these can be determined on a case-by-case basis by the Commission in a quasi-judicial role. (ID. Power Co. comments, p. 22). Again this places the Commission in a role outside its jurisdiction by leading it to re-examine and question relocation determinations by municipalities.

Additionally, the Order is unreasonably vague in its treatment of local improvement districts. The Order directs Idaho Power to "clarify its use of the phrase 'local improvement district' as it is used in Section 10," but then approves the application. So while both Idaho Power and the IPUC recognize a problem with vague language, the Order approves the application prior to any clarification or opportunity for further comment on Idaho Power's "to be delivered" definition of local improvement districts.

ACCHD will submit, within twenty-one (21) days, a written brief presenting further legal argument and evidence on the above issues. ACCHD also requests a hearing on reconsideration, as no hearing was held under the modified procedure in the initial deliberations on this matter.

DATED this 22nd day of July, 2009.

WHITE PETERSON

By: _____
Matthew A. Johnson
Attorneys for the ACCHD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 22nd day of July, 2009, a true and correct copy of the above and foregoing PETITION FOR RECONSIDERATION instrument was served upon the following by the method indicated below:

Lisa D. Nordstrom Barton L. Kline Scott Sparks Gregory W. Said IDAHO POWER COMPANY P. O. Box 70 Boise, ID 83707-0700	__X__ U.S. Mail _____ Overnight Mail _____ Hand Delivery _____ Facsimile: __X__ lnordstrom@idahopower.com __X__ bkline@idahopower.com __X__ ssparks@idahopower.com __X__ gsaid@idahopower.com
Kristine A. Sasser Deputy Attorney General IDAHO PUBLIC UTILITIES COMMISSION 472 W. Washington (83702) P. O. Box 83720 Boise, ID 83720-0074	__X__ U.S. Mail _____ Overnight Mail _____ Hand Delivery _____ Facsimile: __X__ kris.sasser@puc.idaho.gov
Michael C. Creamer Given Pursley LLP 601 W. Bannock St. Boise, ID 83702 *Attorneys for BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO*	__X__ U.S. Mail _____ Overnight Mail _____ Hand Delivery _____ Facsimile: __X__ mcc@givenspursley.com

Michael Kurtz, Esq. Kurt J. Boehm, Esq. Boehm, Kurtz & Lowry 36 E. Seventh Street, Suite 1510 Cincinnati, OH 45202 *Attorneys for The Kroger Co.*	__X__ U.S. Mail _____ Overnight Mail _____ Hand Delivery _____ Facsimile: __X__ mkurtz@BKLlawfirm.com __X__ kboehm@BKLlawfirm.com
Kevin Higgins Energy Strategies, LLC Parkside Towers 215 S. State Street, Suite 200 Salt Lake City, UT 84111 *Attorneys for The Kroger Co.*	__X__ U.S. Mail _____ Overnight Mail _____ Hand Delivery _____ Facsimile: __X__ khiggins@energystrat.com

for WHITE PETERSON

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WHITE PETERSON

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July 22, 2009

IDAHO PUBLIC UTILITIES COMMISSION
P. O. Box 83720
Boise, ID 83720-0074

RE: Case No. IPC-E-08-22:
In the Matter of the Application of Idaho Power Company for Authority to Modify its Rule H Line Extension Tariff Related to New Service Attachments and Distribution Line Installations
Intervenors: (1) Association of Canyon County Highway Districts; and (2) City of Nampa

Dear Commission:

Enclosures:

1. (original + 7 copies) *Petition for Reconsideration* – by Intervenor City of Nampa; and
2. (original + 7 copies) *Petition for Reconsideration* – by Intervenor Association of Canyon County Highway Districts; and

Enclosed for filing with the IPUC, please find two separate *Petitions for Reconsideration* in connection with the above referenced matter.

Please contact this office if you have any questions. Thank you.

