ORIGINAL

Stanley J. Tharp, ISB No. 3883
EBERLE, BERLIN, KADING, TURNBOW, McKLVEEN & JONES, CHARTERED
1111 W. Jefferson, Suite 530
P. O. Box 1368
Boise, ID 83701
Telephone: (208) 344-8535
Facsimile: (208) 344-8542

Attorneys for Petitioner

2007 JUN -7 PM 4:25
IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

JERRENE PHILLIPS, Petitioner, vs. IDAHO POWER COMPANY, Respondent.	Case No. IPC-E-07-01 **AFFIDAVIT OF STANLEY J. THARP IN SUPPORT OF PETITIONER'S MOTION TO DISMISS**

STATE OF IDAHO)
:ss
County of Ada)

STANLEY J. THARP, being first duly sworn upon oath, deposes and says:

1. I am an attorney with the law firm of Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered, attorneys of record for the Petitioner in the above-captioned matter. As such, I am familiar with the facts of this case and make this affidavit based on my own knowledge and belief.

2. Attached hereto as Exhibit "A" is a true and correct copy of a December 8, 2006, letter from Lisa Nordstrom at Idaho Power to Stanley J. Tharp.

3. Attached hereto as Exhibit "B" is a true and correct copy of the Formal Complaint filed by Petitioner on January 11, 2007.

4. Attached hereto as Exhibit "C" is a true and correct copy of the Answer of Idaho Power Company dated February 7, 2007.

5. Attached hereto as Exhibit "D" is a true and correct copy of Idaho Power Company's Response to Petitioner's First Set of Interrogatories, Requests for Production of Documents and Requests for Admission.

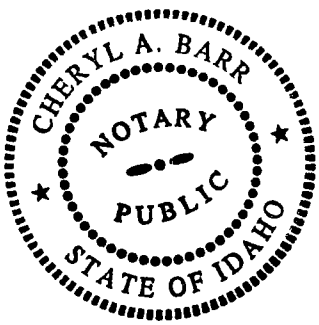
6. Attached hereto as Exhibit "E" is a true and correct copy of Idaho Power's responses to Petitioner's Second Set of Interrogatories and Requests for Production of Documents.

7. Attached hereto as Exhibit "F" is a true and correct copy of the Decision on Motion to Dismiss in *John P. March v. Ford Motor Co., et al.*, Case No. CV OC 95-05974.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Stanley J. Tharp

SUBSCRIBED AND SWORN to before me this 7 day of June, 2007.



Notary Public for Idaho
My Commission Expires: 10/13/10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of June, 2007, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Tammie Estberg Idaho Public Utilities Commission P.O. Box 83720 Boise, ID 83720-0074	[ ] U.S. Mail [ ] Fax: [ ] Overnight Delivery [X] Messenger Delivery
Lisa Nordstrom IDAHO POWER COMPANY 1221 W. Idaho P.O. Box 70 Boise, ID 83707	[ ] U.S. Mail [ ] Fax: 388-6936 [ ] Overnight Delivery [X] Messenger Delivery

STANLEY J. THARP

IDAHO POWER®
An IDACORP Company

Lisa Nordstrom
Attorney

December 8, 2006

VIA CMRRR (7000 0520 0024 9023 5205)
Stanley J. Tharp
Eberle, Berlin, Kading, Turnbow, McKlveen
& Jones, Chtd.
Capitol Park Plaza
300 N. Sixth Street
P.O. Box 1368
Boise, Idaho 83701

Re: Jerrene Phillips

Dear Mr. Tharp:

Idaho Power has reviewed your November 28, 2006 letter requesting meter information for Jerrene Phillips' residence. Given the nature of your request and use of terms like "claim" and "negligence," Idaho Power wishes to make clear that the Idaho Public Utilities Commission has jurisdiction over the billing disputes of its regulated utilities pursuant to *Idaho Code* §§ 61-503, 61-641, and 61-642. The Commission sets forth its customer complaint procedure in Utility Customer Relations Rules 401 through 404 (IDAPA 31.21.01.401 - .404). Utility Customer Relations Rule 204 (IDAPA 31.21.01.204) specifically governs situations where public utilities inaccurately bill service or fail to bill for service.

With this in mind, Idaho Power provides the following responses to your information requests:

REQUEST NO. 1: The initial date upon which the CTs were sealed.
REQUEST NO. 2: The initial date upon which the meter was sealed.

RESPONSES TO REQUEST NOS. 1 AND 2: Current transformers, when installed on underground service, are provided to the customer's electrician to install on the service wire during construction prior to the meter being installed. This causes the current transformer installation date record to show that they were installed prior to the meter (see Documents 2 and 3 provided in Response 3). Current transformer enclosures are then sealed by Idaho Power at the time of meter installation. Both the current transformers and the meter were sealed on January 24, 1994 (See Document 1 provided in Response 3).

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Telephone (208) 388-5825, Fax (208) 388-6936, E-mail LNordstrom@idahopower.co

REQUEST NO. 3: Please produce copies of any and all documents with regards to the meter or the CTs, including any notations by a meter reader or meter technician if either the meter or the CTs were unsealed at any time, dating back to its original installation.

RESPONSE TO REQUEST NO. 3:

- **Document #1** -- CASMETER archive system report: Shows meter serial # 62128615 was installed on 1/24/94. Sealing the meter and enclosure which contains the current transformers at the time of the installation is, and always has been, standard operating procedure.

- **Document #2** -- Meter Management Subsystem report: Shows current transformer serial #6317544 was installed in 1993, after 11/19/93.

- **Document #3** -- Meter Management Subsystem report: Shows current transformer serial #6318185 was installed in 1993, after 11/19/93.

- **Document #4** -- Meter Management Subsystem report. Page 1 shows meter serial # 62128615 was removed on 3/26/06. This was a planned maintenance exchange and test for that meter. Page 2 shows install and removal test results for meter #62128615.

- **Document #5** -- Meter Management Subsystem report. Page 1 shows meter #92265314 was installed on 3/26/06 and removed on 11/7/06. Page 2 shows test results for meter #92265314 prior to installation and after removal.

