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 IDAHO PUBLIC
 UTILITIES COMMISSION

Attorneys for Eagle River, LLC

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO POWER COMPANY,)	
)	
Complainant,)	Case No. IPC-E-04-4
)	
vs.)	EAGLE RIVER, LLC'S
)	PETITION FOR ORDER
CITY OF EAGLE, IDAHO,)	GRANTING LEAVE TO
)	INTERVENE
Respondent.)	
_____)	
)	
EAGLE RIVER, LLC,)	
)	
Applicant for Intervention.)	
_____)	

I. INTRODUCTION

Idaho Power Company, through this action, is asking the Idaho Public Utilities Commission to second-guess and effectively undermine the City of Eagle's Findings of Fact and Conclusions of Law issued on May 11, 2004. That decision resolved the very issue presented to the Commission in the present action – whether Idaho Power may

construct a 138 kV transmission line on one of two proposed routes through the City of Eagle.

Eagle River, LLC seeks to intervene in Idaho Power's action because if the proposed 138 kV transmission line is constructed along State Highway 44—one of the proposed routes for the line—it will be located adjacent to Eagle River's commercial development and cause significant and irreparable harm to both the company and its development. Moreover, if Idaho Power obtains its requested relief, Eagle River will be directly impacted by the assessment of a heightened surcharge if the transmission line is required to be buried or relocated. Unless Eagle River is permitted to intervene, it will be without adequate means to fully participate in this proceeding and protect its interests in the determination of the location of the proposed transmission line and the propriety and necessity for the assessment of a surcharge as requested by Idaho Power.

Eagle River's petition for intervention is timely; it will not broaden the issues presented; and it will not otherwise delay these proceedings. As such, Eagle River respectfully requests the Commission grant its petition and permit it to intervene in these proceedings so that it may appear and participate in all matters as may be necessary and appropriate, to present evidence, call and examine witnesses, cross-examine witnesses, present argument and to otherwise fully participate in these proceedings.

II. DISCUSSION

The Idaho Public Utilities Commission Rules of Procedure permit intervention where the petition shows a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues." IPUC Rules of

Procedure, IDAPA 31.01.01.072. The subject matter of the current proceeding involves Idaho Power's petition for authorization to construct a 138 kV transmission line along one of two proposed routes through the City of Eagle. The first route is along State Highway 44 from Edgewood Road to Ballantyne Road, and the second, along State Street through downtown Eagle. Alternatively, Idaho Power requests authority to establish a surcharge to the rates charged customers within the City of Eagle in the event the Commission requires the transmission lines to be buried underground or sited in alternate locations.

Eagle River's intervention in this proceeding is proper because it owns property within the City of Eagle along one of the proposed routes for the 138 kV transmission line and therefore has a direct and substantial interest in the location of transmission line and in whether it will be assessed a heightened surcharge.

A. Eagle River Has A Direct And Substantial Interest In The Current Action Because Idaho Power's Proposed Transmission Line Will Result In Significant And Irreparable Injury to Eagle River.

Eagle River owns a unique commercial development located on the southeast corner of Eagle Road and Highway 44 Alternate Route. The development is the result of years of planning and thousands of hours of detailed coordination with the City of Eagle in order to create a 100-acre mixed used planned community that promotes the development objectives of the City. Consistent with and in reliance upon those efforts—and as required by the City of Eagle—Eagle River made substantial investments to create a commercial community center that protects the quality of life and the natural aesthetics of the community and promotes the economic and job-creation goals of the City. Examples of Eagle River's investments include the

construction of fountains, ponds, and bike paths, the placement of extensive landscaping and vintage street lighting, and the undergrounding of all utilities—most particularly an Idaho Power utility line, which was buried along Eagle Road for the specific purpose of protecting development plan for Eagle River. As a result of these investments, the Eagle River Development has provided economic benefits for the company and for the City of Eagle, in the form of increased business development, job opportunities, employment rates and tax revenues.