Sincerely,
WHITE PETERSON
LeAnn Hembree
Legal Assistant to Matthew A. Johnson

Encls.
Cc: counsel of record
Clients
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Davis F. VanderVelde
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Attorneys for Intervenor
City of Nampa

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS	CASE NO. IPC-E-08-22 **PETITION FOR RECONSIDERATION**

The CITY OF NAMPA ("Nampa") hereby petitions for reconsideration of Order No. 30853 in the above-captioned matter. This petition for reconsideration is brought pursuant to Idaho Code § 61-626 and IPUCRP 331.

Following is an identification and summary of the issues requested for reconsideration.

I. The Order is unlawful in that it exceeds the jurisdiction of the IPUC.

Under the Section 10 approach, as approved by the Order, the IPUC places itself in a position of overseeing and adjudicating disputes as to the validity of relocation requests made by

a municipality. This will place the IPUC in the position of judging whether or not a request was made due to a concern about incommoding the public use or whether there is a third party that directly benefits from the relocation request. Such a role is not within the jurisdiction of the IPUC.

The Order also fails to address the constitutional concerns raised by commenters.

II. The Order fails to clarify and specify the definitions of third-party beneficiaries and local improvement districts.

The Order provides no clarification on the definitions of third-party beneficiaries or local improvement districts as used in Section 10. Concern with these broad references was detailed in the City of Nampa Comments. Without further specification in the Order, the IPUC seems to be following the approach mentioned in Idaho Power Company's Reply Comments that these can be determined on a case-by-case basis by the Commission in a quasi-judicial role. (ID Power Co. comments, p. 22). Again this places the Commission in a role outside its jurisdiction by leading it to re-examine and question relocation determinations by municipalities.

Additionally, the Order is unreasonably vague in its treatment of local improvement districts. The Order directs Idaho Power to "clarify its use of the phrase 'local improvement district' as it is used in Section 10," but then approves the application. So while both Idaho Power and the IPUC recognize a problem with vague language, the Order approves the application prior to any clarification or opportunity for further comment on Idaho Power's "to be delivered" definition of local improvement districts.

Nampa will submit, within twenty-one (21) days, a written brief presenting further legal argument and evidence on the above issues. Nampa also requests an opportunity to present further argument at a hearing on reconsideration, as no hearing was held under the modified procedure in the initial deliberations on this matter.

DATED this 22nd day of July, 2009.

WHITE PETERSON

By: _____
Matthew A. Johnson
Attorneys for the City of Nampa

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 22nd day of July, 2009, a true and correct copy of the above and foregoing PETITION FOR RECONSIDERATION was served upon the following by the method indicated below:

Lisa D. Nordstrom Barton L. Kline Scott Sparks Gregory W. Said IDAHO POWER COMPANY P. O. Box 70 Boise, ID 83707-0700	_X_ U.S. Mail _____ Overnight Mail _____ Hand Delivery _____ Facsimile: _X_ lnordstrom@idahopower.com _X_ bkline@idahopower.com _X_ ssparks@idahopower.com _X_ gsaid@idahopower.com
Kristine A. Sasser Deputy Attorney General IDAHO PUBLIC UTILITIES COMMISSION 472 W. Washington (83702) P. O. Box 83720 Boise, ID 83720-0074	_X_ U.S. Mail _____ Overnight Mail _____ Hand Delivery _____ Facsimile: _X_ kris.sasser@puc.idaho.gov
Michael C. Creamer Given Pursley LLP 601 W. Bannock St. Boise, ID 83702 *Attorneys for BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO*	_X_ U.S. Mail _____ Overnight Mail _____ Hand Delivery _____ Facsimile: _X_ mcc@givenspursley.com

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for WHITE PETERSON

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IDAHO POWER®
An IDACORP Company

LISA D. NORDSTROM
Senior Counsel

July 29, 2009

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-08-22
Rule H

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Answer to Petitions for Reconsideration in the above matter.

Very truly yours,

Lisa D. Nordstrom

Lisa D. Nordstrom

LDN:csb
Enclosures

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTUTION LINE INSTALLATIONS.	)	CASE NO. IPC-E-08-22 IDAHO POWER COMPANY'S ANSWER TO PETITIONS FOR RECONSIDERATION

Idaho Power Company ("Idaho Power" or the "Company"), in accordance with Idaho Code § 61-626 and Procedural Rule 331, hereby responds to the Petitions filed by the Building Contractors Association of Southwestern Idaho ("Building Contractors"), the Ada County Highway District ("ACHD"), the City of Nampa ("Nampa"), and the Association of Canyon County Highway Districts ("ACCHD") for Reconsideration of Commission Order No. 30853 issued on July 1, 2009.