- **Document #6** -- Meter Management Subsystem report. Page 1 shows meter serial #2026405 was installed on 11/7/06. Page 2 shows test results for meter serial #2026405 prior to installation.

- **Document #7** -- Customer Information System report. Pages 1-3 show the meter reading history from 9/30/99 to 11/3/06. Unsealed meters would be reported with trouble codes under the Column Heading "REPORT 1 CD" or "REPORT 2 CD." As the report shows, no trouble codes have been reported for this account.

- **Document #8** -- Customer Information System – Archive Information on Microfiche. Pages 1 – 11 show Jerrene Phillips' account history including meter number and meter constant from 4/30/95 through 3/29/2000. This information is from Idaho Power's old Customer Information System (a.k.a. Legacy System), which was replaced in 2000.

REQUEST NO. 4: The name of the manufacturer of the CTs and the meter.

RESPONSE TO REQUEST NO. 4: The manufacturer information for the current transformers installed at 16625 Basin Way Boise ID is:

Manufacturer: General Electric
Model: JCWO
Ratio: 400/5

The manufacturer information for the meters that have been installed at 16625 Basin Way Boise, ID is:

SN 62128615
Manufacturer: General Electric
Model: I50S

SN 92265314
Manufacturer: General Electric
Model: I70S

SN 2026405
Manufacturer: Elster
Model: A1T-L

If you have questions regarding these responses or the documents provided, please contact me at 208-388-5825.

Very truly yours,

Lisa Nordstrom

Lisa Nordstrom

LN/sh
Enclosures

Cc: Beverly Barker, Idaho Public Utilities Commission
Tammie Estberg, Idaho Public Utilities Commission

COPY

Stanley J. Tharp, ISB No. 3883
EBERLE, BERLIN, KADING, TURNBOW,
McKLVEEN & JONES, CHARTERED
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P. O. Box 1368
Boise, ID 83701
Telephone: (208) 344-8535
Facsimile: (208) 344-8542

Attorneys for Petitioner

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2007 JAN 11 PM 4:28
IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

JERENE PHILLIPS, Petitioner, vs. IDAHO POWER COMPANY, Respondent.	Case No. **FORMAL COMPLAINT**

COMES NOW the Petitioner, JERENE PHILLIPS, by and through her attorneys of record, Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered, and pursuant to IDAPA 31.01.01.054 hereby files this Formal Complaint against the Respondent, Idaho Power Company (hereinafter "Idaho Power").

LISTED REPRESENTATIVE:

Stanley J. Tharp
Eberle, Berlin, Kading, Turnbow, McKlveen & Jones Chartered
300 North Sixth Street, 2nd Floor
P.O. Box 1368
Boise, ID 83701-1368
(208) 344-8535
(208) 344-8542 (facsimile)
E-Mail: stharp@eberle.com

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PETITIONER:

Jerene Phillips
16625 Basin Way
Boise, ID 83714
(208) 939-0375

RESPONDENT:

Idaho Power Company
c/o its Registered Agent, Patrick Harrington
1220 West Idaho Street
Boise, ID 83702

COMMON ALLEGATIONS

1. The Petitioner, Jerene Phillips, is a customer of the Respondent, Idaho Power.

2. From January 1994 through March of 2006, Idaho Power was billing the Petitioner at the home address identified as "16625 Basin Way, Boise, Idaho 83714" (hereinafter the "Premises").

3. Idaho Power installed CTs and meter at the Premises on or about January 24, 1994. The CTs and meter installed by Idaho Power at all times functioned properly, and the meter installed never failed to function.

4. Thereafter, Idaho Power billed the Petitioner for correct readings from the installed meter. All bills received by Petitioner from January 1994 through March of 2006 were paid when received.

5. On March 26, 2006, as part of a planned maintenance exchange, a different meter was installed. Shortly thereafter, the Petitioner noticed a huge increase in her electricity bills and after further inquiry it was discovered that the incorrect CTs were installed by Idaho Power back in 1994. In fact, the multiplier should have been a 40; however the meter and CTs that were installed had a multiplier of 20.

6. In June of 2006, Idaho Power sent Petitioner a bill for three (3) years of additional electricity in the amount of $6,359.44. Petitioner has disputed this bill ever since and in fact

approached Idaho Power in an attempt to compromise this matter; however, Idaho Power rejected Petitioner's offer to compromise.

7. A true and accurate copy of the bill is attached hereto as Exhibit "A" and incorporated herein by reference.

8. Originally, the basis and claim of the additional charges by Idaho Power was that the CTs and meter previously installed in 1994 were not properly functioning and as a result, the billings did not accurately reflect the services received by the Petitioner.

9. At no time in the past twelve (12) years did the meter and CTs installed by Idaho Power fail or malfunction. In fact, upon the removal and testing of the meter by Idaho Power it was found to be one-hundred percent (100%) accurate and fully functional.

COUNT ONE

10. Petitioner restates and realleges the common allegations contained in paragraphs 1 through 9.

11. Under IDAPA 31.21.01.204, a utility may file a corrected billing only "[w]henever the billing for utility service was not accurately determined because the meter malfunctioned or failed, bills were estimated, or bills were inaccurately prepared, the utility shall prepare a corrected billing. If the utility has failed to bill a customer for service, the utility shall prepare a bill for the period during which no bill was provided."

12. Because the basis of the billing was that Idaho Power had installed the wrong CTs and meter, as opposed to an allegation that the meter failed or malfunctioned, Idaho Power lacks any legal authority to rebill the Petitioner for the months of April 2003, through March 2006.

COUNT TWO

13. Petitioner restates and realleges the common allegations contained in paragraphs 1 through 12.

14. The Idaho Public Utilities Commission (hereinafter "IPUC") jurisdiction is limited and has to be found entirely within the enabling statutes. *Afton Energy, Inc. v. Idaho Power Co.*, 111 Idaho 925, 729 P.2d 400 (1986); *Washington Water Power Co. v. Kootenai Environmental Land*, 99 Idaho 875, 591 P.2d 122 (1979). An administrative regulation cannot exceed the bounds of authority granted to it by the legislature. *Curtis v. Canyon Highway District No. 4*, 122 Idaho 73, 831 P.2d 541 (1992) (overruled on other grounds).

