

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
 COMMISSIONER RAPER
 COMMISSIONER ANDERSON
 COMMISSION SECRETARY
 LEGAL
 WORKING FILE**

FROM: DANIEL KLEIN

DATE: AUGUST 1, 2016

**RE: IDAHO POWER PROPOSAL TO REVISE SCHEDULE 95 (TARIFF
 ADVICE NO. 16-02)**

BACKGROUND

On July 20, 2016, Idaho Power submitted Tariff Advice No. 16-02 to revise Idaho Power's Electric Service Schedule 95 for the City of Donnelly. The existing one percent franchise fee remains unchanged.

The proposed franchise fee agreement was approved by the City of Donnelly on July 1, 2016, as authorized in the attached City of Donnelly Ordinance 231. The agreement was accepted by Idaho Power Company on July 19, 2016. The agreement imposes a one percent franchise fee from the sale of electricity within the corporate limits of the City of Donnelly and remains in effect until the end of the ten (10) year franchise agreement unless amended in the manner set forth by the Ordinance 231. Idaho Power requests an effective date of August 30, 2016.

Idaho Title 50, Chapter 3, § 50-329A allows cities to establish franchise fees assessed upon a public service provider up to one percent without the consent of the public service provider or the approval of a majority of voters of the city voting on the question at an election. Franchise fees up to three percent are allowed with the consent of the public service provider or the approval of a majority of voters of the city voting on the question at an election.

STAFF RECOMMENDATION

Staff has reviewed the proposed tariff change, the franchise agreement for the City of Donnelly, and the franchise fee requirements under Idaho Title 50, Chapter 3 § 50-329A. Staff recommends that the Commission accept Idaho Power's proposed revision to Electric Service Schedule 95 Municipal Franchise Fees. Staff recommends an effective date of August 30, 2016.

COMMISSION DECISION

Does the Commission wish to approve the changes set forth in this Tariff Advice?



Daniel Klein

Idmemos/Tariff Advice No. 16-02

SCHEDULE 95
ADJUSTMENT FOR MUNICIPAL
FRANCHISE FEES

PURPOSE

The purpose of this schedule is to set forth the charges such as license, privilege, franchise, business, occupation, operating, excise, sales or use of street taxes or other charges imposed on the Company by municipal corporations and billed separately by the Company to its Customers within the corporate limits of a municipality.

APPLICABILITY

This schedule is applicable to all bills for Electric Service calculated under the Company's schedules and special Contracts in the Company's service area within the State of Idaho as provided in Rule C of this Tariff.

CHARGE

The rates and charges for Electric Service provided under the Company's schedules will be proportionately increased by the following charge within the municipality on and after the effective date of the charge for the applicable municipal ordinance, which charge will be separately stated on the Customer's regular billing.

<u>Municipality</u>	<u>Ordinance No.</u>	<u>Effective Date Of Charge</u>	<u>Charge</u>
City of Aberdeen	303	July 31, 2015	1%
City of Bellevue	2008-06	February 28, 2008	3%
City of Blackfoot	2133	October 1, 2015	1%
City of Bliss	13-71	September 26, 2013	1%
City of Boise	6820	October 1, 2012	1.5%
City of Buhl	835	November 20, 1997	1%
City of Caldwell	2133	June 26, 1996	1%
City of Carey	96-06	March 25, 1997	1%
City of Cascade	537	November 16, 1995	1%
City of Chubbuck	498	January 21, 1999	1%
City of Council	362	September 1, 2000	1%
City of Dietrich	2007-1	September 27, 2007	1%
City of Donnelly	231	August 30, 2016	1%
City of Eagle	349	December 29, 2010	1%
City of Eden	2015-3	November 2, 2015	1%
City of Emmett	858	June 26, 1996	1%