Eagle River's northern boundary is approximately one-mile in length, the entire distance of which runs along State Highway 44. If the proposed transmission line is constructed on the State Highway 44 route, Eagle River will suffer substantial economic impacts as the result of its entire northern property line being obstructed by 70 to 90-foot towers and criss-crossing overhead power lines. Because Eagle River's development focuses on the life-style and aesthetic goals that are central to the City of Eagle's comprehensive plan, the eye-sore created by Idaho Power's transmission line will cause substantial adverse economic impacts to Eagle River. Instead of the open views, scenic vistas and natural aesthetics that are currently integrated into Eagle River's development—again, as required by the City—the property will be fenced by a mile of industrial 70 to 90 foot towers with metal cob-webbed lines that will obstruct the landscape. As a result, the development, which is designed to focus on the outdoor aesthetic, to attract pedestrian traffic, and to create a lifestyle commercial center with outdoor-seating in cafes and restaurants, will be destroyed. Eagle River's investment in its development will be substantially impaired, its property values lowered, its development quality diminished, and the build-out of its development delayed.

Moreover, Eagle River's substantial investments made in reliance upon the City of Eagle's ordinances, comprehensive plan and planning objectives will have been utterly undermined.

The significant and irreparable harm to Eagle River as the result of the proposed transmission line gives it a direct and substantial interest in the present action.

B. Additionally, Eagle River Has A Substantial And Direct Interest In This Action Because It May Be Subject To A Heightened Surcharge On Its Utility Rates As a Result of Idaho Power's Complaint.

As an alternative remedy to the routing of its transmission lines along State Highway 44 or State Street, Idaho Power requests authority from the Commission to file tariffs to establish a surcharge to be added to the rates charged customers in Eagle in the event the Commission requires the transmission line to be buried or relocated. Idaho Power's rationale is that it believes that it should be entitled to recover the costs of the alternative locations for the line. Eagle River disagrees with Idaho Power's premise and ultimate conclusion that it is entitled to discriminate against rate payers like Eagle River through the assessment of a surcharge. In order to protect its interest as against Idaho Power's position and because Eagle River is one of the rate payers who may be assessed the heightened surcharge, it has direct and substantial interest in these proceedings.

C. Unless It is Permitted To Intervene, Eagle River Will Be Unable To Adequately Protect Its Interests In This Action.

Eagle River has made substantial investments in its development and will suffer significant adverse affects as the result of the construction of the transmission line along State Highway 44. Unless Eagle River is permitted to intervene in this action, it will be without adequate means to fully participate and represent its interests in the

determination of the location of the proposed transmission line and the propriety and necessity for an additional surcharge.

Intervention is appropriate because Eagle River's petition for intervention is timely; it will not broaden the issues presented; and it will not otherwise delay these proceedings. Furthermore, because of the significant adverse effects that Eagle River will suffer in the event that Idaho Power's requested relief is granted, Eagle River has a sufficient direct and substantial interest in these proceedings and should be permitted to intervene.

D. The Rules Of Procedure Of the Idaho Public Utilities Commission Requires The Name And Address Of The Intervener And The Intervener's Representatives.

As required by the Commission's Rules of Procedure, the name and the address of Eagle River is:

Eagle River, LLC
c/o A. Ennis Dale
485 East Riverside Drive
Eagle, Idaho 83616

Eagle River will be represented in this action by:

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III. CONCLUSION

Due to Eagle River's proximity to the proposed transmission line route, the significant detrimental impacts it will suffer as a result of the construction of the line along State Highway 44, and the possibility of a heightened surcharge assessment, Eagle River has a direct and substantial interest in these proceedings. To protect its interests, Eagle River petitions the Commission to intervene in these proceedings so that it may appear and participate in all matters as may be necessary and appropriate, to present evidence, call and examine witnesses, cross-examine witnesses, present argument and to otherwise fully participate in these proceedings. Eagle River respectfully requests the Commission grant its petition for intervention and permit it to intervene in this proceedings.

DATED this 27th day of June 2004.

HOLLAND & HART LLP

By 
B. Newal Sadyres, of Holland & Hart LLP
Attorneys for Eagle River, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2004, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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