15. Idaho Power's billing authority is limited via statute and its authority cannot exceed the bounds of the statute.

16. Idaho Power's interpretation of IDAPA Rule 31.21.01.204 is not consistent with Idaho Code § 61-642. Idaho Code § 61-642 does not allow Idaho Power to back bill the Petitioner for three (3) years as alleged by Idaho Power pursuant to IDAPA 31.21.01.204.

COUNT THREE

17. Petitioner restates and realleges the common allegations contained in paragraphs 1 through 16.

18. Idaho Power's interpretation of IDAPA 31.21.01.204 and Idaho Code § 61-642 is arbitrary and capricious and not in accordance with law.

19. The IPUC should not enforce Idaho Power's arbitrary and capricious interpretation of IDAPA and the Idaho Code.

COUNT FOUR

20. Petitioner restates and realleges the common allegations contained in paragraphs 1 through 19.

21. The principles of equity are applicable in proceedings before administrative bodies. *Duggan v. Potlatch Forests Inc.*, 92 Idaho 262, 441 P.2d 172 (1968).

22. Over the past twelve (12) years the Petitioner has in good standing, paid the bills sent to her by Idaho Power. Idaho Power's current attempt to back bill the Petitioner is inequitable because if she had known the true amount of her power consumption over the years she could have taken measures to budget and conserve even more. However, Idaho Power's installation of the wrong CTs prevented her from taking that opportunity.

RIGHT TO AMEND

23. Petitioner reserves the right to amend this Formal Complaint in any respect as motion practice and discovery proceeds in this matter.

WHEREFORE, Petitioner asks for the following relief:

A. The IPUC declare that the Respondent had no basis to charge the Petitioner for the additional amounts claimed.

B. The IPUC declare that the billing received by Petitioner from the Respondent from April 7, 2003 to March 26, 2006, including any late charges, is paid in full.

C. To the extent authorized by law, that the IPUC award the Petitioner its reasonable attorneys' fees and costs; and

D. For such other and further relief as the IPUC may deem just and equitable.

DATED this 11th day of January, 2007.

EBERLE, BERLIN, KADING, TURNBOW,
McKLVEEN & JONES, CHARTERED

By: _____
Stanley J. Tharp
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of January, 2007, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Tammie Estberg	[ ] U.S. Mail
Idaho Public Utilities Commission	[ ] Fax:
P.O. Box 83720	[ ] Overnight Delivery
Boise, ID 83720-0074	[X] Messenger Delivery

_____
STANLEY J. THARP

IDAHO POWER.
An IDACORP Company

www.idahopower.com

Questions? Contact us at:
PO BOX 70, Boise, ID 83707.
Or call (208) 388-2323 (Treasure Valley).
Se habla español.
For faster service please call
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: JERRENE PHILLIPS
Account Number: 9796216346
Billing Date: 08/08/2006
Print Date: 08/08/2006

Due Date	Please Pay
08/23/2006	$6,613.79

Account Activity

Previous Balance	$2,606.64
Payments - Thank You	$245.44 CR
Balance Forward	$2,361.20
Total Adjustments	$3,945.14
Current Charges	$307.45
Account Balance	**$6,613.79**

Please Note: Any unpaid balances will be assessed a monthly charge of one percent (1%) for Idaho customers. Returned checks may be resubmitted electronically for payment. Checks remaining unpaid will be charged a $20 fee.

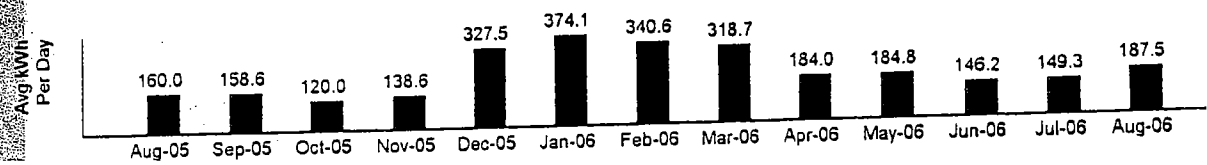
The amount due includes a past due balance. If you have already remitted payment, thank you. If not, please remit payment to ensure it is received by the due date. Thank you.

Learn, Reduce & Save With New ENERGY Tools

Learn about your home's energy use and tips on how to save energy. Become your own Account Manager with *ENERGY Tools* now available at the E-services area of www.idahopower.com.

▼ Please detach and return the portion below with your payment. Please bring entire bill when paying at a pay station. ▼

Your Electric Use Pattern



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IDAHO POWER.
An IDACORP Company

www.idahopower.com

Questions? Contact us at:
PO BOX 70, Boise, ID 83707.
Or call (208) 388-2323 (Treasure Valley).
Se habla español.
For faster service please call
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: JERRENE PHILLIPS
Account Number: 9796216346
Billing Date: 08/08/2006
Print Date: 08/08/2006

Service Agreement No: 4520711845

Next Read Date: 09/05/2006

Service Location: 16625 BASIN WAY/BOISE, ID

Meter Number	Service Period From	Service Period To	Number of Days	Reading Type	Meter Readings Previous	Meter Readings Current	Meter Constant	kWh Used
003C92265314	07/06/06	08/04/06	29	Regular	432	568	40	5440

Residential Rate Schedule I01

07/06/2006 - 08/04/2006 29 days

Service Charge	$4.00
Summer Energy Charge 0-300 kWh @ $0.054251 per kWh	$16.28
Summer Energy Charge Over 300 kWh @ $0.06106 per kWh	$313.85
PCA @ -$0.003689 per kWh	$20.07 CR
Conservation Program Funding Charge	$1.75
Federal Columbia River Benefits Supplied by BPA	$8.36 CR
Current Charges - Electric Service	**$307.45**

