3-29-2010

Ada Highway Dist. V. Public Utilities Com'n Clerk's Record v. 4 Dckt. 37294

Vol IV of VI

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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37293

37294

Volume IV (pp. 612-705)

TABLE OF CONTENTS
(Chronological Index)

VOLUME I **PAGE**

DOCUMENTS FROM IPUC CASE NO. IPC-E-08-22

VOLUME III

VOLUME IV **PAGE**

TABLE OF CONTENTS
(Alphabetical Index)

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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 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 timely, as it is made within fourteen days of the date of filing of the last brief in this matter, which was October 27, 2009.

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 Attachment 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 Company's ("Company") 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. Originally this matter was deemed by the parties and the Commission as appropriate for decision on modified procedure upon submission of comments responding to the Company's application and direct testimony. Order 30719. As later became apparent, however, the technical and legal issues related to the Company's requested amendments, as they affected the Building Contractors' members and members' customers and the Company, ultimately warranted a technical hearing and additional briefing by the Company and Intervenors. Order 30883.

Consistently throughout this proceeding, Building Contractors sought findings and conclusions by the Commission that new customers were entitled to a level of per-customer Company investment in distribution facilities on a par with existing customers; which, based on calculated embedded costs, was approximately $1,232 per customer. In comparison, although Staff computed the $1,232 embedded cost amount, it did not oppose the per-transformer charge serving as the sole Company investment.

3. Because of 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, Dr. Richard Slaughter was retained as the Building Contractors' consultant and expert witness in support of the Building Contractors' written comments and to provide testimony to and before the Commission. Dr. Slaughter's experience and testimony served to establish an historical and

factual foundation concerning the Company's existing Rule H Tariff, its embedded distribution costs, and the actual sources of increasing costs of service to the Company. His testimony also provided a counterbalancing critique of the Company's and Staff's assertions on these important issues.

Dr. Slaughter presented reasonable and factually supported opinions in rebuttal of the Company's assertion that line extensions costs to serve new customers were a source of upward pressure on rates that would be alleviated by approval of the Company's proposed tariff amendments. Dr. Slaughter also provided relevant testimony addressing the potential effects of the proposed tariff amendments on energy demand, use and achievability of the Commission's conservation goals, which are pertinent to the Commission's consideration of whether the tariff amendments would be adverse to the public interest. Beyond merely criticizing the proposed tariff, Dr. Slaughter offered reasonable alternatives for the Commission's consideration under alternative allowance/refund and strict allowance approaches.

Dr. Slaughter challenged the Staff's calculations of the Company's proposed investment in distribution facilities. He presented evidence indicating 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 new 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 generally and through line extension charges specifically. 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.

The Commission's Order 30883 granting in part Building Contactors' request for reconsideration implicitly, if not explicitly, recognized that Building Contractors had identified important issues that warranted further testimony and briefing by the parties and consideration by the Commission.

Based on the foregoing, Building Contractors have materially contributed to this proceeding and the Commission's consideration of the merits of the Company's tariff amendment application.

4. The Building Contractors' expenses and costs incurred in this case, as summarized in Exhibit A, total $60,965.25.[1] This includes $40,017.50 for legal fees (166.3 hours), $19,926.66 for consultant fees (113.12 hours) and $1,021.09 in copy charges. Of this total, $28,386.35 in legal expenses and costs and consultant expenses and costs were incurred in the initial proceedings, and the balance of $32,578.90 have subsequently been incurred in connection with seeking and obtaining reconsideration, preparation of testimony, preparing for and participating in the technical hearing, and preparation of a post-hearing brief.

These expenses all were reasonable and necessary. They include expenses incurred to retrieve and review Commission files regarding 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, the drafting of Building Contractors' own testimony, comments, petitions and briefs, request for reconsideration,

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

preparation for and participation in the October 20th technical hearing, and preparation of Building Contractors' post-hearing brief.

5. 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 Attachment 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 and active participation in this proceeding.

The Commission has 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. Case No. IPC-E-95-18, Order No. 26780 at 19 (a copy of Order 26780 as obtained from the Commission's online Orders Archive is attached as Attachment B).

Building Contractors submits that its appearance in this case was for the benefit of developers and owners of lots within subdivisions requiring line extensions, and that an appropriate mechanism exists to provide for the Company's recovery of an intervenor funding award to the Building Contractors, as has previously been implemented by the Company pursuant to the Commission's directive in Order 26780.

CONCLUSION

The expenses that Building Contractors have incurred are reasonable given its substantial effort and participation in this proceeding. These expenses 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 and the appropriate allocation of those costs as between new customers and the Company's existing ratepayers. Its position differed materially from that of any other party and from the Staff's position, and raised issues of concern to the general body of ratepayers.

Participation in this case has been, and continues to be, a financial hardship for Building Contractors. Building Contractors respectfully request that the Commission exercise its discretion to accept and grant this request finding that Building Contractors is entitled to intervenor funding in the maximum amount permitted by law, 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 9th day of November, 2009.

GIVENS PURSLEY LLP

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

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

		Hours	
1	Legal Fees		
	Michael C. Creamer (Partner)	152.0	$ 38,000.00
	Elizabeth M. Donick (Associate)	5.5	$ 852.50
	Justin M. Fredin (Associate)	3.0	$ 585.00
	Tami Kruger (Paralegal)	5.8	$ 580.00
	Subtotals	166.3	$ 40,017.50
	Costs:		
	Copies		$ 1,021.09
	Total Work and Costs		$ 41,038.59
2	Consultant Richard Slaughter	113.12	$19,926.66

TOTAL FEES AND EXPENSES: $ 60,965.25

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

Date	ID	Type	Hours	Rate	Amount	Description
2/9/2009	MCC	Fee	0.50	250.00	125.00	Meeting with J. Risch and J. Kunz.
2/10/2009	MCC	Fee	2.30	250.00	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	250.00	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	100.00	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	250.00	1,000.00	Review IPUC documents; prepare for and attend meeting with clients.
2/12/2009	TLK	Fee	1.60	100.00	160.00	Travel to/from Idaho Historical Society to review documents.
2/13/2009	MCC	Fee	0.70	250.00	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	250.00	100.00	Initial review of discovery responses from IPCo/IPUC; correspondence with J. Kunz re same.
2/18/2009	MCC	Fee	1.50	250.00	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	250.00	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	250.00	75.00	Review IPUC/IPCo documents/discovery responses.
2/24/2009	MCC	Fee	0.80	250.00	200.00	Review economic reports; correspond with R. Slaughter; correspond with J. Kunz.
2/25/2009	MCC	Fee	1.10	250.00	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	250.00	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	250.00	100.00	Review IPUC website; office conference re large ag pumper position on line extension tariff.
3/10/2009	MCC	Fee	0.50	250.00	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	250.00	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	155.00	170.50	Research Idaho Power case regarding August 25th fires.
3/31/2009	MCC	Fee	0.40	250.00	100.00	Correspondence with R. Slaughter; coordinate research re: Idaho Power Company--Oregon Trail Fire.
4/2/2009	LMD	Fee	1.30	155.00	201.50	Continue researching Idaho Power case regarding August 25th fire.
4/2/2009	MCC	Fee	3.80	250.00	950.00	Telephone conference with R. Slaughter; review pleadings and discovery response.
4/3/2009	LMD	Fee	0.60	155.00	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	250.00	700.00	Meeting with R. Slaughter; review IPUC orders.
4/6/2009	LMD	Fee	2.50	155.00	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	250.00	50.00	Telephone conference with R. Slaughter.
4/10/2009	MCC	Fee	1.10	250.00	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	250.00	1,500.00	Review and edit draft testimony.
4/13/2009	MCC	Fee	3.90	250.00	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	250.00	100.00	Review pleadings.
4/16/2009	MCC	Fee	2.70	250.00	675.00	Review and forward draft testimony; coordinate finalizing same.
4/17/2009	MCC	Fee	6.80	250.00	1,700.00	Review and finalize Slaughter testimony; draft comments supporting/transmitting same; review highway districts' comments.
4/20/2009	MCC	Fee	0.50	250.00	125.00	Review and forward IIPA and Highway Districts' comments; review IPUC docket sheet.
4/21/2009	MCC	Fee	0.80	250.00	200.00	Review IPUC staff comments; telephone call to R. Slaughter.
4/26/2009	MCC	Fee	0.40	250.00	100.00	Telephone conference with R. Slaughter.
4/27/2009	MCC	Fee	0.40	250.00	100.00	Review and respond to correspondence re response to staff comments.
4/29/2009	MCC	Fee	0.90	250.00	225.00	Review and forward draft comments; telephone conference with R. Slaughter; begin drafting response.
4/30/2009	MCC	Fee	3.90	250.00	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	250.00	200.00	Review IPCo reply comments and forward to client and to R. Slaughter.
5/11/2009	MCC	Fee	0.30	250.00	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	250.00	75.00	Telephone conference with R. Slaughter.
5/20/2009	MCC	Fee	0.40	250.00	100.00	Review R. Slaughter correspondence.
7/2/2009	MCC	Fee	0.50	250.00	125.00	Review order.
7/10/2009	MCC	Fee	4.00	250.00	1,000.00	Draft request for intervenor funding.
7/13/2009	MCC	Fee	1.10	250.00	275.00	Telephone conference with J. Kunz; telephone conference with L. Nordstrom at Idaho Power Co.; finalize and file request for intervenor funding; telephone conference with K. Sasser at IPUC re same.
7/14/2009	MCC	Fee	0.40	250.00	100.00	Telephone conference with R. Slaughter; correspond with J. Kunz.
7/15/2009	MCC	Fee	2.40	250.00	600.00	Prepare for and attend meeting with R. Slaughter; initial review of IPUC files re discrimination issue; locate Idaho Supreme Court decisions re same.
7/16/2009	MCC	Fee	6.60	250.00	1,650.00	Review line extension tariff docket; telephone conference with R. Slaughter; telephone conference with J. Kunz.
7/17/2009	MCC	Fee	1.50	250.00	375.00	Meeting with R. Slaughter; correspond with R. Slaughter and J. Kunz.
7/20/2009	MCC	Fee	5.80	250.00	1,450.00	Review Slaughter notes; telephone conference with R. Sterling; meeting with Building Contractors Association; telephone conference with C. Ward; begin draft of petition for reconsideration.
7/21/2009	MCC	Fee	6.50	250.00	1,625.00	Draft petition for reconsideration.
7/22/2009	MCC	Fee	6.20	250.00	1,550.00	Continue drafting petition for reconsideration; file same; review petitions for reconsideration filed by highway districts; telephone conference with M. Johnson, counsel for highway districts.
7/23/2009	MCC	Fee	0.20	250.00	50.00	Review and forward highway district petitions for reconsideration.
7/29/2009	MCC	Fee	0.50	250.00	125.00	Preliminary review of IPCo response to petition for reconsideration.
7/30/2009	MCC	Fee	0.20	250.00	50.00	Further review of IPCo response.

8/3/2009	MCC	Fee	0.30	250.00	75.00	Correspond with client re reconsideration of IPUC order.
8/12/2009	MCC	Fee	0.50	250.00	125.00	Review IPUC case file on website to determine status of pending petitions; telephone conference with K. Sasser at IPUC; forward status update to clients.
8/19/2009	MCC	Fee	0.90	250.00	225.00	Review and forward IPUC order on reconsideration.
8/20/2009	MCC	Fee	0.40	250.00	100.00	Telephone conference with R. Slaughter; telephone call to C. Ward re IPUC reconsideration order.
8/21/2009	MCC	Fee	0.80	250.00	200.00	Correspond with R. Slaughter; begin outline of testimony and key points re "allowances" v. "investment"; telephone conference with S. Spear, counsel for ACHD re reconsideration; forward correspondence re same to J. Kunz.
8/24/2009	MCC	Fee	1.00	250.00	250.00	Telephone conference with R. Slaughter; telephone conference with C. Ward; telephone conference with J. Kunz; telephone conference with R. Slaughter.
8/26/2009	MCC	Fee	0.40	250.00	100.00	Correspond with R. Slaughter.
8/27/2009	MCC	Fee	1.50	250.00	375.00	Review draft Slaughter testimony; correspond with ACHD; meeting with R. Slaughter.
8/28/2009	MCC	Fee	0.10	250.00	25.00	Telephone conference with R. Slaughter; telephone conference with S. Spears at ACHD.
8/31/2009	MCC	Fee	5.50	250.00	1,375.00	Draft/edit R. Slaughter's testimony on rehearing; telephone conference with R. Slaughter.
9/1/2009	MCC	Fee	2.00	250.00	500.00	Review PUC orders; attend meeting with M. Wardle & counsel for Highway Districts; telephone conference with R. Slaughter.
9/2/2009	MCC	Fee	3.20	250.00	800.00	Telephone conference with R. Slaughter; revise and forward draft testimony on reconsideration to Dr. Slaughter and to clients.
9/3/2009	MCC	Fee	0.30	250.00	75.00	Coordinate further review and edits of testimony.
9/9/2009	MCC	Fee	0.30	250.00	75.00	Review and forward IPUC decision re request for intervenor funding.
9/10/2009	MCC	Fee	2.20	250.00	550.00	Coordinate preparation of R. Slaughter testimony.
9/11/2009	MCC	Fee	4.70	250.00	1,175.00	Finalize and file BCA testimony on reconsideration; initial review of ACHD briefing.
9/17/2009	MCC	Fee	0.20	250.00	50.00	Review and forward IPUC notice of oral argument and technical hearing.
9/18/2009	MCC	Fee	0.50	250.00	125.00	Coordinate hearing appearance/scheduling; telephone conference with L. Nordstrom; telephone conference with R. Slaughter.
9/22/2009	MCC	Fee	0.70	250.00	175.00	Review and forward IPCo brief responding to highway districts on reconsideration; forward same to clients and R. Slaughter for review.
9/28/2009	MCC	Fee	0.90	250.00	225.00	Review IPCo responsive testimony and forward to clients; review Slaughter testimony; email exchange with R. Slaughter re IPCo arguments.
10/6/2009	MCC	Fee	0.40	250.00	100.00	Telephone conference with S. Spears with ACHD; telephone conference with R. Slaughter; review ACHD motion to strike; forward motion to client and R. Slaughter.
10/7/2009	MCC	Fee	1.40	250.00	350.00	Review pleadings, testimony and order granting reconsideration in preparation for meeting with R. Slaughter to outline Slaughter direct testimony on reconsideration.
10/8/2009	MCC	Fee	0.10	250.00	25.00	Coordinate meeting with R. Slaughter.
10/9/2009	MCC	Fee	3.50	250.00	875.00	Continuing review of pleadings and testimony; meeting with R. Slaughter to prepare for Technical Hearing.
10/13/2009	JMF	Fee	3.00	195.00	585.00	Preparation for and attendance at oral argument; follow-up conversations with M. Creamer and Mike Wardle.
10/19/2009	MCC	Fee	9.00	250.00	2,250.00	Review pre-filed testimony and comments; prepare questioning for IPCo witnesses; prepare statement of position; telephone conference with R. Slaughter re testimony and re cross-examination.
10/20/2009	MCC	Fee	5.00	250.00	1,250.00	Prepare for and attend/participate in IPUC Technical Hearing on reconsideration re line extension allowances.
10/20/2009	TLK	Fee	0.40	100.00	40.00	Prepare documents for hearing.
10/23/2009	MCC	Fee	0.20	250.00	50.00	Coordinate with C. Bucy re draft transcript; review same; telephone conference with C. Bucy re pagination issues in draft transcript.
10/26/2009	MCC	Fee	4.90	250.00	1,225.00	Draft post-hearing brief; telephone conference with R. Slaughter re post-hearing briefing issues and argument.
10/27/2009	MCC	Fee	5.00	250.00	1,250.00	Finalize and file post-hearing brief with IPUC and serve on parties.
Total Fees			166.30		$40,017.50	

RSA, Inc.

Richard Slaughter Associates
907 Harrison Blvd
Boise, Idaho 83702

208 850-1223
Fax 208 345-9633
email: richard@rsatboise.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

RSA, Inc.

Richard Slaughter Associates
907 Harrison Blvd
Boise, Idaho 83702

208 850-1225
Fax 208 345-9653
email: richard@rsaboise.com
EIN: 82-0464626

Invoice

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

August 20, 2009

Time billed at $175 per hour

Date	Item	Time	Fee
IPC-E-08-22 (Rule H)			
7/15/2009	Review data for appeal	0:30	$87.50
7/16/2009	Decision specific review; M. Creamer	2:32	$443.33
7/17/2009	M. Creamer; draft technical issues	3:48	$665.00
7/21/2009	Review appeal petition	3:30	$612.50
7/22/2009	Review of petition and charts; telephone meetings Mike Creamer	1:20	$233.33
	Total	11:40	$2,041.66
	Please remit		$2,041.66

RSA, Inc.