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ORDINANCE NO. 231

“AN ORDINANCE IN ACCORDANCE WITH IDAHO CODE 50-328, 50-329 AND 50-329A GRANTING A FRANCHISE TO IDAHO POWER COMPANY, A CORPORATION, AND TO ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN AND OPERATE IN AND UPON THE PRESENT AND FUTURE STREETS, HIGHWAYS AND OTHER PUBLIC PLACES WITHIN THE CORPORATE LIMITS OF THE CITY OF DONNELLY, IDAHO, ELECTRIC UTILITY PROPERTY AND FACILITIES FOR SUPPLYING ELECTRICITY AND ELECTRIC SERVICE TO THE CITY, THE INHABITANTS THEREOF, AND OTHERS FOR A TERM OF 10 (TEN) YEARS, INCLUDING THE NONEXCLUSIVE RIGHT TO PHYSICALLY LOCATE AND MAINTAIN TELEPHONE, CABLE, FIBER OPTICS OR OTHER COMMUNICATIONS FACILITIES; SETTING FORTH AN AGREEMENT NOT TO COMPETE, RESERVING POWER OF EMINENT DOMAIN; PROVIDING FOR THE PAYMENT OF FRANCHISE FEES; AND SPECIFYING OTHER LIMITATIONS, TERMS AND CONDITIONS GOVERNING THE EXERCISE OF SAID FRANCHISE.”

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DONNELLY, IDAHO THAT;

SECTION 1. The City of Donnelly, Idaho (hereinafter called the “City”) hereby grants to IDAHO POWER COMPANY, a corporation, and to its successors and assigns (hereinafter called the “Grantee”) the right (subject to the rights of the City set forth in Section 14 hereof), privilege and franchise for a period of ten (10) years from and after publication, however, with the right to amend by mutual agreement in accordance with Section 15, to construct, maintain and operate in and upon the present and future streets, alleys, highways and other public places within the corporate limits of the City, electric utility property and facilities for supplying electricity to the City, and the inhabitants thereof, and to persons and corporations beyond the limits of the City, including the nonexclusive right to physically locate and maintain telephone, cable, fiber optics or other communications facilities of the Grantee or other parties, (provided, that Grantee shall comply with the City’s requirements for cable system franchises) all subject to the terms and conditions hereinafter specified. In the case of annexation of property to the corporate limit, such area will be considered under this agreement, upon effective date of the annexation, subject to Section 9 hereof. All such electric utility property and facilities now maintained by the Grantee within the streets, alleys, highways and other public places within the corporate limits of the City shall be deemed covered by this ordinance as provided herein.

SECTION 2. All of the Grantee’s electric property and facilities in and upon the present and future streets, alleys, highways and public places within the corporate limits of the City shall be constructed and at all times maintained in good order and condition and in accordance with standard engineering practices and all applicable safety codes and lawful governmental regulations, including all applicable state and federal regulations and all construction standards

presently in effect by the Idaho Public Utilities Commission or adopted by that Commission during the term of this franchise agreement.

SECTION 3. Upon request of the City, the Grantee shall relocate its facilities as necessary within the present and future streets, alleys, highways and other public places owned by the City. The City shall have no responsibility for the costs of such relocations. The Grantee shall bear the cost of relocating its facilities at the City's request, unless the facilities are to be relocated for the benefit of a third party, in which case the third party shall pay the costs of relocation. In the event federal, state or other funds are available in whole or in part for utility relocating purposes, the City shall apply for such funds and the Grantee will be reimbursed to the extent any such funds are actually obtained.

SECTION 4. It shall be lawful for the Grantee to make all needful or convenient excavations and/or installations in any of the present and future streets, alleys, highways and other public places within the corporate limits of the City for the purpose of erecting and maintaining the posts, poles, towers, or other supports for its wires or for the purpose of laying, maintaining and operating conduits, vaults and wires and other conductors underground for the purpose aforesaid, or to repair and improve such electric power and light system and to extend the same; provided that when the Grantee or any person or corporation under the authority of this franchise, shall disturb any of said streets, alleys, highways or other public places for the purposes aforesaid, he, it or they shall restore the same to good order and condition as soon as practicable and without unnecessary delay and failing to do so after five days' notice from the City, or its duly authorized officer or officers, then the City may place said street, alley, highway or public place in such condition at the cost and expense of the Grantee, and said Grantee will forthwith pay the full cost and expense thereof upon demand of the City. All facilities constructed under this ordinance shall be placed and maintained at such places and positions in or upon such public ways and public places as shall not interfere with the passage of traffic and shall conform to all applicable laws, rules and regulations.