Adjustments

Cancel/Rebilled Bill Segment	$377.75
Cancel/Rebilled Bill Segment	$610.09
Cancel/Rebilled Bill Segment	$84.05 CR
Late Payment Charge	$62.43
Cancel/Rebilled Bill Segment	$97.18 CR
Cancel/Rebilled Bill Segment	$675.62
Cancel/Rebilled Bill Segment	$315.57
Cancel/Rebilled Bill Segment	$116.51 CR
Cancel/Rebilled Bill Segment	$159.19 CR
Cancel/Rebilled Bill Segment	$103.68 CR
Cancel/Rebilled Bill Segment	$305.05
Cancel/Rebilled Bill Segment	$186.89
Cancel/Rebilled Bill Segment	$306.84 CR
Cancel/Rebilled Bill Segment	$239.95 CR
Cancel/Rebilled Bill Segment	$659.86
Cancel/Rebilled Bill Segment	$123.94 CR
Cancel/Rebilled Bill Segment	$331.34 CR

IDAHO POWER.
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www.idahopower.com

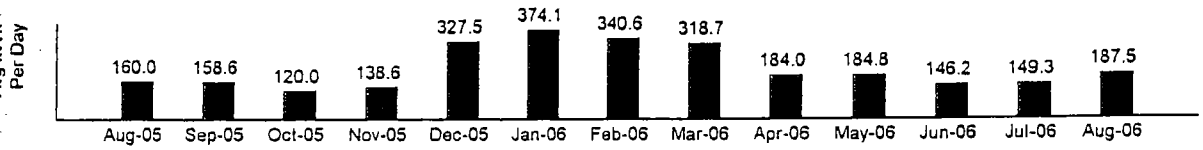
Questions? Contact us at:
PO BOX 70, Boise, ID 83707.
Or call (208) 388-2323 (Treasure Valley).
Se habla español.
For faster service please call
Tuesday - Friday, 7:30 a.m. to 6:30 p.m.

Customer Name: JERRENE PHILLIPS
Account Number: 9796216346
Billing Date: 08/08/2006
Print Date: 08/08/2006

Cancel/Rebilled Bill Segment	$302.58
Cancel/Rebilled Bill Segment	$118.17 CR
Cancel/Rebilled Bill Segment	$251.78
Cancel/Rebilled Bill Segment	$130.96 CR
Cancel/Rebilled Bill Segment	$204.56
Cancel/Rebilled Bill Segment	$118.32 CR
Cancel/Rebilled Bill Segment	$343.60 CR
Cancel/Rebilled Bill Segment	$287.06 CR
Cancel/Rebilled Bill Segment	$164.49
Cancel/Rebilled Bill Segment	$339.22 CR
Cancel/Rebilled Bill Segment	$293.94
Cancel/Rebilled Bill Segment	$569.09
Cancel/Rebilled Bill Segment	$190.68 CR
Cancel/Rebilled Bill Segment	$94.76 CR
Cancel/Rebilled Bill Segment	$230.20
Cancel/Rebilled Bill Segment	$87.58 CR
Cancel/Rebilled Bill Segment	$152.69 CR
Cancel/Rebilled Bill Segment	$127.41 CR
Cancel/Rebilled Bill Segment	$242.87
Cancel/Rebilled Bill Segment	$201.85
Cancel/Rebilled Bill Segment	$258.32
Cancel/Rebilled Bill Segment	$477.10
Cancel/Rebilled Bill Segment	$172.36
Cancel/Rebilled Bill Segment	$234.56
Cancel/Rebilled Bill Segment	$682.17
Cancel/Rebilled Bill Segment	$231.85
Cancel/Rebilled Bill Segment	$147.83 CR
Cancel/Rebilled Bill Segment	$102.32 CR
Cancel/Rebilled Bill Segment	$191.56
Cancel/Rebilled Bill Segment	$154.12 CR
Current Adjustments	**$3,945.14**

CR = Credit kWh = Kilowatt-hour PCA = Power Cost Adjustment kW = Kilowatt BLC = Basic Load Capacity G = Generation

Your Electric Use Pattern



LISA D. NORDSTROM ISB #5733
BARTON L. KLINE ISB #1526
Idaho Power Company
P. O. Box 70
Boise, Idaho 83707
Telephone No. (208) 388-5825
FAX Telephone No. (208) 388-6936
E-mail: lnordstrom@idahopower.com

Attorneys for Idaho Power Company

Street Address for Express Mail:

1221 West Idaho Street
Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

JERENE PHILLIPS, Petitioner, IDAHO POWER COMPANY, Respondent.	))))))))	CASE NO. IPC-E-07-01 **ANSWER OF IDAHO POWER COMPANY**

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") and, in accordance with IPUC R.P. 057, hereby submits this Answer to the Formal Complaint submitted on January 11, 2007 by Jerene Phillips ("Ms. Phillips"), the Petitioner in the above-entitled matter. Idaho Power hereby denies all of the material allegations contained in Ms. Phillips' Complaint except as specifically admitted by Idaho Power in this Answer. Pursuant to Idaho Public Utilities Commission ("IPUC") Rule of Procedure 057.02(a), any material

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allegation not specifically admitted in this Answer shall be considered by the Commission to be denied.

FACTUAL BACKGROUND

Jerene Phillips is an Idaho Power customer and has taken continuous service at 16625 Basin Way in Boise since it was constructed in 1994. Given the service requirements of her all-electric home, the construction plan called for a Current Transformer (CT) installation, thus requiring a meter multiplier (a.k.a. meter constant) to calculate the actual kWhs for billing. On March 26, 2006, during a periodic test Idaho Power visually inspected the CT wiring and exchanged the meter at Ms. Phillips' address for testing as part of a planned maintenance meter exchange. When processing the exchange order, the new meter information and the correct multiplier of 40 were entered into the billing software system.