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208 850-1225
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Invoice

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

October 27, 2009

Time billed at $175 per hour

Date	Item	Time	Fee
IPC-E-08-22 (Rule H)			
8/20/2009	Review Commission order	0:45	$131.25
8/24/2009	Begin draft of testimony	2:00	$350.00
8/25/2009	Write testimony	4:06	$717.50
8/26/2009	Review and edit	2:06	$367.50
8/27/2009	Meeting; M. Creamer	1:12	$210.00
8/31/2009	Testimony questions, Creamer	0:36	$105.00
9/1/2009	start Creamer changes	0:12	$35.00
9/2/2009	Creamer review;edits; IPCo FERC data	3:00	$525.00
9/4/2009	Creamer comments on testimony; revisions	1:48	$315.00
9/10/2009	Creamer revisions for filing	1:42	$297.50
9/11/2009	Conference and final review for filing	0:36	$105.00
9/28/2009	Said review	0:54	$157.50
10/9/2009	Prepare for conf., conf. w/ M. Creamer	4:12	$735.00
10/13/2009	PUC Hearing on road agencies	2:45	$481.25
10/19/2009	Prepare for hearing	4:06	$717.50
10/20/2009	PUC Hearing	4:00	$700.00
10/26/2009	Creamer telephone; Notes for final briefing	1:30	$262.50
10/27/2009	Review Creamer brief; conference	1:12	$210.00
	Total	36:42	$6,422.50
	Please remit		$6,422.50

ATTACHMENT B

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF NEW TARIFF PROVISIONS RELATING TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLMENTS OR ALTERATIONS.

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CASE NO. IPC-E-95-18

ORDER NO. 26780

TABLE OF CONTENTS

[Footer A:

ORDER NO. 26780 -i-]

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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CASE NO. IPC-E-95-18

ORDER NO. 26780

INTRODUCTION

Idaho Power Company filed an Application for approval of modifications to its Tariff No. 101, Rule H, providing for charges for the construction of distribution line installations or alterations. Idaho Power proposes 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. The Commission held several hearings in this matter in Boise and Pocatello, Idaho, as well as post hearing briefing. In this Order we conclude that Idaho Power's Application is not precluded by the Supreme Court decision in *Boise Water, infra*. We grant Idaho Power's Application for modification to its Rule H Tariff. Specifically, we approve the change from average unit cost to work order costs, approve a slight change to the allowances, modify the refund policy, approve changes to the engineering charge and overhead fees and address other miscellaneous provisions of the tariff. We further grant the Building Contractor's motion for intervenor funding.

I. PROCEDURAL HISTORY

On December 8, 1995, Idaho Power filed an Application for approval of modifications to its Tariff No. 101, Rule H. Idaho Power proposes to shift more of the cost of new service attachments and distribution line installations or alterations from the system revenue requirement to the new customer or customers creating the expenditures by requiring contributions for new service attachments and/or distribution line installations or alterations. On January 3, 1996, the Commission issued a Notice of Application and Notice of Workshop.

At the request of the applicant, Commission Staff conducted several workshops with representatives of Idaho Power and members of the public to discuss the Application and alternative proposals. Workshops were held on January 23, February 15, and March 19, 1996 in Boise, Idaho and on March 26, 1996 in Pocatello, Idaho.

The following parties were designated as intervenors to this case: Idaho Building Contractors Association (Building Contractors) represented by Dean J. Miller, Esq.; American Heritage, Inc. represented by Douglas Balfour, Esq.; Life Style Homes and Building Contractors of Southeast Idaho represented by Darris Ellis; Mountain Park Estates represented by Cynthia Ellis; and Industrial Customers of Idaho Power represented by Peter Richardson, Esq. The petitioner, Idaho Power, was represented by Larry Ripley, Esq. and the Commission Staff was represented by Susan E. Hamlin, Esq.

On February 12, 1996, the Building Contractors filed a Motion with the Commission to dismiss the Application filed by Idaho Power. The Building Contractors argued that the Application was a collateral attack upon and was precluded by Commission Order No. 26216. Among other things, Order No. 26216 authorized a rate moratorium and provided that base rates could not be changed prior to January 1, 2000, subject to certain exceptions. On March 5, 1996, the Commission conducted an oral argument on the Motion. The Commission issued Order No. 26364 on March 13, 1996, denying the Building Contractors' Motion to Dismiss on the grounds that the proposed line extension fees are not base rates, and therefore, the proposed changes to the line extension tariff are not precluded by Order No. 26216.

On April 4, 1996, the Commission issued Notice of Scheduling and Notice of Hearings. Due to a substantial revision in the original Application, the Commission conducted bifurcated technical hearings. During the first hearing on June 25, 1996, Idaho Power presented its revised position in the form of testimony, and Intervenors and Staff had an opportunity to cross-examine the Company's witnesses. During the second hearing held on August 6, Staff and Building Contractors presented testimony and all parties had an opportunity to present rebuttal testimony. The Commission also conducted public hearings on this matter on July 11, 1996 in Pocatello, Idaho, and on August 6, 1996 in Boise, Idaho.

On July 19, 1996, the Commission issued Order No. 26522 scheduling post hearing briefings in this case. All parties of record were invited to file post hearing briefings addressing the issue raised by the Supreme Court decision in *Building Contractors Association v. IPUC and Boise Water Corporation*, 128 Idaho 534, 916 P.2d 1259 (1996). Post hearing briefs were due September 5, 1996, and responsive briefs were due September 12, 1996. Idaho Power, the Commission Staff and the Building Contractors filed post hearing briefs addressing the issue raised by the Commission.

On September 12, 1996, the Building Contractors filed a Petition for Intervenor Funding. On September 26, 1996, Idaho Power filed a response to the Building Contractors' Petition.

On September 30, 1996, Idaho Power filed a Motion to reopen the record for receipt of an Affidavit to correct an error the Company had discovered in the proposed line extension allowance for three phase service to Schedule 7, Schedule 9 and Schedule 24 customers. On October 3, 1996, Staff responded to Idaho Power Company's Motion to Reopen the Record and indicated that it agreed with augmentation of the record by the affidavit filed by the Company. No other parties filed a response to Idaho Power Company's Motion.

II. IDAHO POWER'S PROPOSAL

Idaho Power's Application for approval of modifications to its Tariff No. 101, Rule H, proposes to increase the percentage of the cost of new service attachments and distribution line installations or alterations paid by the new customer(s) requesting the construction. The Company's revisions to its line extension policy affect only new distribution facilities serving new customers. The Company suggests that the costs of facilities built specifically for the benefit of specific customers should be the responsibility of those customers and should not be passed along to other customers in the system revenue requirement. *Tr. at* 6. The Company also

proposes that transmission, substation, and generation costs be viewed as system-related rather than customer-specific. *Tr. at* 7. The Company's proposed changes to its Rule H tariff, therefore, addresses only new distribution facilities required to serve only the new customer.

The Company summarizes the major changes to the Rule H tariff as follows:

1. Provide allowances for terminal facilities, but not line extensions.

2. Use work order cost estimates rather than average unit costs.

3. Create separate charges for service attachments (not refundable), line installations (refundable), and vested interests (refundable).

4. Create miscellaneous, nonrefundable charges.

5. Revise the line installation methodology for subdivisions.

6. Create a new refund methodology.

Tr. at 7-8.

The Company asserts that it filed its application for approval of these new tariff charges (hereafter "line extension charges") because "the anticipated revenues from the new customer are not sufficient to cover the costs of new distribution facilities." *Tr. at* 6, lines 13-15. Idaho Power explains that when it absorbs costs associated with constructing new distribution facilities, the end result is upward pressure on all customers' rates through an increased overall revenue requirement. The Company posits that the current construction allowances allow too much of the cost of new distribution facilities to be shifted to other customers who do not utilize the facilities that generated those costs. *Tr. at* 6.

The fees that the Company has proposed to increase are directly attributed to specific customers. Under the Company's proposal, the difference between the average cost of new distribution facilities that is now being recovered through rates and the total costs of bringing distribution service to new development will be paid by those requesting the extension of facilities. Idaho Power argues that this will keep all customers on a level playing field, because everyone pays the average rate base embedded in rates. To the extent that the costs of newer installations exceed the average cost included in rates, that additional cost is paid by the customer who requested it.

Commission Staff

Staff agrees 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 through a one-time capital

contribution. Staff recommends that the costs of new terminal facilities and line extensions needed to serve new customers be paid by the customers who cause those costs to be incurred. Staff proposes that the Company reduce its share of the investment in new distribution and terminal facilities to recover actual customer connection costs not currently recovered through rates, thereby relieving the upward pressure on rates caused by the current line extension policy. *Tr. at* 276.

Building Contractors

The Building Contractors oppose any changes to the Rule H tariff. The Building Contractors argue that there is no rationale for the proposed changes in Rule H other than an implied assertion that customers with existing service should be protected from inflation relative to customers with new service. They argue that the proposed rule in conjunction with the regulation may result in Idaho Power being able to collect revenues on assets for which the Company bore no investment risk, and that the proposed rule change would have a significant negative effective on developers in the short-term and on taxpayers in the long-term with little offsetting benefit. *Tr. at* 187-189. Building Contractors also claim that the proposed changes will result in double billing of customers and increased prices for new home construction. Essentially the contractors oppose the Application as a whole, as well as the change to the allowance recommendation and the average unit costs.

No other party filed direct testimony with the Commission.

Public Testimony

Many realtors and contractors testified during the public hearings in Pocatello and Boise. They expressed concerns that the changes could impact new home prices. They generally believe that if changes to Rule H are approved, many buyers will be edged out of the market.

Mr. Bill Goodnight testified as a ratepayer during the June 25 hearing. He supports the changes to the tariff. He argues that the general body of ratepayers should not pay for these increased costs.

The public policy issues raised by the Application and the parties are addressed in the following sections.

III. IMPACT OF SUPREME COURT DECISION ON APPLICATION

On March 5, 1996, the Idaho Supreme Court issued its opinion in *Building Contractors Association v. IPUC and Boise Water Corp.*, 128 Idaho 534, 916 P.2d 1259 (1996), (*Boise Water)* relating to whether the Commission's decision to increase United Water's (formerly

Boise Water) hookup fees to reflect higher cost marginal resources was discriminatory to new customers who must pay the higher fee. The Court invalidated increased fees that recovered a portion of new plant cost from new customers stating that "[t]o the extent the fee increase disproportionately allocates new plant facility costs solely to Boise Water customers connecting new service from July 25, 1994, forward, the increase unlawfully discriminates against the new customers." *Boise Water*, 916 P.2d at 1260.

On July 19, 1996, the Commission issued Order No. 26522 inviting parties to this case to explain by brief whether or to what extent Idaho Power's proposed charges for new service attachment and distribution line installation are affected by the Supreme Court's ruling in *Boise Water*.

The statutory framework within which the Commission is authorized to set rates is found in Title 61, Chapters 3 and 5 of the Idaho Code. *Idaho Code* § 61-502 provides, in pertinent part:

Determination of rates.—Whenever the commission, after a hearing...shall find that the rates,...[or] charges or classifications, ...collected by any public utility for any service or product or commodity,...are unjust, unreasonable, discriminatory or preferential, or in any wise in violation of any provision of law, or that such rates,...[or] charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates,... [or] charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force and shall fix the same by order as hereafter provided, ...

Idaho Code § 61-503 provides:

Power to investigate and fix rates and regulations.—The commission shall have power, upon a hearing,...to investigate a single rate,...charge, [or] classification,...of any public utility, and to establish new rates,...charges, [or] classifications,...in lieu thereof.

Finally, *Idaho Code* § 61-315 provides:

Discrimination and preference prohibited.—No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or

in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section.

The Supreme Court explained in *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 530 (1984), that not all differences in rates and charges between different classes of customers is unlawful discrimination. The Court explained:

Not all differences in a utility's rates and charges as between different classes of customers constitute unlawful discrimination or preference under the strictures of *Idaho Code* § 61-315. A reasonable classification of utility customers may justify the setting of different rates and charges for the different classes of customers. *Utah Idaho Sugar Company v. Intermountain Gas,* 100 Idaho 368, 597 P.2d 1058 (1979). Any such difference (discrimination) in a utility's rates and charges must be justified by a corresponding classification of customers that is based upon factors such as cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of the use. *Utah Idaho Sugar Company v. Intermountain Gas, supra.* We have found justification for rate discrimination as between customers within a schedule and as between customers in different schedules. *Grindstone Butte Mutual Canal Company v. Idaho Public Utilities Commission*, 102 Idaho 175, 627 P.2d 804 (1981); *Utah Idaho Sugar Company v. Intermountain Gas Company, supra.*

Homebuilders, 107 Idaho at 420.

These factors, cost of service, quantity of electricity used, differences in conditions of service, or the time, nature and pattern of use, are guidelines the Supreme Court has set for the Commission to use to evaluate whether there is a reasonable justification for setting different rates and charges for different classes of customers. Thus, the issue in this case becomes whether the increased charges associated with the Rule H line extension policy unreasonably discriminate against new customers.

Commission Staff

Staff believes that the proposed line extension charges in this case do not unlawfully discriminate against new customers. Staff points out that unlike the hookup fees at issue in *Boise Water*, Idaho Power's proposed line extension charges are designated to recover quantifiable costs related to identifiable plant used to serve only those customers who pay the charges. Therefore, in Staff's opinion, the charges do not unlawfully discriminate against new customers and the holding of *Boise Water* is inapplicable.

Idaho Power

Idaho Power's position is similar to the Staff's position in that the Idaho Supreme Court has recognized the difference between investment required to serve new customers and investment required for the system. Idaho Power points out that the Idaho Supreme Court has ruled that a system investment should be borne by all the system's customers, i.e., a new generation source, a

new water treatment plant like in *Boise Water*. On the other hand, if the new investment is solely to provide service to new customers, then the Commission is authorized to require that the new customers bear the cost of that new investment. Relying on *Idaho State Homebuilders v. Washington Water Power, Id.*, Idaho Power states that the Court clearly made a distinction between system investment, as was the investment in *Boise Water,* and distribution investment as was the case in *Washington Water Power.* Idaho Power further alleges that in the present proceeding before the Commission Idaho Power's proposed charge is for new investment required for extended distribution facilities. Therefore, Idaho Power argues that the Commission may lawfully authorize such a charge.

Building Contractors

The Building Contractors argue that *Boise Water* stood for the premise that there should be no discrimination between old and new customers. The Building Contractors allege that the Court prohibited a pricing scheme that assigns costs to new customers in the absence of clear proof that new customers are the cause of higher costs. The Building Contractors conclude that the charges in Idaho Power's Application are prohibited by *Boise Water* and the Commission should reject the Proposed Rule H.

Discussion

We find that the hookup fees that were at issue in *Boise Water* are fundamentally different from the line extension charges in this case. In *Boise Water,* the Court struck down increases in hookup fees because they "disproportionately allocate new plant facility costs" to new customers. *Boise Water*, 916 P.2d at 1260. The facts associated with the hookup fees in *Boise Water,* however, are significantly different from the facts of this case. In *Boise Water* the utility constructed a water treatment plant at a cost of $16 million pursuant to the federal Safe Drinking Water Act. Boise Water Company subsequently applied to the Commission to increase its rates and its hookup fees for new customers to offset the cost of the water treatment plant. In order to minimize future general rate increases, Boise Water proposed increasing its hookup fees to reflect the higher marginal cost of its backbone resources.

In Order No. 25640, issued July 19, 1994, the Commission approved a 29.59% general rate increase and increased the hookup fees for residential customers to $1,200, an average of the cost per customer of a well and a water treatment plant. The Commission reasoned that, because the cost of supply for a new service connection varied greatly depending on whether the water supply came from a well or a water treatment plant, it was reasonable to use an average of the two costs, plus an amount for storage and pumping water. The Commission reasoned that its decision would help protect existing ratepayers from the costs associated with growth and "ensure that growth pays for itself." Order No. 25640 at 31.

On appeal, the Supreme Court addressed the issue of whether in allocating the increased cost of new supply to new customers via increased hookup fees, the Commission regularly pursued its

authority to set nondiscriminatory rates as required by *Idaho Code* §§ 61-301, 61-315, -502, and -503. The Court held that the hookup fees approved by the Commission unlawfully discriminated against Boise Water's new customers. The Court explained:

Like the facts in *Homebuilders*, the pattern, nature, and time of Boise Water customers' usage did not change on July 25, 1994, nor did the conditions of service. *Id.* at 421, 690 P.2d at 356. Similarly, the quantity of water used by Boise Water's individual customers before July 25, 1994, does not differ from the quantity used by individual customers added to the system after that date. *Id.* Thus, as in *Homebuilders*, the focus of this case is whether the cost of service differs between the two classes.