This case presents two distinct sets of issues on reconsideration: (1) the charges and credits governing New Service Attachments and Distribution Line Installations or Alterations raised by the Building Contractors and (2) relocations in

public road rights-of-way raised by ACHD, Nampa, and ACCHD (collectively referred to as the "Agencies"). The arguments raised on reconsideration are not new; Idaho Power Company previously addressed them in its Reply Comments filed May 1, 2009. The Company requests that the Commission deny the Petitions for Reconsideration filed in this case and supplements its arguments as follows:

I. BUILDING CONTRACTORS' PETITION

On October 30, 2008, Idaho Power Company proposed modifications to Rule H charges and credits that help reduce the upward pressure on rates by shifting more of the cost of new service attachments and distribution line installations or alterations from system revenue requirement to new customers and/or developers that request construction. The findings in Commission Order No. 30853 support this approach and the Company is working assiduously to implement all approved modifications by the November 1, 2009, effective date.

In responding to the Building Contractors' Petition for Reconsideration and/or in the Alternative for Clarification and Petition of Stay, the Company feels it necessary to differentiate a residential customer (a customer paying for electric service) from a developer (a business that does not take electric service). In many instances throughout their Petition, the Building Contractors refer to a "customer" when the actual reference is to a developer of a subdivision. For example, the heading at the top of page 6 of Building Contractors' Petition refers to "Developer (customer) Investment per lot." This can lead to confusion insofar as the Petition blurs the distinction to reach the erroneous conclusion that the Order creates "inherently discriminatory rate structure for line extensions." Building Contractors' Petition at 1-2.

A. **Terminal Facilities and Line Installation Allowances.**

Company-funded allowances are intended to provide a limit on the Company investment in distribution terminal facilities and/or line installations for customers or developers requesting service under Rule H. The fixed allowances are based on the most commonly installed overhead terminal facilities and help mitigate intra-class and cross-class subsidies by requiring customers (those connecting load) with greater facilities requirements to pay a larger portion (the amount above the allowance) of the cost to serve them. Allowance levels will be updated annually by the Company and will typically grow with inflation as approved by the Commission per Order No. 30853.

Regardless of whether construction is inside or outside of a subdivided development, the Company will provide customers and developers a fixed allowance equal to the Company investment toward their required terminal facilities. Customers are eligible to receive maximum allowances up to $1,780 for single-phase services and $3,803 for three-phase services per service attachment, whereas developers of subdivisions (with no connected load) are eligible to receive the same amounts for each transformer installed within a development. In no instance will allowances exceed the cost of the facilities provided.

For residential customers connecting load, the allowance generally covers the full cost the service connection resulting in no cost to the customer. The only cost difference to customers is that those inside residential subdivisions pay an underground wire installation charge equal to the differential between overhead service and underground service. Customers requesting underground service attachments outside of subdivisions are also required to pay the appropriate underground wire installation

charge. In both cases, most customers receive the equivalent of overhead service attachments without any personal investment because the allowance (credit) provided by the Company (investment) covers the entire cost of the required service. Customers requesting services beyond the "standard" or most commonly installed facilities are required to pay all costs above the provided allowance. As a result, customers are treated and charged equitably based on a standard overhead service.

1. **Building Contractors Incorrectly Characterize Allowance Amounts.**

Contrary to the Building Contractors' claims, customers outside of subdivisions are not eligible to receive a greater allowance than those inside subdivisions. Instead, *all* customers receive allowances for line installations and service connections up to the equivalent of the cost of standard overhead terminal facilities only – regardless of whether the connection is inside or outside a subdivision.