Idaho Power sent the old meter to its Meter Test Facility and determined that it accurately performed its role towards recording energy usage. After Ms. Phillips called Idaho Power on June 13, 2006 regarding the high energy use on her bill, Idaho Power scheduled an appointment with Ms. Phillips on June 22nd at the premises to help determine why her energy usage had doubled. On June 23rd it was determined a meter error had occurred when a multiplier of 20 rather than 40 had been erroneously inputted into Idaho Power's billing system in 1994 when Ms. Phillips' service was initially established. As a result, Ms. Phillips was charged for only half of her electric usage during the subsequent 12 years.

Later that same day on June 23, the Company advised Ms. Phillips of the error and that an Idaho Power employee would return to the premises to verify that the multiplier of 40 was correct before a corrected billing would be sent. Idaho Power confirmed that the CTs are the correct size, are installed correctly and are still installed at the premises.

On July 12, 2006, an Idaho Power representative called Ms. Phillips to explain that the under-billed usage for the three-year period between April 2003 and March 2006 would be included on her August 8th bill.[1] The representative also explained that payment arrangement options were available, including increased payments over 36 months to pay the re-billed amount.

Ms. Phillips contested the amount of the corrected billing and attempts to settle the matter were not successful. Idaho Power representatives have visited with Ms. Phillips several times to help her better understand her power consumption. The Company also conducted an energy audit of her home and installed a survey meter that records 15-minute intervals to better identify areas in which energy savings can be achieved. Idaho Power has visited the residence several times to confirm the amount of energy the premises is using and provide information promoting energy saving opportunities.

In the fall of 2006, Idaho Power investigated the root causes of incorrect multipliers like the one used on Ms. Phillips' account. Idaho Power reviewed the system data for all transformer rated metering installations (approximately

[1] The August 8, 2006 bill attached as Exhibit "'A" to the Complaint reflects inclusion of the $6,306.34 re-billed amount, which can be found by subtracting the "Account Balance" minus "Current Charges" [6613.79 - 307.45 = 6306.34]. The $307.45 represents the cost of current use from meter readings 07/06/2006 through 08/04/2006.

19,000) and identified nearly 500 installations with questionable meter multipliers for which field verification orders were produced. The results of these field inspections yielded nine (9) accounts with billing errors due to incorrect multipliers and four (4) accounts with billing errors due to wiring installation problems. As a result of this investigation, Idaho Power has corrected these errors and changed its reporting and monitoring processes to improve billing accuracy. In addition, Idaho Power is presently conducting field inspections to independently verify that 62 previously un-inspected installations are receiving a correct bill.

RESPONSE TO ALLEGATIONS

Except as specifically admitted by Idaho Power in this Answer, Idaho Power Company hereby denies all of the material allegations contained in Ms. Phillips' Complaint filed with the Commission on January 11, 2007. The numbers listed in the following paragraphs correspond to numbering used by Ms. Phillips in her Formal Complaint.

I.

Idaho Power admits the allegations contained in Paragraphs 1, 2, 3, 4, 7 and 9 of the Complaint.

II.

Idaho Power denies allegations in Paragraphs 5, 8, 12 and 22 that the Company installed the wrong CT and meter at Ms. Phillips' residence as well as any claims that its equipment malfunctioned. In 1994 Idaho Power Company installed the appropriate CTs and meter to serve Ms. Phillips' energy needs and

this equipment functioned properly. However, Idaho Power admits that an incorrect multiplier of 20 was inadvertently entered into the Company's billing system. As a result Idaho Power inaccurately prepared Ms. Phillips' bills, thus billing her for only half of her actual usage since the account was opened in 1994.

III.

Idaho Power neither admits nor denies Paragraphs 11, 14 and 21 of the Complaint. The statutes, rules and cases referred to therein speak for themselves.

IV.

Idaho Power denies allegations in Paragraphs 12 and 15 that it lacks authority to issue a corrected billing to Ms. Phillips for the months of April 2003 through March 2006. The Company's billing practices are governed by the Commission and its Rules, specifically Utility Customer Relations Rules 204 and 313 (IDAPA 31.21.01.204 and -.313), which the Commission promulgated pursuant to the legislative authority vested in it by *Idaho Code* §61-507. Idaho Power's actions are in keeping with these Rules and established Commission practice. See Order Nos. 28212 and 28298 (finding Avista properly back billed customers for the maximum three year period after use of an incorrect multiplier was discovered). Accordingly, Idaho Power likewise denies the allegations contained in Paragraphs 16, 18 and 19 of the Complaint.

CONCLUSION

Idaho Power respectfully requests that Ms. Phillips' Complaint be dismissed and that, pursuant to the provisions of the Commission's Utility Customer Relations Rules 204.03 and 313, Ms. Phillips be ordered to pay Idaho Power Company $6306.34 for electrical service received for the three-year period between April 2003 and March 2006.

RESPECTFULLY SUBMITTED this 7th day of February 2007.

Lisa Nordstrom

Lisa Nordstrom

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of February 2007, I served a true and correct copy of the within and foregoing Answer of Idaho Power Company upon the following party by the methods indicated below and addressed to the following:

Stanley J. Tharp Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered P.O. Box 1368 Boise, ID 83701	____ X ____ ____ ____	Hand Delivered U.S. Mail Overnight Mail Electronic Mail FAX
Jerene Phillips 16625 Basin Way Boise, ID 83714	____ X ____ ____ ____	Hand Delivered U.S. Mail Overnight Mail Electronic Mail FAX
Cecelia A. Gassner Deputy Attorney General Idaho Public Utilities Commission P.O. Box 83720 Boise, ID 83720-0074	X ____ ____ X ____	Hand Delivered U.S. Mail Overnight Mail Electronic Mail FAX

Lisa Nordstrom

Lisa Nordstrom

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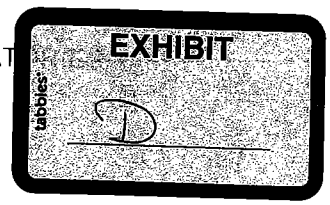
BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

JERENE PHILLIPS,	)	CASE NO. IPC-E-07-01
	)	
Petitioner,	)	**IDAHO POWER COMPANY'S RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND REQUESTS FOR ADMISSION**
IDAHO POWER COMPANY,	)	
Respondent.	)	

TO: PETITIONER AND HER ATTORNEY OF RECORD:

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") by and through its attorneys of record and responds and objects to Petitioner's First set of Interrogatories, requests for Production of Documents and Requests for Admission as follows:

This response is qualified by virtue of the fact that discovery is not yet complete in this matter. Other pertinent facts and witnesses on which Respondent may rely during the course of the matter may be discovered and Respondent reserves the right



to supplement this response to set forth such facts and witnesses. It is premature to require a full and complete response to this discovery and a limited objection is made on that basis.