The cost of servicing all Boise Water customers has increased, due in part to passage of the Safe Drinking Water Act, limitations on the availability of water, and inflationary factors. While it is true that the cost of service has increased, the cost has increased proportionately for each Boise Water customer. There is no difference in the cost of service between customers who connected to Boise Water's system before July 25, 1994, and those who have connected or will connect to the system from that date forward. Each new customer that has come into the system at any time has contributed to the need for new facilities. No particular group of customers should bear the burden of additional expense occasioned by changes in federal law that impose new water quality standards. To the extent that the new hookup fees are based on an allocation of the incremental cost of new plant construction required by growth and by the Safe Drinking Act solely to new customers, the fees unlawfully discriminate between old and new customers in violation of section 61-315 of the Idaho Code.

Boise Water, 916 P.2d at 1268.

The Court went on to explain that the increased hookup fees to Boise Water customers contained an incremental or marginal capital investment cost of new plant construction. The Court noted that the Building Contractors Association (also a party to this proceeding), "concede that hookup fees may be charged and need to be increased incrementally from time to time to reflect such factors as inflation." *Id.*, 916 P.2d at 1267. This is another factual distinction between *Boise Water* and this case. As Staff explains in direct testimony, it believes that the increased charges associated with the Rule H line extension policy are caused by many factors, including inflation.

Because of the nature of Boise Water's system, it is not possible to determine whether any customer, new or old, is or will be served by a well or a water treatment plant. This is the foundation for the Court's ruling in *Boise Water* and a critically distinguishing factor between *Boise Water* and this case. Idaho Power's proposed line extension charges are imposed only on those customers who will be served by the related facilities. Those facilities will provide service only to those customers who paid for them. As the Company indicates, transmission, substation

and generation costs are viewed as system-related rather than customer-specific, and those costs were not included as part of the proposed increased line extension charge.

Most important, the Supreme Court in *Boise Water* identified a significant factual distinction between *Boise Water* and the case at hand. "The Court ruled that the fees at issue here are not those charged to offset the actual per-customer cost of physically connecting to Boise Water's distribution system." *Id.* 1916 P.2d at 1260 (fn. 1.) Indeed, the *Homebuilders'* Court specifically ruled that costs incurred to serve a specific customer or group of customers, such as line extension costs, may be recovered solely 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.

107 Idaho at 421, (emphasis added).

Commission Findings

Based on the above discussion, we find that the charges at issue in this case do not unlawfully discriminate against new customers, that the line extension fee is inherently different from the hookup fees in *Boise Water*. We therefore find that the holding of *Boise Water* does not prohibit a change in the rates at issue here.

IV. ISSUES RAISED BY APPLICATION

A. Motion to Reopen the Record

On September 30, 1996, Idaho Power filed a Motion to Reopen the Record for the limited purpose of receiving the Affidavit of Gregory W. Said. The Motion was filed due to an error the Company had discovered in the proposed line extension allowance for three phase service to Schedule 7 (small general service) customers, Schedule 9 (large general service) customers and Schedule 24 (irrigation service) customers. The Company indicated that the error resulted in the proposed allowance being significantly understated. The Company also indicated that the proposed allowance for Schedule 1 (residential customers) was not affected by the error.

On October 3, 1996, Staff responded to Idaho Power's Motion to Reopen the Proceedings. Staff indicated that it agreed with augmentation of the record by the affidavit filed by the Company. Staff recommended that if the Commission approves this change, that the Company should be directed to file corrected tariffs consistent with this change. No other parties filed a response to Idaho Power Company's Motion.

We find that parties were given proper notice to the Motion and that no party will be denied due process by the receipt of the affidavit. We therefore grant Idaho Power's Motion to Reopen the Record for the limited purpose of receiving the Affidavit of Gregory W. Said.

B. Average Unit Costs v. Work Order Costs

The average unit cost method now used for determining the costs of line extensions is based on average installed costs for various elements of line extensions. The actual installed cost of each individual line extension can be either higher or lower than the estimated cost as determined by the average unit cost method. The term "work order costs" refers to an adjusted work order cost, or a work order from which those items for which the customer would not be charged have been removed. Adjusted work order costs refer to work order costs less terminal facilities and less any work included as part of the work order not done specifically for the customer, i.e., Company or system betterment. *Tr. at* 382. The use of average unit costs was intended to simplify and expedite the process of making cost estimates for new line extensions.

Idaho Power

The Company has proposed eliminating the average unit cost method and using actual work order costs to determine line extension costs. It believes work order costs more accurately assign specific costs to specific customers. The Company claims that it has streamlined the cost estimating process and that it can do detailed work order costs in an efficient manner. The Company claims that the difference in time required to prepare estimates using either method would not be as significant, and therefore, there is no need for both methods. *Tr. at* 9. The Company also notes that under the average unit cost method, customers may either under pay or over pay for their line extensions.

Commission Staff

The Staff supports the proposed change from an average unit cost method to a work order cost method and notes that the current average method often results in inaccurate estimates for individual line extensions. *Tr. at 297.* Staff does recommend, however, that some procedure be implemented to ensure that periodic checks are done between adjusted work order costs and reconciled work order costs so that the Commission can have the assurance that what is booked by the Company, is in fact, close to what is paid by the customer. Adjusted work order costs are cost estimates prior to construction. Reconciled work order costs are post construction costs booked by the Company. Staff proposes that the Company charge adjusted work order costs. *Tr. at* 271.

Building Contractors

The Building Contractors oppose the change from an average unit cost method to work order cost method. The Building Contractors assert that the work order costs usually exceed the average unit costs by a substantial margin. *Tr. at 190.*

Commissions Findings

In the past we have permitted the Company to use average unit costs because it seemed to simplify and expedite the cost estimating process. We recognize that in some circumstances averaging may be the only or best method for calculating costs. However, in this case the

Company believes it can prepare work order estimates specific to each customer just as expeditiously. The Building Contractors claim that work order costs usually exceed average unit costs. Our review of the record indicates that this is not supported by the record nor the audit of Idaho Power conducted by Staff in 1994. *See* Case No. IPC-E-94-5. We find that using work order costs rather than average unit costs is an effective means of treating customers individually and fairly, and insuring that one customer does not pay too much for a service while another pays too little. We also conclude that changing to a work order cost method will provide an incentive for more economical building practices. Subdivisions with below average costs for electrical facilities will now pay only their costs and subdivisions with above average costs will not be subsidized. We find that using adjusted work order costs rather than average unit costs is fair, just and reasonable. We also find that a periodic audit of the work order costs will be an effective way to insure that booked amounts reflect customer payments.

Although no party presented a proposal for allowing a developer to hire his own contractor or requiring the utility to solicit bids, several public witnesses testified that they thought this would be an efficient way to control costs. We encourage the Company to consider these options. We believe there may merit in the suggestions of the witnesses. We direct the Company to report to us within six months of the date of this Order its analysis of these concerns and the feasibility of allowing developers to hire independent contractors or requiring the Company to solicit bids for this type of construction.

C. Allowances

Idaho Power and Staff are in agreement with regard to the allowances proposed in this case. The proposed allowances are as follows:

1. Residential (Schedule 1)

100% of cost of terminal facilities

No allowance toward cost of line extension

2. Subdivisions

Same as individual residential except developer pays in advance for transformers and receives a refund as each new customer is connected in an amount equal to each lot's share of the transformer costs for the subdivision.

3. Small Commercial (Schedule 7)

Single Phase: 100% of cost of terminal facilities

Three Phase: 80% of terminal facilities

4. Large Commercial (Schedule 9)

Single Phase: $926

Three Phase: 80% of terminal facilities

5. Irrigation (Schedule 24)

Single Phase: $926

Three Phase: 100% of terminal facilities

6. Industrial (Schedule 19)

Determine allowances on a case-by-case basis

The Building Contractors oppose any changes to the current allowances for Schedule 1 customers. The Building Contractors explain that the "Commission policy for the past 60 years has been to allow some portion of line extension costs to be recovered in general rates." Building Contractors Brief at 7. It claims that the allowance changes in the proposed Rule H shift full responsibility for those costs to new customers.

Commission Findings

All parties in this case seem to agree that the cost of serving new customers is increasing. There is debate, however, about the exact causes of the increasing cost and whether the cost burden should be borne by all customers through a rate increase or by new customers through higher line extension charges. We do not believe it is necessary to determine the exact cause of higher costs, but we do believe it is important to address the issues raised as a result.

In the case of distribution plant, it is easy to identify the purpose for its construction. Furthermore, we believe it is the obligation of the Commission to provide a reasonable and fair method of recovering these increased costs. 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.

Under the proposed Rule H, the recommended allowances are calculated based on the total embedded cost of distribution facilities. The total embedded cost is made up of two components

— one portion for terminal facilities, and one portion for line extensions. To the extent that any allowance is ordered, some portion of distribution cost will continue to be recovered through rates. Whether the allowance is applied in exact proportions toward the terminal facilities component, the line extension component, or both, is not critical. The amount of the allowance is critical, however. We find it is reasonable to apply the allowance in a manner so as to pay the cost of terminal facilities first, and apply any remaining amount of the allowance to the line extension portion of the costs.

We find that the current allowances should be reduced somewhat to prevent an unreasonable portion of the line extension costs from being shifted to base rates. The allowances we adopt are shown in Attachment 1 to this Order. We find that they are fair, just and reasonable and represent a reasonable allocation of line extension costs.

D. Refund Policy

Idaho Power's current refund method, sometimes referred to as the proportional method, includes provisions that allow customers who request a line extension to their property to collect a refund as other customers hook up to the same line. Refunds are computed using a method that allocates costs based on the length of shared line and the ratio of each customer's load. Original applicants and subsequent additional applicants are eligible to receive refunds for five years from the date the first customer is connected. Idaho Power claims that this current system is burdensome and administratively difficult to track. Thus, Idaho Power proposes to change the policy to a first-in first-out method. Using this method, the existing shared load and length ratio formula would be retained, but vested interest refunds would be made first to the longest standing vested interest holder until that interest is fully paid, before a refund is paid to any subsequent applicant.

Staff proposes to retain the current policy of vested interest refunds. Staff claims the current policy is fairer to customers than the Company's proposed first-in first-out method, and that the current policy is not as burdensome as the Company claims. Staff does recommend, however, that the refund period be extended to 10 years for platted, undeveloped subdivisions to alleviate complaints from original applicants who become saddled with the entire cost burden when subsequent applicants "wait out" the five-year refund period. Staff also recommends instituting a minimum refund amount to relieve the Company of administrative difficulties.

The Building Contractors did not take a position on this policy.

Commission Findings

The Commission recognizes the merits in the positions put forth by both the Company and Staff. We believe the proportional method is fair, but sympathize with the Company's concerns

regarding the method's administrative complexity. Similar arguments have been made in another docket, UPL-E-96-4, which is also currently before the Commission.

We are not prepared to completely abandon the proportional method in favor of the Company's proposed first-in, first-out method; however, neither are we comfortable ordering that the current method be retained if it cannot easily be administered. Consequently, we order that a new method be implemented, that will capture the advantages of the current and the proposed methods and balance the competing objectives of fairness and administrative complexity. First, a five-year refund period is reasonable and should be retained, except in the cases of platted, undeveloped subdivisions where we order a 10-year refund period. Second, we order that the first five customers sharing a common segment of a line extension shall be responsible for the cost of the line. By limiting cost responsibility to five customers and limiting the refund period to five years, we believe much of the current administrative difficulty will be relieved. In order to preserve fairness, we order that length and load ratios continue to be used in determining each customer's cost responsibility. Finally, to further eliminate incentives for additional customers to wait to connect, the cost responsibility will shift from the first applicant to each successive applicant until each of the first five customers has an equal minimum cost responsibility. The cost responsibility shall be 100% for the first customer and decrease by 20% for each successive customer. Vested interest payments made to the Company by each successive applicant shall, in turn, be refunded by the Company to the most recent previous applicant. Thus, for example, the second customer shall pay 80% of the cost of the shared facilities; that amount shall be refunded to the first customer. The third customer shall pay 60% of the cost of the shared facilities; that amount shall be refunded to the second customer. The fourth customer shall pay 40%, to be refunded to the third customer. Finally, the fifth customer shall pay 20%, to be refunded to the fourth customer.

We find that this method adequately addresses the concerns of the Company and the Staff and is fair and reasonable for customers. We direct Commission Staff to work with the Company to implement this new refund system.

E. Engineering Charge & General Overheads

Under the existing Rule H tariff, engineering costs are incorporated in the overhead charged on each work order. The Company currently charges 17% in overhead fees that include construction engineering and supervision, construction injuries and insurance and construction accounting. *Tr. at* 308. Under the new proposal, Idaho Power would itemize engineering charges. *Tr. at* 50. Commission Staff raised the issue of how much the general overhead rate should be reduced if engineering is charged separately. Idaho Power contends that it wants to separate engineering charges from general overhead costs; however, it does not want to specify the percentage of amount charge. The Company argues that it needs to be able to adjust the engineering charge periodically as circumstances change. *Tr. at* 394, lines 1-6. Idaho Power has acknowledged that because the engineering fee has been separated out, that the general overhead rate should be reduced. *Tr. at* 392. Staff has recommended that the overhead charge should be specific in the tariff and has recommended a general overhead rate of 1.5%. Staff's Exhibit 114.

The Building Contractors did not take a position on this issue.

Commission's Findings

Both Staff and the Company are in agreement that there should be a reduction in the general overhead rate if engineering costs are charged separately. We agree with Staff that both the rate for engineering work and the general overhead rate should be known by customers, and specified in the tariff. We find Staff's recommendation for a 1.5% general overhead rate to be fair, just and reasonable.

F. Omitted Sections and Service Attachment Charge

The Commission Staff recommended inclusion of certain provisions in the proposed Rule H that are in the current tariff but were excluded in the Company's proposal. These sections relate to fire protection facilities, local improvement districts and interest on construction payments. The Company agrees that these sections should be included in the revised Rule H and incorporated in the tariffs.

Staff also recommended a single charge for the service attachment charge and noted a difference of $5 between the base charge assessed for underground service installation where the customer supplies the trench conduit and backfill and the Company supplied underground service installation. Staff recommended eliminating the difference by moving both base charges to the lower charge. The Company agrees with the establishment of a single-base charge, however, proposes that the base charge that the Company has proposed be averaged, resulting in the base charge of $32.50 for underground service from underground lines and $252 for underground service from overhead lines regardless of who supplies the trench and backfill. *Tr. at* 378. Staff also suggested that the tariff be reworded in order to make it easier to understand and administer.

The Building Contractors did not take a position on this issue.

Commission's Findings

We adopt Staff's and Idaho Power's recommendation for the inclusion of the omitted section in the proposed Rule H and find that these sections should be included in the tariff filings. We also agree with the Company and Staff's recommendation of a single-base charge for the service attachment charge. We find that a base charge for underground service of $30 and a base charge for overhead service at $255 to be fair, just and reasonable. We also find the tariff should be reworded as suggested by Staff.

V. INTERVENOR FUNDING

On September 12, 1996, the Building Contractors filed Petition for Intervenor Funding pursuant to Rule 161-170 of the Commission's Rules of Procedure, IDAPA 31.01.01.161-170.

Idaho Code § 61-617A and Rule 162 of the Commission's Rules of Procedure provide the framework for awards of intervenor funding. Section 61-617A provides that the Commission shall rely upon the following considerations in awarding funding to a given intervenor: (1) whether the intervenor materially contributed to the decision rendered by the Commission; (2) whether the alleged costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor to incur; (3) whether the recommendation made by the intervenor differed materially from the testimony and exhibits of the Commission Staff; and (4) whether the testimony and participation of the intervenor addressed issues of concern to the general body of users or consumers.

The statute further provides that the total award for all intervening parties combined shall not exceed $25,000 in any proceeding.

Rule 162 of the Commission's Rules of Procedure provides the procedural requirements with which an application for intervenor funding must comply. The application must contain: (1) an itemized list of expenses broken down into categories; (2) a statement of the intervenor's proposed finding or recommendation; (3) a statement showing that the costs the intervenor wishes to recover are reasonable; (4) a statement explaining why the costs constitute a significant financial hardship for the intervenor; (5) a statement showing how the intervenor's proposed finding or recommendation differed materially from the testimony and exhibits of the Commission Staff; (6) a statement showing how the intervenor's recommendation or position addressed issues of concern to the general body of utility users or customers; and (7) a statement showing the class of customer on whose behalf the intervenor appeared.

Finally, Rule 165 provides that the Commission must find that the intervenor's presentation materially contributed to the Commission's decision.

