

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>CABLE ONE, INC.,</b>	)	
	)	<b>CASE NO. GNR-E-01-2</b>
<b>Petitioner, Complainant,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>IDAHO POWER COMPANY, INC.</b>	)	<b>ORDER NO. 28999</b>
	)	
<b>Respondent.</b>	)	
	)	

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*Idaho Code* § 61-538 grants the Commission jurisdiction to establish and regulate the rates, terms and conditions for pole attachments “whenever a public utility and a cable television company are unable to agree upon rates, terms or conditions for pole attachments or for the terms, conditions or costs of production of space needed for pole attachments.” Asserting the jurisdiction of Section 61-538, the petition filed by Cable One, Inc. on October 30, 2001, asks the Commission to establish the pole attachment rate for Cable One to attach to Idaho Power Company’s poles. On April 5, 2002, however, the parties filed a stipulation stating their agreement that this case can be stayed pending the results of a broader proceeding by the Commission to determine a formula for resolution of pole attachment disputes.

The parties’ stipulation followed the Commission’s decision on a preliminary issue presented by the parties. Cable One asserted in its petition that it was entitled to a pole attachment rate resulting from a formula approved by the Commission in 1984 in Case No. U-1008-206, *In The Matter of the Washington Water Power Company v. Benewah Cable Company, et al.* Idaho Power contended it was not bound by the *Benewah* formula and the parties submitted briefs to the Commission asking for a ruling on the question. The Commission accordingly issued Order No. 28962 on February 27, 2002, not able to find “in the *Benewah* decision itself or in the proceedings in that case any indication that the Commission intended the rate formula in that decision to be dispositive for all future pole attachment rate disputes.” Order No. 28962 p. 3. Concluding that the *Benewah* rate formula did not necessarily control the dispute between Cable One and Idaho Power, the Commission stated its intent to proceed to a

hearing and asked the parties to submit a procedural schedule to conclude the case within the time allowed by the Commission's Rule of Procedure 151.

The Commission also stated "it is apparent the Commission should consider establishing a pole attachment rate formula or formulas to be utilized to determine future pole attachment rates," and indicated it would initiate a separate proceeding to review pole attachment rate formulas. Order No. 28962 p. 3. The parties have determined to temporarily suspend this case and participate in the broader proceeding. The stipulation filed by the parties provides that this case should be stayed until the Commission has "entered an Order promulgating rules to establish formula or formulas to be utilized to determine pole attachment rates." Stipulation p. 2. The stipulation provides for an interim pole attachment rate between Cable One and Idaho Power pending resolution of the broader proceeding by the Commission.

The Commission approves the stipulation filed by the parties and stays further proceedings in this Case No. GNR-E-01-2. The Commission will open Case No. GNR-E-02-2 and issue notice of its decision to determine an appropriate rate formula for resolving future pole attachment disputes between a public utility and cable television company pursuant to *Idaho Code* § 61-538. The notice will inform interested participants that the Commission will convene workshops to allow parties an opportunity to consider cable attachment rate formulas, and then to present a recommended formula or formulas to the Commission in a formal proceeding. The Commission also will determine whether it is appropriate to formally adopt a cable attachment rate formula in rules promulgated pursuant to the Idaho Administrative Procedures Act. The Commission finds that the parties in this case should be made parties in the broader proceeding to establish a pole attachment rate formula.

## **ORDER**

IT IS HEREBY ORDERED that the Stipulation filed by the parties on April 5, 2002 is approved and further proceedings in this case are stayed. The Commission will initiate a proceeding, Case No. GNR-E-02-2, to determine an appropriate pole attachment rate formula or formulas for resolution of disputes between cable television companies and public utilities as defined in *Idaho Code* § 61-538 and will issue a notice of the proceeding.

IT IS FURTHER ORDERED that Cable One, Inc., Idaho Power Company and the Idaho Cable Telecommunications Association are designated as parties in the pole attachment rate formula proceeding, Case No. GNR-E-02-2.

THIS IS AN INTERLOCUTORY ORDER. Any person interested in this Order may file a petition for review within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. A petition to review may request that the Commission: (1) rescind, clarify, alter, amend; (2) stay; or (3) finalize this Interlocutory Order. After any person has petitioned for review, any other person may file a cross-petition within seven (7) days. *See* Rules 321, 322, 323.03, 324, 325 (IDAPA 31.01.01.321-.325).

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day of April 2002.

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PAUL KJELLANDER, PRESIDENT

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MARSHA H. SMITH, COMMISSIONER

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DENNIS S. HANSEN, COMMISSIONER

ATTEST:

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Jean D. Jewell  
Commission Secretary

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