Developers of subdivisions (businesses that do not take electric service) on the other hand, receive Company-funded allowances of $1,780 for each single-phase transformer installed within a development and $3,803 for each three-phase transformer installed within a development to help offset their development costs. Here, developers are paying for and installing a portion of potential future customers' terminal facilities above the Company's investment as part of a business venture; they are not customers of Idaho Power. These allowances (Company investment) are credited directly to developers as a reduced cost that may or may not be passed on to home buyers (future rate paying customers).

The Company's required investment in terminal facilities has, and always will, vary between service connections within the same customer class. Staff's Comments

show that Staff recognizes that wide variation between customers exists within the residential class. Rather than "precisely matching the recommended allowance with the average embedded investment for the class, good judgment and simplicity support an allowance of terminal facilities." Staff Comments at 3-4. Recognition of this is demonstrated in the level of allowances currently provided under Rule H. For some customer classes, the Company is required to pay an "open-ended" level of allowance equal to overhead terminal facilities requirements without regard to the size and type of terminal facilities required. This results in customers (within the same customer class) receiving varying levels of Company investment. As shown in Section 3 of the existing Rule H, some allowances are based on a fixed or flat amount and some are based on an "open-ended" amount equaling the total cost or a percentage of the total cost of overhead terminal facilities. The allowances approved in Order No. 30853 do not depart from existing policy nor do they have a discriminatory effect on customers because similarly situated customers are treated the same under the tariff.

2. Building Contractors Misread Staff's Comments.

Contrary to the Building Contractors' assertion, it is apparent from Staff calculations throughout its Comments that Staff did not "mistakenly categorize a $1,780 "per transformer" allowance as a "per new customer" allowance. See Staff Comments, Attachment 9, page 2 of 4. Nor did the Commission misapprehend approved allowances as "per customer" rather than "per installed transformer" as is suggested by the Building Contractors on page 8 of its Petition. On page 10 of Order No. 30853, the Commission clearly states that "developers of subdivisions and multiple occupancy projects will receive a $1,780 allowance for each single-phase transformer installed

within a development and a $3,803 allowance for each three-phase transformer installed within a development." The Building Contractors confuse the facts by suggesting that developers are equivalent to "customers" and including developer-related costs in the calculations of customer charges and credits provided under Rule H. Again, developers may or may not reduce lot prices to reflect credits they receive from Idaho Power.

3. Line Extension Cost Recovery Does Not Create "Windfall."

The Building Contractors' Petition also suggests that if the current economic climate continues for any extended period, a "windfall to the Company and its existing customers" will result with "an additional unreimbursed line extension cost to developers." Building Contractors' Petition at 2 and 6. This is simply not true. The Company either makes an investment or it does not; if made, the Company expects to earn a return only on the investment it makes and does not receive a "windfall." At no time would the Company "recover costs exceeding the actual new distribution facilities cost." *Id.* at 7 (emphasis in original). Idaho Power does not earn a return on these Contributions In Aid of Construction ("CIAC"). CIAC reduces rate base growth. A larger payment by a customer or developer will not create a "windfall" to existing customers because increased CIACs reduce the responsibility of existing customers to pay for facilities that do not serve them.

In the event the Commission does not grant reconsideration, the Building Contractors' Petition requests that the Commission clarify its Order to "clearly confirm that the Commission now is rejecting its heretofore, longstanding policy that new customers are entitled to a Company level of investment equal to that made to serve

existing customers in the same class . . . ." *Id.* at 2 and 11. No such "confirmation" is needed nor would it be accurate. The Building Contractors' reference paraphrases a 1997 Commission finding in Order No. 26780, the Commission's last order addressing Rule H in its entirety. To the extent that Order No. 30853 requires a new customer payment greater than that made to serve existing customers, it is a reflection that different circumstances exist in 2009 than did in 1997. While Idaho Power is not convinced that one order can support the inference of a "longstanding" policy when the Commission has not revisited the policy in the interim, the fact remains that policy does not exist in a vacuum. Commission policies can (and do) change as conditions change. New customer-provided payments are essentially the "entry fee" to become a customer; that policy has not changed and it has no relationship to existing or past customers. The amount of the entry fee is different now than it was 12 years ago and correctly reflects the increased payment in distribution facilities necessary in 2009 to serve new customers.