The Building Contractors allege that its position was materially different from the Commission's Staff. It claims that it addressed issues concerning a general body of ratepayers and lead to a more in depth and rigorous examination of certain issues. The Building Contractors claimed the following fees and costs were incurred in this proceeding:

Legal fees: 114 hours at $125 per hour $14,250.00

Consultant fees: 128.5 hours at $95 per hour $12,207.50

Photocopies, travel to Pocatello and miscellaneous $ 220.00

Total $26,677.50

On September 26, 1996, Idaho Power filed a response to the Building Contractors' Petition for Intervenor Funding stating that the Petition should have more detailed itemization, but nevertheless, recommending approval of the request and recovery from the class that primarily benefitted; i.e., lots within subdivisions that require line extensions. Idaho Power recommends collecting a subdivision lot charge of $11.00 per lot for one year.

Commission Findings

The Building Contractors' Petition meets the procedural requirements set forth in *Idaho Code* § 61-617A and Rules 161-170 of the Commission's Rules of Procedure. The Building Contractors made a sufficient showing of financial hardship, took a position that differed materially from the Commission Staff and raised issues of concern to the general body of ratepayers.

The Building Contractors contributed materially to our final decision in this case. Therefore, we find that the amount of intervenor funding requested by the Building Contractors is reasonable and hereby award the amount of $25,000. Idaho Power is required to pay the Building Contractors this amount within twenty-eight (28) days from the service date of this Order. We adopt Idaho Power's proposal to collect a subdivision lot charge of $11 per lot to be effective as of the date of this Order, to reimburse the Company for the intervenor funding award, pursuant to Rule 165 of the Commission's Rules of Procedure. This incremental addition to subdivision lot charge shall be removed after being in effect for one year.

VI. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

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*. The Commission grants Idaho Power's motion to reopen the record for receipt of an affidavit. The Commission also grants Idaho Power's Application for revisions to its Rule H tariff with modifications to the tariff as set forth above.

ORDER

IT IS HEREBY ORDERED that Idaho Power's Motion to Reopen the Record for the limited purpose of receiving the Affidavit of Gregory W. Said is granted.

IT IS FURTHER ORDERED that Idaho Power's Application for approval of new tariff provisions relating to new service attachment and distribution line installations or alterations is approved with modifications as enumerated above and as shown on Attachment 1.

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

IT IS FURTHER ORDERED that the Petition for Intervenor Funding filed by the Building Contractors is hereby granted in the amount of $25,000. Idaho Power is directed to pay theses amounts within twenty-eight (28) days from the service date of this Order and to assess a subdivision lot charge of $11 per lot effective for a period of one year.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-95-18 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. IPC-E-95-18. Within seven (7) days after any person has petitioned for

reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day of February 1997.

RALPH NELSON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:IPC-E-95-18.sh3

Descriptive Name: O.N. 26780 - Line Extension

Creation Date: 11/22/1996 2:32:16 PM

Revision Date: 1/1/1601 12:00:00 AM

Author: SHamlin

Typist: BSORREL

Filename: E:\Common\UT_ORD\26795.ORD\26780.wp

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dtSearch 6.03 (6079)

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of November, 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

Office of the Secretary
Service Date
November 30, 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. 30955

On October 30, 2008, Idaho Power Company filed an Application seeking authority to modify its line extension tariff commonly referred to as the "Rule H" tariff. Specifically, the Company sought to increase the charges for installing new service lines and relocating existing electric distribution facilities. On July 1, 2009, the Commission issued Order No. 30853 partially approving the Company's request to modify its Rule H tariff. The Ada County Highway District (ACHD), City of Nampa, Association of Canyon County Highway Districts (collectively "the Districts"), and the Building Contractors Association ("BCA" or "Contractors") all filed timely Petitions for Reconsideration. The Districts argued that the Commission exceeded its statutory authority in approving the changes to Section 10 of the tariff ("Relocations in Public Road Rights-of-Way"). BCA objected to changes to the line extension rate structure concerning "allowances" or credits for the installation of new service and the elimination of subdivision lot refunds. On July 29, 2009, Idaho Power filed an answer to the petitions.

In Order No. 30883 issued August 19, 2009, the Commission granted in part and denied in part the petitions for reconsideration. The Commission granted reconsideration to the Districts to review their legal arguments and set oral argument for October 13, 2009. The Commission partially granted reconsideration to the Contractors and scheduled an additional evidentiary hearing regarding the appropriate line extension allowances contained in Rule H. The evidentiary hearing was held on October 20, 2009. Final reconsideration briefs were filed by BCA and Idaho Power on October 27, 2009. On November 9, 2009, the Contractors filed a Petition for Intervenor Funding.

After reviewing the initial record, the reconsideration testimony and briefs, and the intervenor funding petition, the Commission issues this final Order on reconsideration affirming,

rescinding, amending and clarifying parts of our initial Order pursuant to *Idaho Code* § 61-624. The Commission's textual changes to Rule H are contained in the Appendix to this Order.

BACKGROUND

A. The Application

Idaho Power's last request to update its Rule H tariff was in 1995. In its present Application, Idaho Power proposed modifications to its existing Rule H tariff that reorganize sections, add or revise definitions, update charges and allowances, modify refund provisions, and delete the Line Installation Agreements section. Idaho Power proposed separate sections for "Line Installation Charge" 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 asserted 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 a new customer with an installation credit or "allowance" equal to the installed costs of "standard" overhead distribution facilities (e.g., transformers, meters, wiring) is intended to provide a fixed credit toward the cost of constructing terminal facilities and/or line installations for customers requesting new service under Rule H. Tr. at 128. 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 who need more costly facilities 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 revisions to the tariff specifically address the Company's desire that customers pay their fair share of the cost for providing new service lines or altering existing distribution lines.

Idaho Power proposed to provide "Vested Interest Refunds" to developers of subdivisions and new customers inside existing subdivisions for new service line installations

that were not part of the initial service installation in the subdivision. The Company also proposed to change the availability of Vested Interest Refunds from a five-year period to a four-year period and discontinue all refunds for subdivision lots.

Idaho Power also added a new Section 10 entitled "Relocations in Public Road Rights-of-Way" to address the recovery of costs when the Company has to relocate its facilities pursuant to *Idaho Code* § 62-705. The section identifies when and to what extent the Company would be responsible for relocation costs and when it could recover costs from third-party beneficiaries. Specifically, this section outlines cost recovery when road improvements are for the general public benefit, for third-party beneficiaries, and for the benefit of both the general public and third-party beneficiaries.

B. The Prior Final Order

On July 1, 2009, the Commission issued final Order No. 30853 approving the Company's increased allowances, miscellaneous costs, language regarding highway relocations, and the requested changes to format and definitions. The Commission further approved a "cap" of 1.5% on general overhead costs and maintained the existing five-year period for Vested Interest Refunds.

The Commission determined that the updated charges and installation allowances for line installations represent an appropriate "contribution" from new customers requesting the service, thereby relieving one area of upward pressure on rates. The Commission specifically noted that the costs of new power generation and transmission lines cannot be charged to only new customers. The Commission found that when it is possible to allocate the cost of new distribution facilities to new customers, it is appropriate to charge such facilities to the customers who use them. As a result, the Commission found the Company'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.

The Commission also declined to grant the Company's request to reduce the time limitation within which to receive Vested Interest Refunds from five years to four years. The Commission reasoned that more refunds may be made in the fifth year now that building activity has slowed. Although the Building Contractors Association requested that the refund period be extended to ten years, the Commission found such request was not supported by documentation

or argument. Therefore, the Commission determined it reasonable to maintain a five-year period for Vested Interest Refunds.

The Commission also found that it is reasonable to discontinue refunds for subdivision lots. Since 1995, as lots were sold the Company would reimburse a portion of the line extension costs that developers were required to advance to Idaho Power prior to construction. These reimbursements were by subdivision lots. The Commission discontinued the subdivision lot refunds for three reasons. First, the Commission increased the initial "allowance" or credit for new service to new customers. Customers may receive a $1,780 allowance for each single-phase transformer installed or a $3,803 allowance for each three-phase transformer. Order No. 30853 at 10. A transformer may serve multiple customers. Second, the Commission rejected BCA's argument to increase the lot refunds because its proposal included inappropriate costs and the costs were miscalculated. *Id.* at 12. The Commission found the increased allowance was properly based on the average cost of distribution facilities (the Standard Terminal Facilities) for a new customer. After providing the increased allowances to a developer, allowing any lot refunds to "the developer would exceed the distribution investment" for a new customer. *Id.* Finally, discontinuing subdivision lot refunds reduces the growth of rate base that results from such refunds.

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 in the public right-of-way pursuant to their police powers. Idaho Power proposed, and the Commission approved, Section 10 as a mechanism to determine who is responsible for the costs of certain relocations in the public right-of-way. The Commission specifically noted that Section 10 in no way grants Idaho Power or the Commission authority to impose relocation costs on a public road agency. Order No. 30853 at 13. The Commission found it persuasive that if a public road agency determines that a private third party should pay for a portion of a road improvement project, it is a reasonable and appropriate indication of responsibility for the allocation of utility relocation costs incurred as a result of the road improvement project. Furthermore, based on concerns noted by the parties, Idaho Power was directed to clarify and resubmit the definitions of "Local Improvement District" and "Third-Party Beneficiary."

PETITIONS FOR RECONSIDERATION

A. The Districts

Ada County Highway District (ACHD), City of Nampa (Nampa), and the Association of Canyon County Highway Districts (ACCHD), (collectively, "the Districts"), allege that the Commission's approval of Section 10 in Rule H exceeds the Commission's authority granted by statute. Section 10 addresses relocation costs in public rights-of-way. ACHD further maintains that Section 10 violates the Idaho Constitution by requiring highway agencies and other public entities to pay for the relocation of utility facilities in public rights-of-way. ACHD Petition at 11. Nampa and ACCHD also argue that the Commission's Order fails to clarify the definitions of "Third-Party Beneficiary" and "Local Improvement District." Petitions at 2.

B. BCA

Building Contractors Association (BCA or Contractors) alleges in its Petition for Reconsideration that the Commission's Order "approves an inherently discriminatory rate structure for line extensions by imposing unequal charges on customers receiving the same level and conditions of service." BCA Petition for Reconsideration at 1. BCA also disputes the Commission's decision to discontinue "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." *Id.* at 11.

C. The Order Granting and Denying Reconsideration

On August 19, 2009, the Commission issued Order No. 30883 granting in part and denying in part the parties' Petitions for Reconsideration. The Commission acknowledged the limits of its authority in Order No. 30853 by stating that "Section 10 in no way grants Idaho Power or this Commission authority to impose [relocation] costs on a public road agency." Order No. 30853 at 13. The Order further clarified that "[j]ust 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." *Id.* However, given the complexity of the constitutional and jurisdictional arguments posed by the Districts on reconsideration and the Company's acknowledgement that the terms "Local Improvement District" and "Third-Party Beneficiary" should be clarified, the Commission found it appropriate to grant the Districts'

petitions regarding the disputed language in Section 10 of the Rule H tariff. In order to adequately address the issues raised on reconsideration, the Commission first directed that Idaho Power supply new language for Section 10, including the clarification of the definitions for "Third-Party Beneficiary" and "Local Improvement District." *Id.* at 11. Idaho Power was directed to file its updated Section 10 language with the Commission and the parties no later than August 28, 2009.

The Petition for Reconsideration filed by BCA was granted in part and denied in part. The Commission found it appropriate to grant reconsideration on the limited issue of the amount of appropriate allowances. As stated in its final Order, "[t]he Commission recognizes that multiple forces put upward pressure on utility rates." Order No. 30853 at 10. Allowances are intended to reflect an appropriate amount of contribution provided by new customers requesting services in an effort to relieve one area of upward pressure on rates. BCA was directed to address what allowance amount is reasonable based on the cost of new distribution facilities.

Reconsideration was denied regarding the five-year vested-interest refund period and the per-lot refunds. The Commission found that the Contractors provide no cogent argument or documentation on why the period should be expanded to 10 years. Having determined that the new service allowance of $1,780 is based upon the cost of a single-phase transformer and conductors, ("standard terminal facilities") that can serve multiple customers (three or more), the Commission found that BCA's requested refund of $1,000 per lot for a subdivision developer would exceed the costs of new extension facilities. *Id.* at 11-12.

ISSUES ON RECONSIDERATION

A. Legal Standards

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by reviewing the existing record by written briefs, or by evidentiary hearing. IDAPA 31.01.01.311.03. If reconsideration is granted, the Commission must complete its reconsideration within 13 weeks after the deadline for filing petitions for reconsideration. *Idaho Code* § 61-626(2).

B. Motions to Strike

On September 21, 2009, Idaho Power filed a motion to strike portions of the affidavit of Dorrell Hansen submitted by ACHD in support of its motion for reconsideration. Idaho Power maintains that portions of Mr. Hansen's testimony constitute inadmissible evidence because they lack proper foundation, lack personal knowledge, lack relevance and contain conclusory or speculative statements. On October 5, 2009, ACHD filed a brief opposing Idaho Power's motion to strike. ACHD noted that the Idaho Supreme Court has recognized that "the law governing the Commission contemplates a rule of liberality in the reception of evidence." *Application of Lewiston Grain Growers*, 69 Idaho 374, 380, 207 P.2d 1028, 1032 (1949).

At oral argument on October 13, 2009, the Commission denied Idaho Power's motion to strike portions of the affidavit of Dorrell Hansen. Rule 261 of the Idaho Public Utilities Commission's Rules of Procedure provides that

> Rules as to the admissibility of evidence used by the district courts of Idaho in non-jury civil cases are generally followed, but evidence (including hearsay) not admissible in non-jury civil cases may be admitted to determine facts not reasonably susceptible of proof under the Idaho Rules of Evidence. . . . All other evidence may be admitted if it is a type generally relied upon by prudent persons in the conduct of their affairs. The Commission's expertise, technical competence and special knowledge may be used in the evaluation of the evidence.

IDAPA 31.01.01.261. The Commission determined that it was capable of considering the information provided and, based on its expertise, give it the proper weight.

On October 6, 2009, ACHD filed a motion to strike all or portions of the written prefiled testimony of Scott Sparks, David Lowry and Greg Said filed by Idaho Power. ACHD argued that the prefiled testimony of Idaho Power's witnesses was inadmissible because it failed to comply with Rule of Procedure 250 requiring that testimony in formal hearings be given under oath. IDAPA 31.01.01.250. On October 8, 2009, Idaho Power filed a notice with the Commission opposing ACHD's Motion to Strike. Idaho Power requested that argument be held on its Motion during the oral argument scheduled for October 13, 2009.

At the technical hearing conducted by the Commission on October 20, 2009, each of ACHD's objections was considered and each was denied. The written testimony of Idaho Power's witnesses expressed the Company's positions on matters regarding the Rule H tariff. The witnesses had firsthand knowledge of the matters to which they testified. Moreover, the

witnesses were available at both the oral argument and technical hearing for cross-examination.

At the October 20, 2009, technical hearing BCA moved to strike certain portions of the written testimony of Idaho Power witness Greg Said as hearsay. The Commission reserved a ruling on BCA's Motion to Strike until Mr. Said had an opportunity to testify. BCA was advised to renew its objection if Mr. Said's live testimony did not provide adequate explanation regarding its concerns. The hearsay concerned information provided to Mr. Said from another witness and the other witness was present at the hearing. BCA renewed its objection. The Commission overruled the objections. Tr. at 263, 261-64. BCA later declined to cross-examine the other witness on the information that was the subject of the initial objections. Tr. at 299.

C. The Districts' Legal Arguments

The Districts make several legal arguments to support their position that Section 10 (Relocation Costs in Public Rights-of-Way) and several definitions in Section 1 (Definitions) should be stricken from Rule H. The Districts generally assert that Section 10 intrudes in the highway districts' exclusive jurisdiction and is unconstitutional because it obligates highway agencies and other local government entities to pay for utility relocation costs. The Districts also dispute the definitions for "Third-Party Beneficiary" and "Local Improvement Districts" as used in Section 10. The Districts argue that a local improvement district (LID) should not be considered a "Third-Party Beneficiary." They maintain that an LID is an entity of local government and, as such, should not be required to reimburse a utility for relocation costs. These legal arguments are discussed in greater detail below.

1. Exclusive Jurisdiction. The Districts maintain that the highway districts possess exclusive jurisdiction over the public rights-of-way. Thus, Section 10 of Rule H is beyond the jurisdictional authority of the Commission because it seeks to usurp the exclusive jurisdiction of the State's public road agencies. ACHD Petition at 2. In a related argument, the Districts maintain that Section 10 is unconstitutional and an illegal attempt to abrogate or amend the common law rule that utilities placing their facilities along streets and highways gain no property right and must move their facilities at their own expense upon demand.