Petitioner's interrogatories and document requests are objectionable to the extent that they seek or may be deemed to seek information which is protected from disclosure by attorney-client or other privilege, as attorney work-product, or as containing mental impressions, conclusions, opinions, or legal theories of one or more of Respondent's attorneys.

Petitioner's interrogatories are objectionable to the extent that they are overly broad, general interrogatories such as those that ask defendant to state all facts on which a contention is based.

Documents will be produced at a time and place mutually convenient to counsel for the parties, and/or reasonable under the circumstances.

Confidential information will be produced only subject to entry of an appropriate protective order.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all persons answering these interrogatories .

RESPONSE TO INTERROGATORY NO. 1: The response to this request and those that follow were prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and/or Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 2: Please set forth in detail the complete circumstances of how the Company determined that it was utilizing the wrong multiplier for the Petitioner's residence.

RESPONSE TO INTERROGATORY NO. 2: As previously explained in Idaho Power's Answer filed February 7, 2007, Jerene Phillips has taken continuous service at 16625 Basin Way in Boise since it was constructed in 1994. Given the service requirements of her all-electric home, the construction plan called for a Current Transformer (CT) installation, thus requiring a meter multiplier (a.k.a. meter constant) to calculate the actual kWhs for billing.

On March 26, 2006 during a periodic test Idaho Power visually inspected the CT wiring and exchanged the meter at Ms. Phillips' address for testing as part of a planned maintenance meter exchange. When processing the exchange order, the new meter information and the correct multiplier of 40 were entered into the billing software system.

Idaho Power sent the old meter to its Meter Test Facility and determined that it accurately performed its role towards recording energy usage. After Ms. Phillips called Idaho Power on June 13, 2006 regarding the high energy use on her bill, Idaho Power scheduled an appointment with Ms. Phillips on June 22nd at the premises to help determine why her energy usage had doubled. On June 23rd it was determined a billing error had occurred when a multiplier of 20 rather than 40 had been erroneously inputted into Idaho Power s billing system in 1994 when Ms. Phillips' service was initially established. As a result, Ms. Phillips was charged for only half of her electric usage during the subsequent 12 years.

Later that same day on June 23, the Company advised Ms. Phillips of the error and that an Idaho Power employee would return to the premises to verify that the multiplier of 40 was correct before a corrected billing would be sent. Idaho Power confirmed that the CTs are the correct size, are installed correctly and are still installed at the premises.

On July 12, 2006, an Idaho Power representative called Ms. Phillips to explain that the under-billed usage for the three-year period between April 2003 and March 2006 would be included on her August 8th bill. The representative also explained that payment arrangement options were available, including increased payments over 36 months to pay the re-billed amount.

Ms. Phillips contested the amount of the corrected billing and attempts to settle the matter were not successful. Idaho Power representatives have visited with Ms. Phillips several times to help her better understand her power consumption. The Company also conducted an energy audit of her home and installed a survey meter that records 15-minute intervals to better identify areas in which energy savings can be achieved. Idaho Power has visited the residence several times to confirm the amount of energy used at the premises and provide information promoting energy saving opportunities.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 3: Please identify the nine (9) accounts with billing account errors due to incorrect multipliers referenced in your Answer to the Complaint including how each one was resolved.

RESPONSE TO INTERROGATORY NO. 3: Idaho Power objects on the grounds that the information requested involves confidential customer account information and is not relevant to the subject matter of this complaint.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 4: Please identify the four (4) accounts with billing errors due to the wire installation problems referenced in your Answer to the Complaint, including how each one was resolved.

RESPONSE TO INTERROGATORY NO. 4: Idaho Power objects on the grounds that the information requested involves confidential customer account information and is not relevant to the subject matter of this complaint.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 5: Please provide in detail the current status of the other "62 previously uninspected installations" referenced in your Answer to the Complaint.

RESPONSE TO INTERROGATORY NO. 5: Idaho Power objects on the grounds that the information requested involves confidential customer account information and is not relevant to the subject matter of this complaint.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 6: Please identify each and every person known to you or your attorney who has any knowledge of, or who purports to have any knowledge of, any of the facts of this matter. Please also state the following:

(a) The relevant facts which you understand to be within the knowledge of such person; and

(b) The substance of any testimony expected to be elicited from such person at the hearing, if any, of this matter.

RESPONSE TO INTERROGATORY NO. 6: Idaho Power objects on the grounds that the request is overly broad and burdensome. Furthermore, the Company cannot ascertain which witnesses Idaho Power will present, or the substance of testimony expected to be elicited at hearing, until Ms. Phillips prefiles direct testimony.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 7: Please state whether you are aware of or obtained any admissions of Petitioner, if any, including the content of said admissions.

RESPONSE TO INTERROGATORY NO. 7: To better assist Ms. Phillips in lowering her future electric bills, Bill Homan made site visits to the Phillips residence to monitor energy usage. On August 3, 2006, Mr. Homan called Ms. Phillips to advise that high energy consumption (over 5000 kWh) continued and would be reflected in the 7/6/06 to 8/4/06 billing. Mr. Homan recommended adjusting thermostat and closing all window coverings to help increase energy savings. Ms. Phillips returned Bill Homan's call, indicating that she understood but couldn't make adjustments as she was in McCall and planned to remain there until the mosquito abatement ended. Ms. Phillips also made oral admissions to Bill Homan on or about August 18, 2006 concerning her willingness and intent to make usage changes necessary to reduce her energy consumption and future billings. Other than documents filed by Petitioner's legal counsel in this matter, the only written communication Idaho Power has received from Ms. Phillips was a settlement offer letter dated October 26, 2006.