The Building Contractors request the Commission confirm that it "recognizes and intends the disparity in Company investment (and customer charges) as between existing and new customers and as among new customers inside and outside of subdivisions created by the Order." *Id.* Again, no such confirmation is required or appropriate. It is true that under Order No. 30853, Idaho Power would invest less in terminal facilities than it has in the past. This is representative of the times Idaho Power finds itself in. The Company makes many investments for new customers for the numerous parts of its system that comprise its electric service. The fact is that Idaho Power's investment per customer is increasing. There are two principal drivers that

effect growth in rates over time: (1) inflation and (2) growth-related costs. The growth in rates over the past five years (over 21 percent) has outpaced pure inflation, demonstrating that growth is not paying for itself. Other than Rule H, no means of assessing the costs of serving new customers directly to those specific customers currently exists.

The *Homebuilders'* Court recognized that costs incurred to serve a specific customer or group of customers, such as line extension costs, may be recovered from those customers. The Court held:

> The instant case presents no factors such as when a nonrecurring charge is imposed upon new customers because the service they require demands an extension of existing distribution or communication lines and a charge is imposed to offset the cost of the utility's capital investment.

Idaho State Homebuilders v. Washington Water Power, 107 Idaho 415 at 421, 690 P.2d 530 (1984)(emphasis added). Consequently, the Commission does not need to justify "the disparity in new customer Company investment" based upon the factors enumerated in *Homebuilders* (e.g., cost of service, quantity of electricity used, differences in conditions of service or the time, nature or pattern of use) as suggested on page 9 of the Building Contractors' Petition. Utilities are permitted to recover line extension charges that will offset the actual per-customer cost of physically connecting to Idaho Power's distribution system. In light of the Company's increased investments to serve new customers on its system as a whole that will be paid for by the entire rate paying public, it is reasonable and prudent for the Commission to require that these connection costs be fully funded by the individual customers causing them.

B. **Lot Refunds.**

Under existing Rule H provisions, developers of subdivisions must pay full work order costs minus Company-funded allowances before the start of construction. In turn, developers are eligible to receive Company-funded lot refunds for five years as customers connect for permanent service within subdivisions. Lot refunds are generally paid directly to developers and may or may not be passed on to retail customers as they purchase new homes. Lot refunds are not guaranteed.

The "Comparison of Existing Rule H with Company and Staff Proposals" table found on pages 5 and 6 of the Building Contractors' Petition mischaracterizes customer costs by lumping developer investment and allowances with Building Contractors' alleged embedded costs per customer. Not only does this table misrepresent "new customer investment," it also contains flawed calculations of the total distribution rate (embedded costs) per customer as described by the Company's Reply Comments (pages 5-6) and referenced in Order No. 30853 (page 8). Simply put, the recently approved allowance levels and refund provisions provided to developers of subdivisions will not "raise new customers' investment in distribution" and will in no way result in the Company over-collecting line installation costs from "new customers" (actually developers) as alleged on page 6 of the Building Contractors' Petition. The elimination of lot refunds will reduce the Company's rate base because it will no longer grow by refunded amounts. In fact, customers as well as developers will benefit because this will hold electric rates down in the long run.

C. **Vested Interest Refund Period.**

The current five-year vested interest refund period has been in place for more than 20 years. Although economic conditions have varied over time, the five-year refund period has remained the same. In its 1997 Order addressing vested interests, the Commission found a five-year refund period "is reasonable and should be maintained" because it "balance[s] the competing objectives of fairness and administrative complexity." Order No. 26780 at 16-17. In that case, the Commission made a special exception for platted, undeveloped subdivisions and ordered a 10-year refund period. *Id.* at 17. The Building Contractors' claim that the all refund periods, even those in developed subdivisions, should be increased to 10 years is neither justified nor supported by substantial evidence.

D. **Tariff Comparison**

Contrary to the arguments of the Building Contractors, Commission's Order No. 30853 does not change long-standing policy relating to the manner in which the Company applies charges and credits for distributions line installations and new service attachments. The following chart compares the existing Rule H tariff for residential subdivisions to that approved in Order No. 30853.