Idaho Power acknowledges the common law rule that the utility's use of the public road right-of-way is subordinate to the paramount use of the public. Idaho Power does not dispute or contest the public road agencies' authority to require relocation of utility facilities. Reply Brief on Reconsideration at 3-4. However, Idaho Power asserts that the public road

agencies do not have the authority, once the utility complies with the relocation request, to determine how the utility will seek subsequent reimbursement from third parties benefiting from the facilities' relocation. The Company maintains that the Commission alone is vested with the authority to determine how utility costs should be allocated.[1]

Commission Findings: At the outset, we note there is agreement between the Districts and Idaho Power regarding some of the underlying legal issues. More specifically, the Districts and Idaho Power agree that road agencies have exclusive jurisdiction to supervise highways and public rights-of-way. ACHD Brief at 3; Joint Brief at 2; Idaho Power Reply Brief on Reconsideration at 3-4. As the Idaho Court of Appeals noted in *Worley Highway District v. Kootenai County*, highway agencies have exclusive jurisdiction over all highways including the power to construct, maintain, and repair public highways as well as to establish design standards and use standards. 104 Idaho 833, 835, 663 P.2d 1135, 1137 (Ct. App. 1983) *citing Idaho Code* §§ 40-1310 and 40-1312. The parties also agree that Idaho Power has a permissive right only to use the public rights-of-way for its facilities and that public road agencies have the exclusive authority to determine when relocation of utility facilities within the public right-of-way is necessary so as not to incommode the public use. ACDH Brief at 5-6; Joint Brief at 2; Idaho Power Reply Brief at 4; *see also Idaho Code* §§ 62-701 and 62-705. As our Supreme Court noted in *State ex rel. Rich v. Idaho Power Co.*, the common law rule in Idaho is that "streets and highways belong to the public and are held by the governmental bodies and political subdivisions of the state in trust for use by the public, and that only a permissive right to use, and no permanent property right can be gained by [utilities] using them." 81 Idaho 487, 498, 346 P.2d 596, 601 (1959); Idaho Constitution, Art. XI, § 8 ("the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such a manner as to infringe . . . the general well being of the state.").

ACHD argues that Section 10 should be removed in its entirety from Rule H. The Districts maintain that as written, Section 10 intrudes upon the road agencies' exclusive jurisdiction. ACHD argues that "Rule H, Section 10 will effectively dictate the policies and procedures of highway districts and local road agencies regarding electric utility relocations. It

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[1] "[T]he Commission has the authority to determine the inclusion as an operating expense in a utility's rate base either in part or in whole 'costs' incurred by a utility." *Washington Water Power v. Kootenai Environmental Alliance*, 99 Idaho 875, 880, 591 P.2d 122, 127 (1979).

will impact the operation of highway districts and local road agencies in their negotiations and relationships with third parties and developers concerning road improvement projects. . . ." Tr. at 17; ACHD Brief on Reconsideration at 7; Joint Brief at 3. ACHD also insists that Section 10 conflicts with the District's Resolution No. 330[2] governing utility relocations. Finally, the Districts also maintain that the Commission has no authority over the relocation of utility facilities in the public rights-of-way because such relocations are "not a service, product or commodity under *Idaho Code* §§ 61-502 and 61-503." ACDH Brief on Reconsideration at 10. The Commission does not agree with these three arguments.

First, the Commission affirms that highway agencies have the authority to determine when Idaho Power must relocate its distribution facilities and whether any other party is responsible for paying for the road improvement costs. However, once the highway agency determines that a private party (e.g., a developer) must shoulder all or a portion of the road improvement costs, then it is the Commission that establishes the costs for utility relocation pursuant to *Idaho Code* §§ 61-502, 503, and 507. This is the purpose of Section 10. The Commission's ability to set relocation costs arises only after the highway agency determines that it or another party is responsible for road improvement costs. Likewise, when a highway agency asks Idaho Power to relocate facilities not in the public right-of-way (e.g., facilities in an easement), Rule H would apply. Idaho Power Reply Brief at 6; *see also* Resolution 330, § 1.A.(2) (if the utility has facilities on private property that must be relocated, "the actual cost of such relocation shall be the responsibility of the District").

Second, as amended below, Section 10 is compatible with and not in opposition to Resolution No. 330. As explained by ACHD, Resolution No. 330 addresses utility relocations and determines which party bears the cost of relocations. For example, if ACHD requires the relocation of utility facilities to accommodate right-of-way improvement "sponsored or funded by Ada County Highway District," then such relocation costs "shall be the responsibility of the utility." Resolution 330, Section 1(A). This section follows the common law rule in Idaho that utilities must relocate their facilities so that the highway agency may make improvements. *Rich v. Idaho Power*, 81 Idaho at 501, 346 P.2d at 603.

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[2] Resolution 330 is a mechanism promulgated more than 20 years ago by ACHD for the allocation of costs of road improvements. Idaho Power patterned its Rule H, Section 10 after the language in Resolution 330.

As amended, Section 10(a) of Rule H incorporates this concept. Sections 2 and 3 of Resolution 330 address instances where utility relocations are either partially-funded or fully-funded by "another individual, firm or entity." In other words, after ACHD has determined that a private purpose (as opposed to a public purpose) is the impetus for a specific relocation, Resolution 330 and Rule H provide that such private party should also be responsible for defraying the cost of relocating utilities within the public right-of-way for that project. For example, Section 3(A)(2) of Resolution 330 provides that when utility "relocations are required as a result of improvements being made by a developer within the public rights-of-way which were not scheduled to have otherwise been made by [ACHD] within three years of the date said improvements are actually commenced, then the responsibility for the costs of utility . . . relocations shall be that of the developer." (Emphases added.) This provision of Resolution 330 requires the developer to pay Idaho Power for the relocation of utility facilities located within the public right-of-way. Thus, Rule H, Section 10 mirrors or complements Resolution 330. Clearly Resolution 330 contemplates circumstances where third parties will pay Idaho Power for the cost of relocating the Company's distribution facilities located in the public right-of-way.

The language of Section 10 in no way usurps the authority of ACHD or any other highway district or political subdivision because it does not attempt to give Idaho Power or this Commission any authority that a highway district would otherwise hold. It is because the allocations of Resolution 330 have worked so effectively in the past 20 years that Idaho Power proposed it as a model for the allocation of relocation costs within its Rule H, Section 10. Tr. at 27.

Third, we reject ACHD's argument that the relocation of Idaho Power's facilities from the public right-of-way is not a "service or product" provided by the utility. As indicated above, the Districts recognize that there are instances where relocation costs are assigned to another individual, firm or entity such as a developer. In such cases, Section 10 provides the basis for Idaho Power to recover its relocation costs from the developer. The relocation of Company facilities is a "practice" or "service" subject to our jurisdiction. *Idaho Code* §§ 61-502 and 61-503 authorize the Commission to establish the just and reasonable rate or charge "for any service or products or . . . the rules, regulations, practices, or contract . . . affecting such rates." In addition, *Idaho Code* § 61-507 provides that the Commission "shall prescribe rules and regulations for the performance of any service." (Emphases added.) Indeed, Rule H "applies to

requests for electric service under [various schedules] that require the installation, alteration, relocation, removal, or attachment of Company owned distribution facilities." See Rule H at 1.

As the Supreme Court observed in *Washington Water Power v. Kootenai Environmental Alliance*, the Commission has authority over services or practices "which do or may affect the rates charged or the services sought or rendered which are within the Commission's ratemaking functions." 99 Idaho at 881, 591 P.2d at 128. Where the Districts require that a third party pay for the road improvement costs of Idaho Power's facilities within a public right-of-way or where the road agency requires Idaho Power to move its facility located in its easements, Section 10 and the other sections of Rule H fall within the Commission's ratemaking functions. *Id.* Even in those cases where a developer would pay only a portion of relocation costs, the calculation of such costs is set out in Rule H.

Fourth, during oral argument ACHD noted the Legislature's recent enactment of *Idaho Code* § 40-210 supports the argument that the Districts have exclusive jurisdiction over public rights-of-way. Tr. at 8-9. While we do not dispute that the Districts have exclusive jurisdiction, we find enactment of Section 40-210 is the Legislature's attempt to condition the common law rule that utilities must relocate their facilities in the public right-of-way at their own expense. *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 34, 607 P.2d 1084, 1088. Enactment of Section 40-210 earlier this year represents the Legislature's intent to contain or limit the cost of relocating utility facilities where possible. In pertinent part, Section 40-210 provides that

> it is the intent of the legislature that the public highway agencies and utilities engage in proactive, cooperative coordination of highway projects through a process that will attempt to effectively minimize costs, limit the disruption of utility services, and limit or reduce the need for present or future relocation of such utility facilities.
>
> . . . the public highway agency shall, upon giving written notice of not less than thirty (30) days to the affected utility, meet with the utility for the purpose of allowing the utility to review plans, understand the goals, objectives and funding sources for the proposed project, provide and discuss recommendations to the public highway agency that would reasonably eliminate or minimize utility relocation costs, limit the disruption of utility service, eliminate or reduce the need for present or future utility facility relocation, and provide reasonable schedules to enable coordination of the highway project construction and such utility facility relocation as may be necessary. While recognizing the essential goals and objectives of the public

highway agency in proceeding with and completing a project, the parties shall use their best efforts to find ways to (a) eliminate the cost to the utility of relocation of the utility facilities, or (b) if the elimination of such cost is not feasible, minimize the relocation cost to the maximum extent reasonably possible.

Idaho Code § 40-210(1-2), 2009 Sess. Laws, ch. 142, § 1 (emphasis added). Here it is clear that the Legislature intends for public road agencies and utilities to eliminate or minimize relocation costs "to the maximum extent reasonably possible." Thus, we find that the enactment of this statute reflects the Legislature's clear intent that public highway agencies and utilities have an affirmative duty to eliminate the costs of utility relocations, or if elimination of such costs are not feasible, minimize the relocation costs "to the maximum extent reasonably possible."

Given the enactment of *Idaho Code* § 40-210, we find it appropriate to amend Rule H by adding another section. New Section 11 (set out in the Appendix to this Order), requires that Idaho Power participate in project design or development meetings once it has received written notice from the public road agency. By participating in the project design or development meetings, we believe that Idaho Power will be in a better position to eliminate or minimize relocation costs to the maximum extent reasonably possible.

Finally, it is a standard practice for a utility to charge for relocating its facilities. This practice is consistent with the fundamental ratemaking principle of "cost causation" – that, to the extent practicable, utility costs should be paid by those entities that cause the utility to incur the costs. If this principle were not followed, additional costs incurred at the request of both public and private entities would be shifted to all other ratepayers. This would not result in a "just and reasonable" rate as required by statute. *Idaho Code* § 61-502, 61-503, 61-507. In summary, we find Section 10 as amended in the Appendix to be fair, just and reasonable.

2. Local Improvement District (LID) and Definition of "Third-Party Beneficiary."

The next issue has two interrelated parts. First, the Districts object to including LIDs in the definition of "third-party beneficiary" in Section 1 and Section 10 of Rule H. Nampa and the Canyon County Districts argue that the definition of "third-party beneficiary" is too broad and that LIDs should not be subject to the payment of utility relocation costs as a third-party beneficiary under Section 10(c). Joint Brief at 5-6. ACHD argues that including LIDs "in the definition of third party beneficiary . . . is a clear violation of Article 8 § 4 of the Idaho Constitution because it establishes a requirement upon such entities of local government to pay

for utility relocations." ACHD Brief on Reconsideration at 17. Second, because an LID is an "entity of local government," LIDs (like road agencies) should not be charged for the relocation of utility facilities when LID's request that such facilities be relocated for a public purpose.

Idaho Power urges the Commission to include LIDs in the definition of "third-party beneficiary" and allow Idaho Power to collect relocation costs from LIDs. Brief on Reconsideration at 9-10. Idaho Power argues that:

> First, a LID is not a public road agency that is charged with operating and maintaining public roads. An LID is simply a vehicle by which taxation can occur but not be included in the general budget of a public road agency. The only function the LID performs is to collect money. Where the local improvement district is paying for the road improvements in question, the local improvement district should also pay for the costs of relocating the power lines as required for the improvements. The local improvement district typically derives funding from adjacent private businesses and landowners and those parties, who are directly benefitting from the power line relocation, should bear the costs of the relocation rather than the utility's customers as a whole. Idaho Power does not believe it is unreasonable to expect a LID to include an amount to cover the cost of utility facility relocation in the amount of money it will fund.

Idaho Power Brief on Reconsideration at 9-10; *see also* Tr. 28-30. Based on problems the Company has experienced with collecting relocation costs for LIDs in the past, the Company maintains that it would be very easy for LIDs to include the cost of utility relocations in their initial funding. *Id.* at 10.

Commission Findings: The Commission first takes up the issue of whether LIDs should be held responsible for utility relocation costs. Pursuant to the Local Improvement District Code (*Idaho Code* §§ 50-1701 *et seq.*), Idaho cities, counties and highway districts are vested with the power to create LIDs. *Idaho Code* §§ 50-1702(a) and 50-1703(a). An LID may be formed to make one or more of the following public improvements: To lay out or widen any street, sidewalk, alley or off-street parking; to pave or resurface curbs, gutters, sidewalks; to construct, repair or maintain sidewalks, crosswalks, sanitary sewers and storm sewers; to construct or repair street lighting; to plant or install landscaping; to acquire and construct parks or other recreational facilities and "to do all such other work and to incur any such costs and expenses as may be necessary or appropriate to complete any such improvements. . . ." *Idaho Code* § 50-1703(a)(13), (1-12).

Idaho Power urges us to include LIDs within the definition of third-party beneficiary so that Idaho Power can seek reimbursement for its relocation costs when an LID needs to have utility facilities relocated to accommodate the LID improvements. Tr. at 28-29. Because LIDs are merely a funding mechanism, the Company insists that an LID should pay for the relocation of utility facilities in the public rights-of-way. *Id.* at 28-30. Idaho Power also argues that an LID is not a public road agency. "It is not charged with operating and maintaining public roads and it does not control the public rights-of-way." *Id.* at 28.

Although the Commission believes that it is reasonable to expect that an LID would include the cost of necessary utility facility relocations as part of the total funding amount of the district improvement, and that an LID *may* reimburse the utility for the cost of relocating its facilities within the public right-of-way (*Idaho Code* § 50-1703(12 and 13), we are not persuaded that the Commission can compel such reimbursement. As indicated above, cities, counties and highway districts (the same entities that control public rights-of-way) may create a local improvement district to make the public improvements authorized by law. *Idaho Code* §§ 50-1702(a), (c); 50-1707.

In *Village of Lapwai v. Alligier*, 78 Idaho 124, 130, 299 P.2d 475, 479 (1956), our Supreme Court held that the "power of the state and its political subdivisions to require removal of a nuisance or obstruction, which in any way interferes with the public use of streets and highways cannot be questioned." (Emphasis added). Lapwai passed an ordinance requiring that a private water company remove its facility from the streets and alleys of Lapwai so the village could construct and install its own water system. The Court noted that the city exercised the police power conferred by the state and was performing a governmental function. *Id.* at 128, 299 P.2d at 477-78.[3] In *Lapwai*, the relocation was not for the purpose of making a roadway improvement but was the exercise of the police power for another governmental purpose – the installation of a municipal water system.

In a more recent case, our Supreme Court reaffirmed that the common law rule, i.e., utilities must relocate their facilities in the public right-of-way at their own expense, is not absolute but is subject to legislative or constitutional conditions. In *Mountain States Tel. & Tel.*

[3] The Court did note that the buried water pipes did not interfere with the use of the streets and alleys. Consequently, the Court modified the city's order to remove the pipes by allowing the water company to decide whether to remove them or not at its option. *Id.* at 130, 299 P.2d at 479.

Co. v. Boise Redevelopment Agency, 101 Idaho 30, 607 P.2d 1084 (1980), the Court was confronted with the question of whether the Legislature had modified the common rule by providing that the redevelopment agency must pay for the costs of relocating utility facilities in the public right-of-way. The Court concluded that although the urban renewal statute "permitted 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 the utilities." *Id.* at 35-36, 607 P.2d at 1088-89. Idaho Power has not provided us with any au thority that the Legislature has modified the common law that would require LIDs formed by cities, counties or highway districts to reimburse utilities for relocating facilities in public rights-of-way.