SECTION 5. The City shall have the right and privilege to string and maintain wires for its internal communications for its fire, police, airport and other services upon the poles and other facilities erected and maintained by the Grantee hereunder, subject to the Rules and Regulations of the Idaho Public Utilities Commission. The City shall string, maintain and operate such wires at its own expense, risk and responsibility, and in accordance with all legal requirements and good engineering practices and in such manner as not to impose any additional expense upon Grantee of its said poles and facilities. Any such wires of the City shall be subject to interference by the Grantee only when necessary in the maintenance, operation or repair of the Grantee's own fixtures, wires, facilities and appurtenances.

SECTION 6. The Grantee shall at all times indemnify and hold the City, its officers, employees and agents, harmless from any and all expenses or liability arising from, and against or by reason of any negligent act or omission of the Grantee, its representatives or employees, in the construction, operation or maintenance of any of the Grantee's electric utility property or facilities.

SECTION 7. Upon acceptance of this franchise by Grantee and before Grantee shall have any rights hereunder, Grantee shall file with the City Clerk a Certificate of Insurance evidencing General Liability Insurance which covers claims for Bodily Injury, Property Damage and Personal Injury. Such insurance shall have minimum limits of \$1,000,000 per occurrence. The City of Donnelly shall be named as an "Additional Named Insured" under Grantee's insurance policy. Should the minimum limits of insurance as set forth herein be increased above \$1,000,000, pursuant to the Idaho Tort Claims Act (Idaho Code Section 6-901 et. seq.) or any similar legislation, the Grantee shall be required to provide the City with a new Certificate of Insurance evidencing the higher limits upon the City's request.

SECTION 8. The electric service to be furnished to the public hereunder, and all rates and charges therefore, and all regulation of the Grantee hereunder, shall at all times be subject to all rules, regulations and orders that may be lawfully prescribed by the Idaho Public Utilities Commission or by any other governmental authority now or hereafter having jurisdiction over such matters. During the term of this franchise, Grantee shall at all times assure that customers within the City have access to customer service from the Grantee as required by the Idaho Public Utilities Commission.

SECTION 9. If authorized by formal adoption of city resolution, as compensation for the right, privilege and franchise hereby granted, Grantee agrees to pay to the City on or before the 30th day of January, April, July and October, an amount equivalent to one percent (1%) of Grantee's "gross revenues" for the preceding calendar quarter. For purposes of this Section, "gross revenues" shall mean the amount of money billed by the Grantee for the electricity it sells within the corporate limits of the City to customers, less uncollectibles. The City shall provide appropriate information to the Grantee to allow the Grantee to identify which of its customers are located within the corporate limits of the City for purposes of paying franchise fees. Grantee shall not be responsible for any failure to pay franchise fees which results from deficiencies in such information provided by the City. In the event the City annexes a new area into its corporate limits, the terms of this Section 9 regarding franchise fees shall not apply to the annexed area until sixty (60) days after the City has supplied the Grantee with appropriate information for the identification of the Grantee's customers within the annexed area.

The Grantee's franchise fee payment obligations hereunder shall commence with the start of the Grantee's first full billing cycle following the effective date of this ordinance; provided, that the Grantee must first receive approval from the Idaho Public Utilities Commission for the collection of the franchise fee in the rates charged by Grantee.

SECTION 10. The City shall have the right during the term of this franchise agreement to increase the franchise fee hereunder up to three percent (3%), by obtaining the consent of the Grantee or the approval of a majority of voters of the City voting on the question at an election held in accordance with chapter 4, title 50, Idaho Code. Any such vote to increase the franchise fee

hereunder shall provide that the increased franchise fee will apply to any electric service provider (other than the City) who utilizes the City's streets, alleys or other public places to provide electrical service within the City, during the term of this franchise agreement.