	Existing Rule H Order No. 26780	Approved Rule H Order No. 30853
Charges and Credits to *Developers* of Subdivisions		
Allowances	Equivalent of terminal facilities	Equivalent of standard overhead terminal facilities (up to $1,780) per installed transformer
Refunds (not guaranteed)	$800 per lot	Not applicable
Difference in costs to developers	Work order costs minus allowances. (eligible for lot refunds for 5 years)	Work order costs minus allowances. (not eligible for lot refunds)
Charges and Credits to *Residential Customers*		
Allowances	Equivalent of overhead terminal facilities + $1,000 (non-electric heat) or $1,300 (all electric heat)	Equivalent of standard overhead terminal facilities ($1,780)
Refunds	Not applicable	Not applicable
Difference in cost to customers	Must pay overhead / underground differential for underground services	Must pay overhead / underground differential for underground services

The simplicity of the above table clearly demonstrates that the Commission's Order No. 30853 does not change long-standing policy relating to the manner in which the Company applies charges and credits for distribution line installations and new service attachments. In reality, only the monetary levels of charges and credits are updated to reflect current conditions. The method in which they are applied to developers and customers has not changed and the Company still funds a portion of distribution investment. Furthermore, Order No. 30853 treats existing and new

customers similarly. Much like a general rate increase, Rule H tariff changes will affect customers equally going forward.

E. Procedure on Reconsideration.

Idaho Power objects to the Building Contractors' request that the Commission "provide for an evidentiary hearing at which the parties' witnesses may be examined and/or cross-examined on their pre-filed testimony and all matters within the scope of the same . . . ." Building Contractors' Petition at 10. The issues the Building Contractors plan to address at hearing would seek to "establish an appropriate value of current Company embedded costs for distribution facilities, a method to true-up those costs over time, and a fair method for line extension costs, allowances, and refunds to be paid going forward." *Id.* All of these issues have previously been addressed by the parties in written comments. The Building Contractors' Petition does not indicate what evidence it would present at hearing that is different than what has been offered by the parties to date, other than just to cross-examine other parties' witnesses on their positions.

A hearing to address the full scope of its issues, as requested by the Building Contractors, would be extremely unfair to Idaho Power and the other parties in this proceeding. It is the equivalent of "starting over" procedurally nine months after the Company filed its Application. *The Building Contractors have had multiple opportunities to request a hearing and declined to do so prior to the issuance of Commission Order No. 30853.* The time to request a full hearing of the Company's Application was at the pre-Hearing conference on January 14, 2009, or even in one of its two sets of comments filed on April 17, 2009, and May 1, 2009, if it determined that written

comments were inadequate to address the issues raised in the Application. If the Commission finds it needs additional evidence to augment the record in this case, Idaho Power respectfully requests that it does so though written comments targeted to elicit the information sought by the Commission.

The Building Contractors also request "a stay of the effective date of those portions of the Company's Rule H tariff relating to the calculation and payment of allowances and refunds, including vested interest refunds, pending a final decision on the merits." *Id.* at 12. At the Company's request and per Order No. 30853, the charges and credits authorized by the Order will become effective for services rendered on or after November 1, 2009. According to the procedure set forth in Idaho Code § 61-626, the Commission may take 13 weeks to process reconsideration petitions after they are filed, and 28 days to issue its order after the matter is fully submitted. If the Commission grants reconsideration and uses the full statutory reconsideration period, the Commission will issue an order no later than November 18, 2009. The Company would note that a stay may not be necessary unless those additional 18 days are required to process the Petitions. Absent an Order to the contrary, Idaho Power will continue to plan for implementation of the credits and charges approved in Order No. 30853 on the November 1, 2009, effective date.

II. AGENCIES' PETITIONS

The Agencies' Petitions for Reconsideration/Clarification largely restate their previous objections to Rule H's Section 10. Their Petitions primarily focus on: (1) whether the Commission has jurisdiction over utility facility relocation amounts assessed to Idaho Power by public road agencies and (2) the application of Section 10 to third-

party beneficiaries and local improvement districts. For purposes of this Answer and the proposed Section 10, a "public road agency" is any state or local agency, county, or municipality that administers the public road rights-of-way and is requesting Idaho Power to relocate facilities.