Our decision regarding LIDs and urban renewal districts is further supported by an opinion issued last week by the Court in *Urban Renewal Agency of the City of Rexburg v. Hart*, No. 77 (Nov. 25, 2009). In *Rexburg*, the Court affirmed an earlier ruling that an urban renewal agency is not the "alter ego" of the local municipality that created the renewal agency even if the city council appoints "itself to be the board of commissioners" of the urban renewal agency . . . ." *Id.*, slip op. at 5 *affm'g Boise Redevelopment Agency v. Yick Kong*, 94 Idaho 876, 499 P.2d 575 (1972). The Court further observed in *Rexburg* that a renewal agency is "*entirely separate and distinct from the municipality*" and the renewal agency acts "as an arm of state government . . . to achieve, perform and accomplish the public purposes prescribed and provided" in the Urban Renewal Law. *Id.*, slip op. at 5 (italicize original and underline added). Thus, the renewal agency exercises the state's police power to achieve the public improvements authorized by statute.

Although we believe it is reasonable for an LID to include the necessary costs of relocating utility facilities, we decline to include in Section 10 a provision requiring LIDs to pay for the relocation of such facilities. The Commission has no power to legislate a change in this area and require LIDs to pay utility relocation costs in the public rights-of-way. We further observe that Rule H has not specifically addressed this issue in the past. We order the Company to modify Section 10 to remove any requirement that LIDs be required to pay relocation costs for utility facilities located in the public rights-of-way as set out in the Appendix. While it appears that LIDs (and urban renewal districts) *may* and reasonably should pay for utility relocation costs that are part of the project, we cannot compel the payment of such costs.

Our LID decision also necessitates changes to the definition of "Third-Party Beneficiary" in Section 1 as set out in the Appendix to this Order. Idaho Power shall delete the term "Local Improvement Districts" from the term "Third-Party Beneficiary." In addition, we direct the Company to change the term of "Third-Party Beneficiary" to "Private Beneficiary" to conform with our decision above.[4]

3. Private Occupancy. ACHD next takes issue with Section 10(d). This subsection states:

> d. Private Right of Occupancy – Notwithstanding other provisions of this Section 10, 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 cost of Relocation is borne by the Public Road Agency.

ACHD argues that this provision imposes a duty upon road agencies to pay for utility relocation costs within the public right-of-way. ACHD also argues that this provision violates various provisions of the Idaho Constitution "because it establishes a requirement upon [governmental road agencies] to pay for utility relocations."[5] ACHD Brief on Reconsideration at 11, 17. Nampa and the Canyon County Districts also argue that this section infringes on public road agencies' ability to negotiate utility relocation costs on a case-by-case basis with utilities and developers. Joint Brief at 3.

On reconsideration, Idaho Power witness David Lowry explained that a "prior right of occupancy" may arise when a public road agency expands the public right-of-way to include or encompass an area where Idaho Power has facilities under a prior private easement. Lowry Direct at 5.

Commission Findings: At the outset, we note that the text of this subsection is somewhat confusing because it indicates that the Company has a private right of occupancy within a public right-of-way. However, the Company explained in its Brief on Reconsideration that this "prior right of occupancy" may arise when a road agency "expands its public right-of-

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[4] Although ACHD takes issue with the definitions of "Public Road Agency" and "Local Improvement District" in Section 1 of Rule H it fails to provide any specific argument on the alleged error committed by the Commission in adopting these definitions. Nevertheless, the Commission believes that amending the definition of Public Road Agency and Local Improvement District will clarify the scope of Rule H and in particular the operation of Section 10. Our changes to these two definitions are reflected in the Appendix to this Order.

[5] Article VIII, § 2 and Article VII, § 17 for the Idaho Transportation Department and Article VIII, § 4 for local road agencies.

way to include land where utility facilities are located on a private easement." Idaho Power Reply Brief on Reconsideration at 15. In previous instances, to accommodate ACHD, Idaho Power and ACHD have entered into written agreements that provide that a subsequent relocation of distribution facilities within certain designated areas where a private right of occupancy existed will be borne by the road agency. This allows the utility to look to the road agency for future relocation costs as an alternative to compensation for expanding across the utility's private easement. As Idaho Power explained, expanding the public right-of-way to encompass the Company's private easement without compensation "would constitute an unlawful taking under both Article 1 § 14 of the Idaho Constitution and the Fifth Amendment of the United States Constitution."

This understanding also comports with ACHD's Resolution 330 Section 1.A.(2). This provision of Resolution 330 provides that

> If a utility . . . has facilities located on private property, with a right of occupancy other than its right to locate in a public right-of-way, and the District requires that any facility so located be relocated, the actual costs for such relocation shall be the responsibility of the District. Such costs shall be exclusive of profit allowances.

(Emphasis added.) In order to assist with the clarification of Section 10, we add two definitions to Section 1 of Rule H. The first added definition is "Easement" (which means the Company's legal right to use the real property of another for the purpose of installing or locating electric facilities). Second, we add a definition for "Prior Right of Occupancy." Adding these definitions and amending Subsection d. of Section 10 will improve clarity a nd allow road agencies the flexibility of negotiating relocation costs on a case-by-case basis. It also reflects the current practice of the Company and road agencies such as ACHD.

4. Advance Payment of Relocation Costs. The Districts take exception to language in Section 10 that requires Idaho Power to be paid in advance by third parties for Idaho Power's relocation work in public rights-of-way. More specifically, the disputed language provides: "All payments from Third-Party Beneficiary to the Company under this Section [10] shall be paid in advance of the Company's relocation work, based on the Company's Work Order Cost." (Emphasis added.) The Districts assert that this provision is an attempt "to regulate how quickly a public utility is required to" relocate its distribution facilities. ACHD Reconsideration Brief at

12; *see also* Tr. at 57. ACHD insists that requiring all relocations in the public right-of-way to be paid in advance will unduly interfere with the project's timetable. Tr. at 57.

For its part, Idaho Power expresses serious concerns about receiving reimbursement for its relocation costs on a project that it did not initiate. Tr. at 32. The Company asserts that it loses its leverage to recover relocation costs from third parties after the Company has already relocated its facilities. *Id.* Under Rule H, the Company is generally paid in advance of starting construction, unless mutually agreed otherwise. Rule H, § 2(I).

Commission Findings: We agree with the Districts that requiring advance payments may hinder the timely completion of improvements and relocations within the public rights-of-way. While we appreciate the fact that advance payments eliminate or reduce the risk of non-payment to Idaho Power for recovering relocation costs, we find that the Company has other alternatives. First, pursuant to *Idaho Code* § 40-210, Idaho Power is permitted to participate in the project development meeting of the highway agency. Instead of simply responding to the highway agency's direction to relocate its facilities, Section 40-210 provides utilities with an opportunity to participate in the planning process for the purpose of eliminating or minimizing their relocation costs.

Second, Idaho Power has other recourses to recover its relocation costs. For example, it may terminate service to a developer if the developer refuses to pay. Utility Customer Rule 302 provides that a utility may terminate service to a small commercial customer for failure to pay past due amounts. The Company also has other collection and legal remedies at its disposal. Consequently, we order the Company to amend this provision of Section 10 to read "All payments from Private Beneficiaries to the Company under this section shall be based upon the Company's work order costs." This change is shown in the Appendix.

5. Section 10 "Savings Clause." At oral argument, ACHD also took issue with the "Savings Clause" contained in Section 10. This part of Section 10 states that:

> This Section [10] shall not apply to utility relocations within public road rights-of-way of Public Road Agencies which have adopted legally binding 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.

ACHD argued that this is another instance where Section 10 intrudes on the road agencies to adopt "legally binding guidelines that [are] substantially similar to [Section 10] or else they're

null and void." Tr. at 58. In other words, "this provision of Rule H, Section 10 states that if our legally binding guidelines are not similar then they're invalid." Tr. at 61.

Idaho Power noted that Section 10 was modeled on ACHD's Resolution No. 330 which was adopted by the District in 1986. Tr. at 27. The Company noted that Resolution 330 has worked well for more than 20 years and that is one reason why Idaho Power modeled Section 10 on Resolution 330. The Company maintained that if a road agency had adopted utility relocation guidelines that were "substantially similar, [then] Section 10 wouldn't take precedent over" the adopted guidelines. Tr. at 34.

Commission Findings: We find that the "Savings Clause" of Section 10 does not operate to invalidate or void a road agency's legally enacted guidelines for the allocation of utility relocation costs. By its terms quoted above, Section 10 is not applicable if a road agency has adopted similar policies addressing the allocation of utility relocation costs.

D. BCA's Issues

The Building Contractors Association (BCA) first argues that Rule H as recently approved by the Commission is inconsistent with the methodology established in the last Rule H case revision completed in 1997. Order No. 26780 (Case No. IPC-E-95-18). BCA asserts the former line extension charges were calculated on a level of investment equal to that made to serve existing customers in the same class. Second, BCA argues that the Company's proposed allowances treat new and existing customers differently by allocating the additional cost of facilities to new customers. Finally, BCA alleges that inflation, not growth, is the actual source of increased costs to extend new distribution plant.

Idaho Power explains that the Line Installation and Service Attachment Allowances section of Rule H 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 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. Idaho Power contends that there are two principal drivers that effect growth in rates over time – inflation and growth-related costs. The Company maintains that the growth in rates over the past five years has outpaced pure inflation, demonstrating that growth is not paying for itself. Post-hearing brief at 2. If the "cost-causers" do not pay, then electric rates for other utility customers will be

higher. This result would not reflect a just and reasonable rate as required by *Idaho Code* § 61-503.

Commission Findings: The Contractors first assert that our recently approved changes to Rule H are inconsistent with the methodology that the Commission adopted in the 1995 Rule H case. BCA implied that the Commission cannot change its methodology from the 1995 case. We reject this argument. As our Supreme Court noted, "Because regulatory bodies perform legislative as well as judicial functions in their proceedings, they are not so rigorously bound by the doctrine of *stare decisis* that they must decide all future cases in the same way as they have decided similar cases in the past." *Rosebud Enterprises v. Idaho PUC*, 128 Idaho 609, 618, 917 P.2d 766, 775 (1996) *citing Intermountain Gas Co. v. Idaho PUC*, 97 Idaho 113, 119, 540 P.2d 775, 781 (1975). "So long as the Commission enters sufficient findings to show that its action is not arbitrary and capricious, the Commission can alter its decisions." *Washington Water Power v. Idaho PUC*, 101 Idaho 567, 579, 617 P.2d 1242, 1254 (1980).

In the present Rule H proceeding, the Commission is addressing a fundamental principle of utility regulation: To the extent practicable, utility costs should be paid by those that cause the utility to incur the costs. If the "cost-causers" do not pay, the electric rates for other customers will be higher. Different circumstances exist now than did in 1995.

Line extension charges offset the cost of physically connecting the new customer to Idaho Power's system. We affirm our Order No. 30853 and find that the amount of $1,780 is based on the current installation cost of standard terminal facilities for single-phase service to new residential customers. Order No. 30853 at 10; Tr. at 140-41, 267. Standard terminal facilities include a single-phase transformer and the cost of the wiring between the Company's existing distribution facilities and the new customer's terminal facilities (the transformer), and any secondary wiring between the transformer and junction boxes. Tr. at 267. Depending upon the geographic configuration of customer locations, transformers can serve multiple customers. Tr. at 237. Because the allowance is calculated on a per transformer basis and not a per customer basis, the allowance inside and outside subdivisions provides the same Company investment. Permitting a per customer allowance rather than a per transformer allowance could lead to an allowance inside subdivisions that is greater than the cost of the terminal facilities required to provide service. Order No. 30853 at 12; Tr. at 276-77.

At the reconsideration hearing, BCA's witness Dr. Richard Slaughter argued that the line extension allowance or lot refund should be equal to $1,232 per lot (single residential customer). Tr. at 234. As Company witness Greg Said explained,

> Dr. Slaughter's recommended mechanism treats developers of residential subdivisions more favorably than individual customers seeking connections outside of subdivisions. [His per lot mechanism] tends to provide allowances in subdivisions that exceed the cost of standard terminal facilities with the excess allowances offsetting the cost of primary conductor and secondary conductor. Such treatment is inconsistent with the treatment of residential customers outside of subdivisions who do not receive an allowance greater than the cost of standard terminal facilities.

Tr. at 270. Mr. Said also explained that Dr. Slaughter's $1,232 cost per lot refund proposal inappropriately includes costs from substations, meters and service conductors which are not part of line extension costs. Tr. at 277, 274-76. On reconsideration, we reaffirm our previous decision that allowances should be based upon the cost of standard terminal facilities and not on a per lot basis. Allowances of $1,780 for single-phase service and $3,803 for three-phase service ensure that customers are treated and charged equitably based on standard overhead service costs, thereby mitigating intra-class and cross-class subsidies. Consequently, the Commission finds that Idaho Power's proposed fixed allowance of $1,780 for single-phase service and $3,803 for three-phase service represents a fair, just and reasonable allocation of line extension costs.

Finally, the Contractors argue that the Rule H revision makes a new customer pay greater upfront line extension charges to defray "some of the costs that would otherwise be charged to existing ratepayers for new generation and transmission," thus running afoul of *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984). We reject this contention. In *Homebuilders*, our Supreme Court determined that the Commission could not impose a charge on only new customers to recover the costs of additional generating resources that served all or "existing" customers. Here, the Commission is addressing distribution costs not resource costs. We are setting line extension charges based on the costs of standard terminal facilities that will be used to serve only the customer who is charged.

More importantly, the Supreme Court noted that there is no discrimination between "new" customers and "old" customers when the Commission sets new line extension charges. *Homebuilders*, 107 Idaho at 421, 690 P.2d at 356. More specifically, the Court noted that no discrimination is present "when a non-recurring charge [e.g., a line extension charge] is imposed

upon a new customer because the service they require demands an extension of existing distribution or communication lines and a charge is imposed to offset the utility's capital investment [in serving new customers]." *Id.*

Idaho Power's line extension charges are imposed only on those customers who will be served by the new facilities. The new facilities will provide service only to those customers who pay for them. The line extension allowances and charges are based upon the cost of terminal facilities. Once new customers pay the nonrecurring charge/line extension costs, they become existing customers and pay pursuant to the same rate schedule as all other existing customers in their class. As such, there is no distinction between new and existing customers in regard to nonrecurring rates and no rate discrimination. *Idaho Code* § 61-315.

INTERVENOR FUNDING

A. The Application for Funding

On November 9, 2009, Building Contractors filed an Application for Intervenor Funding in this case pursuant to *Idaho Code* § 61-617A and the Commission's Rules of Procedure, IDAPA 31.01.01.161-165. In its Petition, BCA claimed the following fees and costs:

Legal Fees	Hours	Total
Michael Creamer, Partner	152.0	$38,000.00
Elizabeth Donick, Associate	5.5	$ 852.50
Justin Fredin, Associate	3.0	$ 585.00
Tami Kruger, Paralegal	5.8	$ 580.00
Total Legal Fees:	166.3	$40,017.50
Costs: Copies		$ 1,021.09
Total Work and Costs:		$41,038.59
Consultant: Richard Slaughter	113.12	$19,926.66
Total Fees and Expenses:		$60,965.25

BCA maintains that it was actively involved in evaluating Idaho Power's proposed changes to its Rule H line extension tariff and the economic impacts these changes would have on BCA members and the general public. The Contractors contend that the factual and policy issues raised by this case were complex and important. BCA alleges that it consistently sought findings and conclusions throughout the proceedings that new customers were entitled to a level

of per-customer Company investment in distribution facilities on par with existing customers. Petition for Intervenor Funding at 2.

BCA states that it retained Dr. Richard Slaughter as a consultant and expert witness based on his familiarity with Idaho Power's rate structure and, specifically, its line extension tariff. BCA maintains that Dr. Slaughter's testimony provided a historical and factual foundation regarding Idaho Power's existing Rule H tariff, its embedded distribution costs, and the sources of increasing costs of service to the Company. Dr. Slaughter argued that it was inflation, not customer growth, causing upward pressure on rates. *Id.* at 3.

BCA argues that the Commission's Order No. 30883 granting, in part, its request for reconsideration implicitly, if not explicitly, recognizes that BCA identified important issues that warranted further consideration. Consequently, BCA maintains that they materially contributed to the proceedings. *Id.* at 4.

BCA next alleges that the costs and expenses incurred from participation in this case were all reasonable and necessary. It also contends that, as a non-profit association that relies on voluntary membership and voluntary contributions, the costs and expenses have been a significant financial burden. BCA claims that voluntary contributions have dropped significantly due to the struggling economy and the depressed local real estate sector. As a result, BCA states that it has imposed significant budget cuts and mandatory days off for its staff. *Id.* at 5.

BCA maintains that its expenses were incurred to advance policies that benefit not only BCA members, but also the public at large. BCA points out that its position differed from that of any other party, including Staff. BCA asserts that it materially contributed to the decision in this case "and to the public debate about issues of population growth and energy costs and the appropriate allocation of those costs as between new customers and the Company's existing ratepayers." *Id.* at 6.