SECTION 11. The Grantee shall keep accurate books of account for the collection of the franchise fees for a period not to exceed three years hereunder and the City shall have the right to inspect the same at all times during business hours, and from time to time audit the same for the purpose of determining gross revenues under Section 9 above.

SECTION 12. The franchise fees paid by the Grantee hereunder will be in lieu of and as payment for any tax or fee imposed by the City on the Grantee by virtue of its status as a public utility including, but not limited to, taxes, fees or charges related to easements, franchises, rightsof-way, utility lines and equipment installation, maintenance and removal during the term of this franchise agreement.

SECTION 13. The Grantee shall have the right and privilege, insofar as the City is able to grant the same, in accordance with National Arborist Association standards, of the pruning of all trees which overhang the present and future streets, alleys, highways and other public places within the corporate limits of the City, in such a manner and to such extent as will prevent the branches or limbs or other parts of such trees from touching or interfering with its wires, poles and other fixtures and equipment. However, except in an emergency, no pruning shall be undertaken without giving the occupant of the adjacent property written or oral notice that such pruning will be performed.

SECTION 14. In consideration of Grantee's undertaking hereunder as evidenced by its acceptance hereof, the City agrees not to engage in the business of providing electric service during the life of this franchise or any extension thereof in competition with the Grantee, its successors and assigns; but nothing herein contained shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of the State of Idaho. The City shall not grant a franchise to another electric service provider during the term of this franchise agreement unless the electric service provider has received approval to provide electrical service within the City from the Idaho Public Utilities Commission, and the City has imposed the same franchise fee on the electric service provider as paid by the Grantee.

SECTION 15. In the event of an amendment to the laws, rules or regulations of the City of Donnelly the State of Idaho or the Public Utilities Commission of Idaho applicable to this franchise, or for periodic review of any section of this agreement, the terms of this franchise and the rights and privileges hereby conferred may be changed, altered, amended or modified upon mutual agreement between the City and the Grantee. In all cases, 60 days notice shall be required on the part of City or Grantee to reopen the agreement pursuant to this section.

SECTION 16. Any violation by the Grantee of the provisions of this ordinance, franchise and grant or any material portions thereof or the failure promptly to perform any of the provisions thereof shall be cause for the forfeiture of this franchise and grant and all rights hereunder by the City after sixty (60) days' written notice to the Grantee and the continuance of such violation, failure or default; however, this provision shall not prevent the Grantee from submitting such question of violation or forfeiture to the appropriate forum (which may include the district court having jurisdiction or the Idaho Public Utilities Commission) for determination.

SECTION 17. Sale, assignment or lease of this franchise is prohibited without notification to the City.

SECTION 18. The Grantee shall assume the cost of publication of this franchise as such publication is required by law.

SECTION 19. The Grantee shall within thirty (30) days after final passage of this ordinance, file with the City Clerk its acceptance of this franchise in writing signed by its proper officers and attested by its corporate seal.

SECTION 20. The existing franchise agreement between the City and Grantee set forth in, Ordinance 183, dated July 17, 2006, shall terminate upon the adoption and acceptance of this ordinance.

SECTION 21. Inasmuch as the Grantee has constructed and now is maintaining and operating the electric utility property and facilities in and upon the streets, alleys, highways, and public places in the City, it is hereby adjudged and declared that this ordinance is necessary for the preservation of the public peace, health and safety, and therefore this ordinance shall take effect on July 1, 2016.

PASSED AND ADOPTED by the Council of the City of Donnelly this 27 day of July, 2016.

APPROVED by the Mayor this 27 day of July, 2016.

ATTEST:

Cami Hedges
Cami Hedges, City Clerk

Brian Koch
Brian Koch, Mayor



ACCEPTANCE

IDAHO POWER COMPANY, as the franchisee, accepts the franchise set forth in the above Ordinance and agrees to abide by the terms and conditions thereof.

DATED this 19th day of July, 2014

By: Lisa Grow
Lisa Grow
Sr. Vice President - Operations

ATTEST:

Antonia A. Hamilton
Secretary

(Seal)