The response to this request was prepared by Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 8: Please identify in detail the types of meters normally installed when Idaho Power is using a meter multiplier of 20.

RESPONSE TO INTERROGATORY NO. 8: Electrical meters are identified by American National Standard Institute's "Form" designations. The industry designation for the single-phase, transformer rated, three wire, 120/240 volt service meter is Form 3S. Form 3S meters from any manufacturer are physically and electrically the same. Idaho Power uses Form 3S meters for all single-phase, transformer rated, three wire, 120/240 volt services. Form 3S meters are designed and wired such that the meter multiplier is equal to 1/2 times the ratio of the current transformers applied. Thus, a meter multiplier of 20 would be appropriate for a Form 3S meter if 200/5 ratio current transformers were installed.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 9: Please identify in detail the types of meters normally installed when Idaho Power is using a multiplier of 40.

RESPONSE TO INTERROGATORY NO. 9: As explained in the response to Interrogatory No. 8, electrical meters are identified by standard "Form" designation. The industry designation for the single-phase, transformer rated, three wire, 120/240 volt service meter is Form 3S. Form 3S meters from any manufacturer are physically and electrically the same. Idaho Power uses Form 3S meters for all single-phase, transformer rated, three wire, 120/240 volt services. Form 3S meters are designed and wired such that the meter multiplier is equal to 1/2 times the ratio of the current transformers applied. Thus, a meter multiplier of 40 would be appropriate for a Form 3S meter if 400/5 ratio current transformers were installed.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 10: Please set forth in detail the difference in the types of meters installed when using a multiplier of 20 versus a multiplier of 40.

RESPONSE TO INTERROGATORY NO. 10: For single-phase, transformer rated, three wire, 120/240 volt service, Idaho Power uses the Form 3S meter. Although each meter manufacturer has their own model designations, the form number identifies the meter type and application. The multiplier is not built into the meter; the number is manually added to the Company's billing system when a current transformer is used to properly account for the reduced current value recorded by the meter.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 11: Please identify what types of meters identified in either Interrogatory No. 8 or 9 were installed at the Residence in 1994 and in 2006.

RESPONSE TO INTERROGATORY NO. 11: All meters installed at the Residence were Form 3S. From 1994 to March of 2006 the meter installed was a Form 3S General Electric model I50S. The meter installed from March 2006 until October 2006 was a Form 3S General Electric model I70S. In October at the request of Ms. Phillips and the Idaho Public Utilities Commission Staff, Idaho Power installed a Form 3S meter with load recording capabilities. That meter is a Form 3S Elster model A1T-L, the L designates load recording capabilities.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 12: Please identify the Idaho Power employee who first installed Meter No. 62128615 at the Residence.

RESPONSE TO INTERROGATORY NO. 12: Idaho Power is unable to identify the Idaho Power employee who first installed Meter No. 62128615 at the Petitioner's residence in 1994.

The response to this request was prepared by Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 13: Please identify the specific training the Idaho Power employee received as to the installation of Meter No. 62128615 at the Residence.

RESPONSE TO INTERROGATORY NO. 13: At the time the meter was installed, Idaho Power required a Journeyman Meterman to install transformer rated meters. Meterman must complete a four-year apprenticeship that includes classroom and on the job training. Installation of transformer rated metering is covered in classroom and on the job training. Idaho Power training materials have been produced in response to Production Request No. 1.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 14: Please identify the Idaho Power employee who contacted Jerene Phillips in approximately July of 2006, and informed her that Idaho Power had installed a meter with a 20 multiplier.

RESPONSE TO INTERROGATORY NO. 14: Bill Homan, Delivery Services Representative, contacted Jerene Phillips in July 2006 to inform her of the billing error.

The response to this request was prepared by Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 15: Please identify each Idaho Power employee or person who inspected and tested Meter No. 62128615.

RESPONSE TO INTERROGATORY NO. 15: The transformer rated meter site was inspected at the residence by Journeyman Meterman William Harshman on March 26, 2006 as part of Idaho Power's periodic meter maintenance program. Meter 62128615 was removed from service at that time and delivered to the Meter Test Facility for testing. Meter 62128615 was subsequently tested on March 28, 2006 by Meter Tester II Lewis McKillop in the Idaho Power Meter Test Facility.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 16: Please identify the individual who put the new meter information of the multiplier of 40 into Idaho Power's billing software system.

RESPONSE TO INTERROGATORY NO. 16: Meter Service Coordinator Christine Anderson completed the periodic test meter exchange order online in the CIS+ billing system for the meter exchange that took place on March 26, 2006. The meter multiplier entered at that time was 40.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 17: Do you plan on putting on evidence, either testimony or through documentation. If so, please state the witness, substance of testimony and produce the documentation.

RESPONSE TO INTERROGATORY NO. 17: Idaho Power objects on the grounds that the Company cannot ascertain what evidence Idaho Power will present, or the substance of testimony expected to be elicited at hearing, until Ms. Phillips prefiles direct testimony.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 18: Please identify each matter where Idaho Power or any other utility's request for back billing has been denied or refused by the Idaho Public Utilities Commission.

RESPONSE TO INTERROGATORY NO. 18: Idaho Power objects on the grounds that the interrogatory seeks information that is publicly available to the extent that it exists and is no more burdensome for the Petitioner to locate than it is for Idaho Power.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 19: Please explain why an Idaho Power employee was required to return to the Residence on June 23, 2006 to verify that the multiplier of 40 was correct.

RESPONSE TO INTERROGATORY NO. 19: Out of an abundance of caution, Delivery Services Representative Bill Homan requested that a second meter technician verify the multiplier of 40 was correct before a large corrected billing was sent to the Petitioner.

The response to this request was prepared by Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 20: Please identify the person who was originally responsible for the improper use of the 20 multiplier at the Petitioner's Residence.