Idaho Power did not file a response to BCA's request for intervenor funding.

B. Standards for Intervenor Funding

Idaho Code § 61-617A and Rules 161-165 of the Commission's Rules of Procedure provide the legal standards for awarding intervenor funding. Section 61-617A(1) declares that it is "policy of this state to encourage participation at all stages of all proceedings before the commission so that all affected customers receive full and fair representation in those proceedings." Accordingly, the Commission may order any regulated utility with intrastate

annual revenues exceeding $3,500,000 to pay all or a portion of one or more parties' legal fees, witness fees, and reproduction costs not to exceed a combined amount of $40,000. *Idaho Code* § 61-617A(2). The Commission's determination of whether to award intervenor fees and costs in a particular proceeding shall be based on the following standards:

1. Did the intervenor materially contribute to the decision rendered by the Commission;

2. Whether the alleged costs of intervention are reasonable in amount and would be a significant financial hardship for the intervenor to incur;

3. Did the recommendation(s) made by the intervenor differ materially from the testimony and exhibits of the Commission Staff; and

4. Did the testimony and participation of the intervenor address issues of concern to the general body of users or consumers.

Idaho Code § 61-617A(2)(a-d).

Rule 162 of the Commission's Rules of Procedure provides the procedural requirements with which an application for intervenor funding must comply. The application must contain: (1) an itemized list of expenses broken down into categories; (2) a statement of the intervenor's proposed finding or recommendation; (3) a statement showing that the costs the intervenor wishes to recover are reasonable; (4) a statement explaining why the costs constitute a significant financial hardship for the intervenor; (5) a statement showing how the intervenor's proposed finding or recommendation differed materially from the testimony and exhibits of the Commission Staff; (6) a statement showing how the intervenor's recommendation or position addressed issues of concern to the general body of utility users or customers; and (7) a statement showing the class of customer on whose behalf the intervenor appeared. IDAPA 31.01.01.162.

Commission Findings: At the outset, BCA's request for intervenor funding regarding its actions for the entirety of these proceedings must be addressed. In Order No. 30896 the Commission denied a request made by BCA for intervenor funding based on its failure to comply with procedural requirements. BCA filed its request nearly two months after the 14-day deadline established by Commission rules. Therefore, $28,386.35 of the $60,965.25 presently requested by BCA has already been denied by this Commission.

BCA's request for expenses incurred during the reconsideration phase of this case in the amount of $32,578.90 was timely filed. Next, *Idaho Code* § 61-617A(2) and Rule 165 of the

Commission's Rules require that the Commission find that: (a) BCA's involvement in this case must have materially contributed to the Commission's final decision; (b) the costs of intervention awarded are reasonable in amount; (c) the costs of intervention are a significant hardship for BCA[6]; (d) the recommendations of BCA differed materially from the testimony and exhibits of Commission Staff[6], and; (e) BCA addressed issues of concern to the general body of ratepayers.

1. Material Contribution. The Commission finds that BCA's arguments did not materially contribute to our final decision in this case. BCA, in large part, recycled its arguments and reasoning from Idaho Power's 1995 Rule H filing. Indeed, clarification was repeatedly necessary during the technical hearing as to which case BCA was referencing – 1995 or the present Application. Tr. at 176, 258-59, 296. The argument BCA presented regarding new and existing customers was similar to the argument it presented in the 1995 prior case. As in the 1995 Rule H case, the Commission was not persuaded by BCA's arguments. Accordingly, the Commission cannot find that BCA's actions materially contributed to our final decision in this case.

2. General Body of Users and Reasonable Costs. Because much of BCA's advocacy addressed the line extension policies of the 1995 Rule H case, we find much of the reconsideration legal fees and expert fees to be unreasonable. BCA was permitted to present evidence on the "limited issue of the amount of the appropriate allowance." Order No. 30883 at 4. "BCA may address what allowance amount is reasonable based on the cost of new distribution facilities." *Id.* Here BCA spent considerable resources addressing issues other than the appropriate allowance amount. *Idaho Code* § 61-617A(2)(b). Moreover, BCA advocacy does not address issues of concern to "the general body of users or consumers." *Id.* at (2)(d).

We conclude that the request for intervenor funding of BCA fails to meet the requirements of *Idaho Code* § 61-617A and Commission Rule 165. Therefore, BCA's request for intervenor funding in this case is denied in its entirety.

ULTIMATE FINDINGS OF FACT

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. The

[6] We find that the costs represent a hardship for BCA and that BCA's positions materially differed from the Staff's positions.

Commission amends Idaho Power's Rule H tariff as explained above and as set out in the Appendix.

ORDER

IT IS HEREBY ORDERED that the Petitions for Reconsideration field by ACHD, the City of Nampa, and the Association of Canyon Highway Districts is partially granted and partially denied. As set out above, the Commission's prior Order No. 30853 is amended and clarified pursuant to *Idaho Code* § 61-124.

IT IS FURTHER ORDERED that the Building Contractors Association's request to amend Rule H and Order No. 30853 is denied.

IT IS FURTHER ORDERED that the Building Contractors Association's Petition for Intervenor Funding is denied.

IT IS FURTHER ORDERED that Idaho Power shall file new Rule H tariff sheets consistent with this Order. The changes set out in this Order and the rest of Rule H shall become effective for services rendered on or after December 1, 2009.

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.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. IPC-E-08-22 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30th day of November 2009.

JIM ~~D.~~ KEMPTON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

MACK A. REDFORD, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

O:IPC-E-08-22_ks_dh_Reconsideration

Section 1 Additions and Amendments:

Easement is the Company's legal right to use the real property of another for the purpose of installing or locating electric facilities.

Prior Right of Occupancy is a designated area within the public road right-of-way where the Company and the Public Road Agency have agreed that the costs of the Relocation of facilities in the designated area will be borne by the Public Road Agency. For example, a Prior Right of Occupancy may be created when the Public Road Agency expands the public road right-of-way to encompass a Company Easement without compensating the Company for acquiring the Easement but the parties agree in writing that the subsequent Relocation of distribution facilities within the designated area will be borne by the Public Road Agency.

Local Improvement District (LID) is any entity created by an authorized governing body under the statutory procedures set forth in Idaho Code, Title 50, Chapter 17 or Idaho Code § 40-1322. For the purpose of Rule H, the term LID also includes Urban Redevelopment projects set forth in Idaho Code, Title 50, Chapter 20.

Public Road Agency is any state or local agency which constructs, operates, maintains or administers public road rights-of-way in Idaho, including where appropriate the Idaho Transportation Department, any city or county street department, or a highway district.

Private Beneficiary is any individual, firm or entity that provides funding for road improvements performed by a Public Road Agency or compensates the Company for the Relocation of distribution facilities as set forth in Section 10. A Private Beneficiary may include, but is not limited to, real estate developers, adjacent landowners, or existing customers of the Company.

10. Relocation Costs in Public Road Rights-of-Way

The Company often locates its distribution facilities within state and local public road rights-of-way under authority of Idaho Code § 62-705 (for locations outside Idaho city limits) and the Company's city franchise agreements (for locations within Idaho city limits). At the request of a Public Road Agency, the Company will relocate its distribution facilities from or within the public road rights-of-way. The Relocation may be for the benefit of the general public, or in some cases, be a benefit to one or more Private Beneficiaries. Nothing in this Section bars a Local Improvement District (LID) from voluntarily paying the Company for Relocations.

The Company's cost of Relocations from or within the public road rights-of-way shall be allocated as follows:

a. Road Improvements Funded by the Public Road Agency – When the Relocation of distribution facilities is requested by the Public Road Agency to make roadway improvements or other public improvements, the Company will bear the cost of the Relocation.

b. Road Improvements Partially Funded by the Public Road Agency – When the Public Road Agency requires the Relocation of distribution facilities for the benefit of itself (or an LID) and a Private Beneficiary, the Company will bear the Relocation costs equal to the percentage of the Relocation costs allocated to the Public Road Agency or LID. The Private Beneficiary will pay the Company for the Relocation costs equal to the percentage of the road improvement costs allocated to the Private Beneficiary.

c. Road Improvements not Funded by the Public Road Agency – When the Relocation of distribution facilities in the public road rights-of-way is solely for a Private Beneficiary, the Private Beneficiary will pay the Company for the cost of the Relocation.

d. Prior Right of Occupancy – When the Company and the Public Road Agency have entered into an agreement regarding a Private Right of Occupancy, the costs of Relocation in such designated area will be borne by the Public Road Agency, or as directed in the agreement.

All payments from Private Beneficiaries to the Company under this Section shall be based on the Company's Work Order Cost.

This Section shall not apply to Relocations within public road rights-of-way of Public Road Agencies which have adopted legally binding guidelines for the allocation of utility relocation costs between the Company and other parties that are substantially similar to the rules set out in Section 10 of Rule H.

11. Eliminating or Minimizing Relocation Costs in Public Road Rights-of-Way

Pursuant to Idaho Code § 40-210, the Company will participate in project design or development meetings upon receiving written notice from the Public Road Agency that a public road project may require the relocation of distribution facilities. The Company and other parties in the planning process will use their best efforts to find ways to eliminate the cost of relocating utility facilities, or if elimination is not feasible, to minimize the relocation costs to the maximum extent reasonably possible. This provision shall not limit the authority of the Public Road Agency over the public road right-of-way.

ORIGINAL

Merlyn W. Clark, ISB No. 1026
D. John Ashby, ISB No. 7228
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Attorneys for Ada County Highway District

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 NOTICE OF APPEAL

TO: THE IDAHO PUBLIC UTILITIES COMMISSION, THE PARTIES IN THIS MATTER AND THEIR RESPECTIVE COUNSEL OF RECORD

NOTICE IS HEREBY GIVEN THAT:

1. The Appellant, the Ada County Highway District, appeals to the Idaho Supreme Court from the Idaho Public Utilities Commission's Order No. 30955, entered in the above entitled proceeding on the 30th day of November.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the order described in paragraph 1 above is an appealable order pursuant to I.A.R. 11(e).

3. Appellant presently intends to assert the following issues on appeal, although Appellant reserves the right to assert other issues on appeal:

a) Whether I.P.U.C. No 29, Tariff No. 101 ("Rule H"), as approved by the Idaho Public Utilities Commission, usurps ACHD's legislatively granted exclusive general supervision and jurisdiction over all highways and public rights-of-way within its highway system.

b) Whether I.P.U.C. No 29, Tariff No. 101 ("Rule H"), as approved by the Idaho Public Utilities Commission, violates Article 8 § 2, Article 8 § 4, Article 7 § 17 and/or other provisions of the Idaho Constitution.

c) Whether I.P.U.C. No 29, Tariff No. 101 ("Rule H"), as approved by the Idaho Public Utilities Commission, abrogates the common law rule related to relocation of utilities.

4. No order has been entered sealing any portion of the record.

5. The appellant requests the preparation of the reporter's standard transcript as defined in Rule 25(c), I.A.R.

6. Appellant requests the standard agency record on appeal pursuant to Rule 28, I.A.R.

7. I certify:

a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Constance S. Bucy
CSB Reporting
23876 Applewood Wy
Wilder, ID 83676

b) That the estimated fee for the preparation of the reporter's transcript has been paid.

c) That the estimated fee for preparation of the clerk's record has been paid.

d) That the appellate filing fee has been paid.

e) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R. (and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code).

DATED THIS 8th day of January, 2010.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By _____
Merlyn W. Clark, ISB No. 1026
D. John Ashby, ISB No. 7228
Attorneys for Ada County Highway District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of January, 2010, I caused to be served a true copy of the foregoing NOTICE OF APPEAL by the method indicated below, and addressed to each of the following:

Jean D. Jewell
Commission Secretary
IDAHO PUBLIC UTILITIES COMMISSION
P.O. Box 83720
Boise, ID 83720-0074

____ U.S. Mail, Postage Prepaid
__X__ Hand Delivered
____ Overnight Mail
____ E-mail
____ Telecopy

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

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Lisa Nordstrom
Barton L. Kline
IDAHO POWER COMPANY
P.O. Box 70
Boise, Idaho 83707-0070

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Gregory W. Said
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gsaid@idahopower.com
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Michael C. Creamer
GIVENS PURSLEY, LLP
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Boise, ID 83702

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Matthew A. Johnson Davis F. VanderVelde WHITE PETERSON GIGRAY ROSSMAN NYE & NICHOLS, P.A. 5700 E. Franklin Road, Suite 200 Nampa, ID 83687	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ E-mail: mjohnson@whitepeterson.com dvandervelde@whitepeterson.com __X__ Telecopy
Kevin Higgins ENERGY STRATEGIES, LLC Parkside Towers 215 S. State Street, Suite 200 Salt Lake City, UT 84111	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ E-mail: khiggins@energystrat.com __X__ Telecopy
IDAHO ATTORNEY GENERAL'S OFFICE P.O. Box 83720 Boise, ID 83720-0010	____ U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail __X__ Telecopy 208-854-8071

Merlyn W. Clark

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MICHAEL C. CREAMER
DIRECT DIAL: (208) 388-1247
EMAIL: MCC@givenspursley.com

January 8, 2010

Via Hand Delivery

Ms. Xan Allen
Idaho Public Utilities Commission
472 W. Washington
P.O. Box 83720
Boise, ID 83720-0074

Re: *Case No. IPC-E-08-22 Notice of Appeal*

Dear Xan:

As requested, enclosed are the following checks for The Building Contractors Association of Southwestern Idaho's Notice of Appeal filed today in the above-referenced matter:

1. Check #5736 in the amount of $862.50 made payable to the Idaho Public Utilities Commission for the estimated record fee on appeal (this check replaces check #9664);

2. Check #5737 in the amount of $86.00 made payable to the Idaho Supreme Court to cover the cost of the appeal filing fee (this check replaces check #9663); and

3. Check #9667 in the amount of $773.50 made payable to CSB Reporting for the estimated cost of the transcript for the appeal, which you will provide to Connie Bucy when she lodges the transcript with the Commission.

Please contact me if you have any questions or need additional information. Your assistance is appreciated.

Sincerely,

Michael C. Creamer

MCC:ch
Enclosures
10495-1_750561_1.DOC

Michael C. Creamer, ISB #4030
Conley E. Ward, ISB # 1683
GIVENS PURSLEY LLP
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Post Office Box 2720
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10495-1_747118_1.DOC

Attorneys for Intervenor/Appellant The Building Contractors Association of Southwestern Idaho

RECEIVED
2010 JAN -8 PM 2:08
IDAHO PUBLIC UTILITIES COMMISSION

IN THE PUBLIC UTILITIES COMMISSION OF THE STATE OF IDAHO

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 **NOTICE OF APPEAL**

TO: RESPONDENTS IDAHO PUBLIC UTILITIES COMMISSION AND IDAHO POWER COMPANY:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Intervenor/Appellant The Building Contractors Association of Southwestern Idaho ("Appellant"), appeals against the above-named Respondent Idaho Public Utilities Commission ("Respondent" or "Commission") and Idaho Power Company ("Respondent" or "Company") to the Idaho Supreme Court from the Commission's final order on reconsideration Order No. 30955 entered herein on the 30th day of November, 2009 ("Order").

2. Appellant has a right to appeal to the Idaho Supreme Court, and the Order from which this appeal is taken, is an appealable final order under and pursuant to Idaho Appellate Rule 11(e) and Idaho Code § 61-629.

3. The following is a preliminary statement of the issues on appeal which Appellant presently intends to assert in the appeal, subject to modification and development as appropriate:

a. Whether the Commission's Order, eliminating a new customer's heretofore existing entitlement to a level of Company investment in distribution facilities equal to that made by the Company to serve its existing customers in the same class was arbitrary, capricious, in excess of its authority or otherwise in violation of the law.

b. Whether the Commission erred in approving amendments to the Company's line extension tariff that result in unlawfully disparate rates as among new customers and as between new customers and existing customers.

c. Whether the Commission erred in approving amendments to the Company's line extension tariff that result in discriminatory rates and charges as between existing and new customers.

d. Whether the Commission abused its discretion in failing to award intervenor funding to Appellant pursuant to Idaho Code § 61-617A and the Commission's Rules of Procedure, IDAPA 31.01.01.161-165, on the asserted grounds that Appellant did not contribute materially to the case, decision or decision making process before the Commission.

e. Appellant reserves the right to identify and raise other issues as the basis for this appeal the extent permitted by law.

4. No portion of the record has been sealed.

5. Appellant requests that the record include the entire reporter's standard transcript (as defined in Idaho Appellate Rule 25(c)) of the October 20, 2009 technical evidentiary hearing.