A. Commission Jurisdiction

It is evident from their Petitions that the Agencies continue to misunderstand the distinction in jurisdiction between public road agencies and the Commission. Order No. 30853 acknowledges that the Agencies have authority to require Idaho Power to relocate its facilities in public road rights-of-way, at no cost to the public road agency, where the facilities would incommode the public use. Order No. 30853 at 12. Section 10 does not encroach on the Agencies' authority to determine that relocation of utility faculties is necessary. However, the Agencies' authority to require relocation does not give them sole discretion to decide if the utility will receive any subsequent reimbursement from third parties benefitting from the facilities relocation.

The question of who pays for the costs of relocating utility facilities directly bears on utility rates and charges and, as a result, fall squarely within the jurisdiction of the Commission. The Commission has authority under Idaho Code §§ 61-502 and -503 to regulate how utilities will recover the costs of relocating their facilities in their rates and charges. This authority includes the ability to require the beneficiary of a relocation of utility facilities to contribute the cost of relocation funded by the utility. Such contributions benefit the rate paying public by reducing upward pressure on rates.

The Commission is obligated to protect the public interest and is charged with ensuring that costs of utility facility relocation have not been unreasonably charged to

Idaho Power customers when, in fact, the relocation of futility facilities wholly or partially benefits a person or entity other than the public. If costs are being unreasonably allocated, the Commission has the authority to provide a remedy. It is reasonable and prudent that the Commission should approve rules that require the third-party causing facility relocation to reimburse Idaho Power so that the costs of the relocation are not unfairly shifted to the Company's customers.

There is nothing in Idaho Code §§ 61-301, -501, -502, or -503 to suggest that the Legislature divested the Commission of its authority to determine how utilities will recover the cost of relocating utility facilities in their rates if public road relocations are involved. In these statues, the Legislature invested the Commission with broad authority to regulate the services, practices and contracts of utilities as they affect rates.

Although much is made of the Agencies' exclusive jurisdiction over the supervision, construction, operation, and maintenance of highways within their districts, Section 10 addresses the entirely separate issue of whether the utility relocation costs should be borne by the utility (and its customers) or by a third party who directly benefits from the relocation. This determination involves the reimbursement of the Company by the third party and has no impact on the public road agencies' jurisdiction over its rights-of-way. If Idaho Power seeks reimbursement from a third party for relocation costs assigned to the Company by a public road agency, it should be of no concern to the public road agency (which is not a party to subsequent reimbursement dealings).

Moreover, the Commission's Order does not seek to contravene the common law rule that the utility's use of the public road right-of-way is subordinate to the paramount use of public road right-of-way if that use interferes with the public benefit. Section 10

does not require any of the pubic road agencies to reimburse the Company for relocation costs where relocation is require to benefit the public. The Commission would have jurisdiction only over the portion of the relocation paid the by utility, and the utility's subsequent collection of the proportional amount that did not benefit the public interest from a third party.

Neither Idaho Power nor the Commission disagrees with ACHD that the public benefits from road projects funded by entities of government, third parties and developers. However, utility rates that include costs of utility relocation in public rights-of-way that have been inappropriately shifted from developers to utility customers – the majority of which live outside the area served by the public road agency – cannot be just and reasonable as required by Idaho Code §§61-301 and -502. Idaho Power customers in Pocatello do not benefit from roadway improvements for a new shopping center in Nampa, but they currently pay for relocation costs in excess of the public benefit in their rates. Section 10 addresses this issue of fundamental fairness and is squarely within the Commission's authority.

ACHD suggests that relocations "should be left in the hands of the highway districts, working in a coordinated effort with local government officials and utility companies to develop an approach that is mutually beneficial." ACHD Petition at 9. Idaho Power values its good working relationship with ACHD and believes that Resolution 330 has greatly contributed to that working relationship since its enactment in 1986. For this reason, Idaho Power wishes to extend Resolution 330's general framework through Rule H to its dealings with other public road agencies to make cost allocations of utility relocations more transparent and less susceptible to inappropriate

subsidization of local economic development. If public road agencies such as ACHD believe these results can be accomplished short of amending Rule H, the Company is certainly willing to explore these alternatives.