6. Appellant requests that the following documents be included in the agency's record in addition to those automatically included under Rule 28(b)(3) of the Idaho Appellate Rules:

Date	Description
12/10/08	Building Contractors Association of Southwestern Idaho Petition to Intervene
2/11/09	Notice of Substitution of Counsel
4/17/09	Comments of Building Contractors Association of Southwestern Idaho
4/17/09	Comments of the Commission Staff
5/1/09	Idaho Power Company Reply Comments
5/1/09	Building Contractors Association of Southwestern Idaho's Response to Comments
7/13/09	Building Contractors Association of Southwestern Idaho's Request for Consideration and Granting of Late-Filed Request for Intervenor Funding
7/22/09	Building Contractors Association of Southwestern Idaho's Petition for Reconsideration and/or in the Alternative for Clarification and Petition for Stay
7/29/09	Idaho Power Company's Answer to Petitions for Reconsideration
10/27/09	Building Contractors of Southwestern Idaho's Post-Hearing Brief
11/9/09	Building Contractors of Southwestern Idaho's Request for Intervenor Funding
10/20/09	Evidentiary Hearing Exhibit 201

10/20/09	Evidentiary Hearing Exhibit 202
10/20/09	Evidentiary Hearing Exhibit 203
10/20/09	Evidentiary Hearing Exhibit 204
10/20/09	Evidentiary Hearing Exhibit 205
10/20/09	Evidentiary Hearing Exhibit 206

7. I certify:

a. That a copy of this Notice of Appeal has been served on the reporter (CSB Reporting, Attn: Constance Bucy, 23876 Applewood Way, Wilder, Idaho 83676);

b. That the requested transcript of the October 20, 2009 technical hearing has already been prepared consisting of approximately 233 pages denoted as "Volume II, pages 68-301," and Appellant has paid the estimated cost of such preparation in the amount of $773.50 to the reporter;

c. That the estimated fee for preparation of the Commission's record has been paid;

d. That the appellate filing fee has been paid to the Secretary of the Commission in the amount of one hundred one dollars and no cents ($101.00); and

e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 8th day of January, 2010.

GIVENS PURSLEY LLP

Michael C. Creamer
Attorneys for Intervenor/Appellant The Building Contractors Association of Southwestern Idaho

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2010, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Original Plus Seven Filed:

Jean D. Jewell, Secretary Idaho Public Utilities Commission 472 West Washington Street P.O. Box 83720 Boise, Idaho 83720-0074	☐ ☐ ☒ ☐ ☐	U.S. Mail, postage prepaid Express Mail Hand Delivery Facsimile Electronic Mail

Service Copies:

Lisa D. Nordstrom Barton L. Kline Idaho Power Company PO Box 70 Boise, ID 83707-0070 lnordstrom@idahopower.com bkline@idahopower.com	☒ ☐ ☐ ☐ ☒	U.S. Mail, postage prepaid Express Mail Hand Delivery Facsimile Electronic Mail
Scott Sparks Gregory W. Said Idaho Power Company PO Box 70 Boise, ID 83707-0070 ssparks@idahopower.com gsaid@idahopower.com	☒ ☐ ☐ ☐ ☒	U.S. Mail, postage prepaid Express Mail Hand Delivery Facsimile Electronic Mail
Kristine A. Sasser Deputy Attorney General Idaho Public Utilities Commission 472 W. Washington PO Box 83720 Boise, ID 83720-0074 kris.sasser@puc.idaho.gov	☒ ☐ ☐ ☐ ☒	U.S. Mail, postage prepaid Express Mail Hand Delivery Facsimile Electronic Mail

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Attorneys for The City of Nampa and The Association of Canyon County Highway Districts

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☐ Express Mail
☐ Hand Delivery
☐ Facsimile
☒ Electronic Mail

Michael C. Creamer

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

THE BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO,	)	SUPREME COURT DOCKET NO.
Petitioner/Appellant,	)	
v.	)	IPUC CASE NO. IPC-E-08-22
IDAHO PUBLIC UTILITIES COMMISSION,	)	IPUC ORDER NO. 30981
Respondent on Appeal,	)	
and	)	
IDAHO POWER COMPANY,	)	
Respondent/Respondent on Appeal.	)	

On January 8, 2010, the Building Contractors Association of Southwestern Idaho filed a timely Notice of Appeal from Order No. 30955 in Case No. IPC-E-08-22. Idaho Appellate Rule 6 provides that the Commission "may by order correct the title of an appeal or cross-appeal at any time before the . . . agency's record is lodged" with the Supreme Court. I.A.R. 6.

Pursuant to Appellate Rule 6, the Commission issues this Order correcting the title of the case on appeal. We believe it is appropriate to reflect the Commission's role as respondent on appeal.

O R D E R

IT IS HEREBY ORDERED that the title of the appeal in this matter shall be corrected as reflected above to include the Idaho Public Utilities Commission as Respondent on Appeal.

IT IS FURTHER ORDERED that the Commission Secretary shall file a copy of this Order with the Supreme Court.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12th day of January 2010.

JIM D. KEMPTON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

MACK A. REDFORD, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

O:IPC-E-08-22_BCA Appeal_Title Change_ks

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

ADA COUNTY HIGHWAY DISTRICT,	
Petitioner/Appellant,	**SUPREME COURT DOCKET NO.**
v.	
IDAHO PUBLIC UTILITIES COMMISSION,	**IPUC CASE NO. IPC-E-08-22**
Respondent on Appeal,	**IPUC ORDER NO. 30982**
and	
IDAHO POWER COMPANY,	
Respondent/Respondent on Appeal.	

On January 8, 2010, the Ada County Highway District filed a timely Notice of Appeal from Order No. 30955 in Case No. IPC-E-08-22. Idaho Appellate Rule 6 provides that the Commission "may by order correct the title of an appeal or cross-appeal at any time before the . . . agency's record is lodged" with the Supreme Court. I.A.R. 6.

Pursuant to Appellate Rule 6, the Commission issues this Order correcting the title of the case on appeal. We believe it is appropriate to reflect the Commission's role as respondent on appeal.

O R D E R

IT IS HEREBY ORDERED that the title of the appeal in this matter shall be corrected as reflected above to include the Idaho Public Utilities Commission as Respondent on Appeal.

IT IS FURTHER ORDERED that the Commission Secretary shall file a copy of this Order with the Supreme Court.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 12th day of January 2010.

JIM D. KEMPTON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

MACK A. REDFORD, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

O:IPC-E-08-22_ACHD Appeal_Title Change_ks

PUBLIC UTILITIES COMMISSION OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS.	SUPREME COURT NO. 37293
THE BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO, Appellant, vs. IDAHO PUBLIC UTILITIES COMMISSION and IDAHO POWER COMPANY, Respondents on Appeal.	CLERK'S CERTIFICATE OF APPEAL

Appeal from the Idaho Public Utilities Commission, The Honorable Marsha H. Smith presiding.

Case Number from Idaho Public Utilities Commission: IPC-E-08-22

Order or judgment appealed from: Order No. 30955, Final Order on Reconsideration, service dated November 30, 2009.

Attorney for Appellant: Michael C. Creamer, Givens Pursley LLP, 601 W. Bannock St, Boise, Idaho 83702, Post Office Box 2720, Boise, Idaho 83701-2720

Attorneys for Respondents: IPUC: Weldon Stutzman, Deputy Attorney General and Kristine A. Sasser, Deputy Attorney General, Idaho Public Utilities Commission, 472 West Washington Street, Boise, Idaho 83702-5918, Post Office Box 83720, Boise, Idaho 83720-0074; and Lawrence G. Wasden, Attorney General, Statehouse, Post Office Box 83720, Boise, Idaho 83702-0010; and Idaho Power Company: Lisa D. Nordstrom and Barton L. Kline, Idaho Power Company, 1221 West Idaho Street, Boise, Idaho, 83702, Post Office Box 70, Boise, Idaho 83707.

Appealed by: The Building Contractors Association of Southwestern Idaho

Appealed against: Idaho Power Company and Idaho Public Utilities Commission

Notice of Appeal filed: January 8, 2010

Amended Notice of Appeal filed: NA

Notice of Cross-appeal filed: NA

Amended Notice of Cross-appeal filed: NA

Appellate Fee Paid: $86.00, January 8, 2010

Respondent or Cross-Respondent's Appeal request for additional record filed: NA

Respondent or Cross-Respondent's request for additional Reporter's Transcript filed: NA

Was Court Reporter's Transcript Requested: Yes

Estimated number of pages: 301

If so, name of each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: CSB Reporting, Constance S. Bucy, CSR No. 187, 23876 Applewood Way, Wilder, ID 83676

Title of Appeal Corrected: Yes

Dated this 12th day of January, 2010.

Jean D. Jewell
Secretary of the Public Utilities Commission

PUBLIC UTILITIES COMMISSION OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS.	SUPREME COURT NO. 37294
ADA COUNTY HIGHWAY DISTRICT, Appellant, vs. IDAHO PUBLIC UTILITIES COMMISSION and IDAHO POWER COMPANY, Respondents on Appeal.	CLERK'S CERTIFICATE OF APPEAL

Appeal from the Idaho Public Utilities Commission, The Honorable Marsha H. Smith presiding.

Case Number from Idaho Public Utilities Commission: IPC-E-08-22

Order or judgment appealed from: Order No. 30955, Final Order on Reconsideration, service dated November 30, 2009.

Attorney for Appellant: Merlyn W. Clark and D. John Ashby, Hawley Troxell Ennis & Hawley LLP, 877 Main Street, Suite 1000, Boise, Idaho 83702, Post Office Box 1617, Boise Idaho 83701-1617

Attorneys for Respondent: IPUC: Weldon Stutzman, Deputy Attorney General and Kristine A. Sasser, Deputy Attorney General, Idaho Public Utilities Commission, 472 West Washington Street, Boise, Idaho 83702-5918, Post Office Box 83720, Boise, Idaho 83720-0074; and Lawrence G. Wasden, Attorney General, Statehouse, Post Office Box 83720, Boise, Idaho 83702-0010; and Idaho Power Company: Lisa D. Nordstrom and Barton L. Kline, Idaho Power Company, 1221 West Idaho Street, Boise, Idaho 83702, Post Office Box 70, Boise, Idaho 83707

Appealed by: Ada County Highway District

Appealed against: Idaho Public Utilities Commission and Idaho Power Company

Notice of Appeal filed: January 8, 2010

Amended Notice of Appeal filed: NA

Notice of Cross-appeal filed: NA

Amended Notice of Cross-appeal filed: NA

Appellate Fee Paid: $86.00, January 8, 2010

Respondent or Cross-Respondent's Appeal request for additional record filed: NA

Respondent or Cross-Respondent's request for additional Reporter's Transcript filed: NA

Was Court Reporter's Transcript Requested: Yes

Estimated number of pages: 301

If so, name of each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: CSB Reporting, Constance S. Bucy, CSR No. 187, 23876 Applewood Way, Wilder, ID 83676

Title of Appeal Corrected: Yes

Dated this 12th day of January, 2010.

Jean D. Jewell
Secretary of the Public Utilities Commission

In the Supreme Court of the State of Idaho

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS.	
BUILDING CONTRACTORS ASSOCIATION OF SOWTHWESTERN IDAHO,	ORDER CONSOLIDATING APPEALS
Petitioner-Appellant,	Supreme Court Docket No. 37293-2010 Idaho Public Utilities Commission No. IPC-E-08-22
v.	
IDAHO PUBLIC UTILITIES COMMISSION and IDAHO POWER COMPANY,	
Respondents on Appeal.	
IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY TO MODIFY ITS RULE H LINE EXTENSION TARIFF RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLATIONS.	
ADA COUNTY HIGHWAY DISTRICT,	
Petitioner-Appellant,	Supreme Court Docket No. 37294-2010 Idaho Public Utilities Commission No. IPC-E-08-22
v.	
IDAHO PUBLIC UTILITIES COMMISSION and IDAHO POWER COMPANY,	
Respondents on Appeal.	

It appearing that these appeals should be consolidated for all purposes for reasons of judicial economy; therefore, good cause appearing,

IT HEREBY IS ORDERED that appeal No. 37293 and 37294 shall be CONSOLIDATED FOR AGENCY'S RECORD ONLY under No. 37293, but all documents filed shall bear both docket numbers.

IT FURTHER IS ORDERED that the Commission Secretary shall prepare an AGENCY'S RECORD, which shall include the documents requested in the Notices of Appeal, together with a copy of this Order.

DATED this 14 day of January 2010.

For the Supreme Court

Stephen Kenyon

Stephen W. Kenyon, Clerk

cc: Counsel of Record
IPUC Commission Secretary

Clerk of the Court

Idaho Supreme Court

Boise, Idaho 83720

Docket No. 37293-2010

The Building Contractors Association of Southwestern Idaho

vs.

Idaho Public Utilities Commission

and

Idaho Power Company

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on February 18, 2010, I lodged a transcript of 239 pages in length for the above-referenced appeal with the Idaho Public Utilities Commission.

Constance S. Bucy

Constance S. Bucy, CSR No. 187

Notary Public in and for the State of

Idaho, residing in Wilder, Idaho.

My Commission Expires 8-25-12.

Clerk of the Court

Idaho Supreme Court

Boise, Idaho 83720

Docket No. 37294-2010

The Ada County Highway District

vs.

Idaho Public Utilities Commission

and

Idaho Power Company

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on February 18, 2010, I lodged a transcript of 308 pages in length for the above-referenced appeal with the Idaho Public Utilities Commission.

CONSTANCE S. BUCY NOTARY PUBLIC STATE OF IDAHO

Constance S. Bucy

Constance S. Bucy, CSR No. 187

Notary Public in and for the State of

Idaho, residing in Wilder, Idaho.

My Commission Expires 8-25-12.

EXHIBITS LIST and CERTIFICATION

LIST OF EXHIBITS BY PARTIES

For Idaho Power Company:

1. Lowry – Letters to and from Idaho Transportation Department and to City of Nampa Public Works Department

For Building Contractors Association of Southwestern Idaho:

201. Richard A. Slaughter – Cost of Growth Sample
202. Richard A. Slaughter – Comparison of Existing and Proposed Rule H Cost Distribution
203. Richard A. Slaughter – NAHB Calculation of Households Priced Out of a Market
204. Richard A. Slaughter – Idaho Power Company's Allocation of Distribution Rate Base
205. Richard A. Slaughter – Comparison of Existing and Proposed Rule H Cost Distribution
206. Richard A. Slaughter – Rebuttal Testimony of Gregory W. Said in Case No. IPC-E-95-18

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Idaho Public Utilities Commission this 25th day of February, 2010.

Jean D. Jewell
Commission Secretary

(SEAL)

CERTIFICATE OF RECORD ON APPEAL

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

I, Jean D. Jewell, Secretary of the Idaho Public Utilities Commission, pursuant to the provisions of Sections 61-620, 61-732 and 13-215, *Idaho Code*, do hereby certify that the foregoing papers are the pleadings, findings of the Commission, orders appealed from and all other papers designated by the Notice of Appeal to be included in the Agency's Record in this matter;

THAT all papers comprising the Agency's Record were compiled and prepared under my direction and are true and correct copies of the proceedings before the Commission in this case;

THAT said Agency's Record was bound by me to form the Record on Appeal which constitutes the full and complete record in this cause on appeal to the Supreme Court of the State of Idaho;

THAT said Agency's Record was prepared and three (3) copies filed with the Supreme Court, one copy provided to each petitioner/appellant and one copy provided to each respondent on appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Idaho Public Utilities Commission this 25th day of February, 2010.

Jean D. Jewell,
Commission Secretary

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the proposed **AGENCY RECORD on APPEAL** was hand delivered to the following:

MICHAEL C. CREAMER, ESQ.
GIVENS PURSLEY LLP
601 W. BANNOCK ST.
BOISE, ID 83702

MERLYN W. CLARK, ESQ.
D. JOHN ASHBY, ESQ.
HAWLEY TROXELL ENNIS
& HAWLEY, LLP
877 MAIN ST. SUITE 1000
BOISE ID 83702

BARTON L. KLINE, LEAD COUNSEL
LISA D. NORDSTROM, SENIOR COUNSEL
IDAHO POWER COMPANY
1221 W. IDAHO ST.
BOISE ID 83702

KRISTINE A. SASSER
DEPUTY ATTORNEY GENERAL
IPUC
472 W. WASHINGTON ST.
BOISE, ID 83702

WELDON B. STUTZMAN
DEPUTY ATTORNEY GENERAL
IPUC
472 W. WASHINGTON ST.
BOISE, ID 83702

on February 25, 2010, at their respective places of business.

WITNESS my hand and seal of said Commission at Boise, Idaho this 25th day of February, 2010.

Jean D. Jewell
Idaho Public Utilities Commission
Commission Secretary

(SEAL)