B. Third-Party Beneficiaries and Local Improvement Districts.

The Company agreed in its Reply Comments in this case to clarify the reference to "local improvement districts" ("LIDs") in Section 10. Rule H already includes a capitalized, defined term "Local Improvement Districts" in Section 1. This defined term is limited to local improvement districts created under Idaho Code § 50-2503, to provide for the study, financing, and construction of distribution line Installations or Alterations. By contrast, the uncapitalized term "local improvement districts" in Section 10 of Rule H is a broader term intended to cover any local improvement district created under authority of Idaho statutes. To clarify this intent, the Company recommends the addition of the following sentence in Section 10: "For purposes of this Section 10, 'local improvement district' includes any local improvement district created under the statutory procedures set forth in Idaho Code Title 50, Chapter 17."

ACHD asserts in its Petition for Consideration/Clarification that local improvement districts and public entities should be excluded from the definition of "third-party beneficiaries" in Section 10. The Company does not agree with this position. For instance, public agency developments such as a new office building may require the relocation of public road rights-of-way and the power lines located within those rights-of-way. In such case, the public agency benefiting from the relocation work should pay for the power line relocations, as opposed to the utility's customers as a whole. There is no meaningful difference here between the public agency requesting the relocation and a

private business requesting the relocation. Similarly, a local improvement district may be formed to finance a road/curb/gutter/sidewalk improvement project that requires the relocation of power poles located within the public road right-of-way. In this case, where the local improvement district is paying for the road improvements in question, the local improvement district should also pay for the cost of relocating the power line as required for the improvements. The local improvement district typically derives funding from adjacent private businesses and land owners and those parties, who are directly benefiting from the power line relocation, should bear the costs of the relocation, rather than the utility's customers as a whole.

ACHD also asserts in its Petition for Consideration/Clarification that ACHD has already established rules for the relocation of utility facilities and the allocation of the associated costs under its Resolution 330 adopted in 1986. Idaho Power has worked effectively with ACHD under Resolution 330 and does not intend to interfere with the ongoing application of Resolution 330. Accordingly, the Company recommends modification to its proposed Section 10 to state: "This Section shall not apply to utility relocations within public road rights-of-way of Public Road Agencies which have adopted guidelines for the allocation of utility relocation costs between the utility and third-party beneficiaries that are substantially similar to the rules set out in Section 10 of Rule H."

C. Procedure on Reconsideration.

ACHD requests reconsideration/clarification of Order No. 30853 by written briefs. Nampa and ACCHD have indicated that they will submit written briefs no later than August 12, 2009, that will present further legal argument and evidence on Section 10.

Idaho Power and the Agencies have already submitted detailed written arguments on the legal issues with regard to Section 10 of Rule H. Although it is not evident what additional legal arguments could be addressed on reconsideration that have not been raised and responded to previously, Idaho Power agrees that the filing of written briefs is the proper procedural mechanism to address legal issues on which the Commission seeks additional argument.

Nampa and ACCHD also request a hearing on reconsideration to present further argument. Idaho Power does not believe that a hearing would be a proper forum to debate the type of legal issues raised by the Agencies. If the Commission determines that written briefs are not sufficient to address the issues raised by the Agencies, Idaho Power believes an oral argument would better suit the legal nature of the issues present in this case.

III. CONCLUSION

The Commission's findings in Order No. 30853 were based upon substantial and competent evidence in the record. Idaho Power respectfully requests that the Commission issue an Order affirming its findings in Order No. 30853 and denying the Petitions for Reconsiderations filed in this case. If the Commission determines that it requires additional evidence upon which to make its reconsideration findings, Idaho Power requests that written comments/briefs and/or oral arguments be scheduled in lieu of a hearing for the reasons described above.

DATED at Boise, Idaho, this 29th day of July 2009.

Lisa D. Nordstrom

LISA NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of July 2009 I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO PETITIONS FOR RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

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