RESPONSE TO INTERROGATORY NO. 20: Idaho Power is unable to identify the Idaho Power employee originally responsible for the improper use of the 20 multiplier at the Petitioner's residence. The multiplier was either 1) written on the field order as 20 in error, or 2) inputted into the billing system as 20 in error. Idaho Power did not retain the 1994 field order in the ordinary course of business.

The response to this request was prepared by Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 21: Please explain in detail what "field verification" means as referenced in your Answer to the Complaint.

RESPONSE TO INTERROGATORY NO. 21: "Field Verification" refers to a qualified person performing a "Meter Site Verification" in accordance with the "Meter Site Verification Criteria" documented in the Meter Quality Manual MQM-4.1. In the case of transformer rated metering, a journeyman meter technician is qualified to perform field verifications. The Meter Site Verification Criteria is provided in Production Response No. 1.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 22: Please explain why if it was merely an office billing error that Idaho Power conducted a field verification on 500 installations to review meter multipliers.

RESPONSE TO INTERROGATORY NO. 22: Idaho Power has historically found few instances where the wrong multiplier was used. When Jerene Phillips' multiplier was found to be incorrect, Idaho Power took the precaution of checking all similar meter installations to ensure the correct multiplier had been entered in the billing system based on the metering equipment installed at each site.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 23: Please identify the circumstances under which a multiplier of 20 versus a multiplier of 40 is used.

RESPONSE TO INTERROGATORY NO. 23: Idaho Power uses the Form 3S meter for single-phase, transformer rated, three wire, 120/240 volt service. If 200/5 ratio current transformers are installed, the correct multiplier would be 20 (½ the current transformer ratio). If 400/5 ratio current transformers are installed, then the correct multiplier would be 40 (½ the current transformer ratio).

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 24: Please identify whether a meter or current transformers have an internal multiplier of 20 or 40.

RESPONSE TO INTERROGATORY NO. 24: Current transformers have fixed primary to secondary turns ratios; the current in the secondary circuit is equal to the current in the primary circuit divided by the turns ratio. Form 3S meters can be purchased with special registers that reverse the effect of specifically applied current transformer ratios, such meters are considered direct read meters and would have a multiplier of 1 in the billing system. Meter No. 62128615 was not equipped with a special register.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 25: Please identify the head of the Meter Department at Idaho Power.

RESPONSE TO INTERROGATORY NO. 25: Duane Van Patten is Idaho Power's Manager of Metering.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce a copy of each and every document identified in or related in any way to your answers to the Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: To the extent documents have not been provided in response to Production Requests 2 and 5, Idaho Power provides the following documents:

a. Settlement Letter referenced in Interrogatory Response 7, provided in response to Production Requests 1, 5 and 8;

b. Meterman Training Materials reference in Interrogatory Response 13, provided in response to Production Requests 1 and 9;

c. Meter Location History and Meter Test History reports referenced in Interrogatories 11 and 15, provided in response to Production Requests 1, 2 and 5;

d. CASMETER archive system report for 1994 meter installation referenced in Interrogatory 15, provided in response to Production Requests 1, 2 and 5;

e. Meter Quality System Account Reports referenced in Interrogatory 14, provided in response to Production Requests 1 and 5;

f. Meter Site Verification Criteria MQM-4.1 referenced in Interrogatory 21, provided in response to Production Request 1;

g. Meter test results referenced in Interrogatory 15, provided in response to Production Requests 1, 2 and 5;

h. Emails re: multiplier verification referenced in response to Interrogatory 15, provided in response Production Requests 1, 2 and 5;

i. Screen shots of completed orders related to Jerene Phillips' account referenced in response to Interrogatory 14, provided in response to Production Requests 1 and 5;

j. Periodic Meter Test Order containing notes of Journeyman Meterman Bill Harshman when he removed Meter No. 62128615 for testing on March 26, 2006 referenced in response to Interrogatory 15, provided in response to Production Requests 1, 2 and 5; and

k. Screen shots of completed meter exchange order with correct multiplier of 40 as entered into billing system on March 26, 2006 by Meter Service Coordinator Christine Anderson (User I.D. CXA5195 on the meter exchange entry audit trail) referenced in Interrogatories 11 and 16, provided in response to Production Requests 1, 2 and 5.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all documents relating to the inspection and testing of Meter No. 62128615.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: To the extent documents have not already been provided in response to Production Requests 1 and 5, Idaho Power provides the following:

l. 1994 and 2006 Periodic Meter Test History for Meter No. 62128615; and

m. Screen shots detailing meter testing results and retirement due to obsolescence.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 3: Please produce the actual Meter No. 62128615.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Meter No. 62128615 was retired and disposed of on March 28, 2006 after it was tested and the results were recorded. This meter was purchased in 1976 and had gone through one periodic maintenance cycle prior to being installed at the Petitioner's residence in 1994. It was retired based on purchase year and model criteria. Documents detailing these events have been provided in response to Production Requests 1 and 2.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 4: Please produce the multiplier tags that were attached to Meter No. 62128615.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Meter No. 62128615 was retired and disposed of on March 28, 2006 after it was tested and the results were recorded. To the extent that multiplier tags for Meter No. 62128615 existed, they are no longer within Idaho Power's possession or control.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all documents relating to Jerene Phillips account for the residence located at 16625 Basin Way, Boise, Idaho 83714.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: To the extent documents have not already been provided in response to Production Requests 1 and 2, Idaho Power provides the following:

n. Phillips energy usage data 2004-2006;

o. Phillips Account Information before and after the billing correction;

p. Customer Contact Log for Phillips account (both screen shots and print out);

q. Raw 15-minute interval graphs and data for Phillips account;

r. Phillips billing and energy usage from July 1995 to present showing rebilled amounts (with and without degree day data);

s. Bill Homan's investigation notes written on service order initiated when Jerene Phillips called Idaho Power with high bill concerns;

t. Meter Management Subsystem reports for current transformer serial #6317544 and #6318185 installed in 1993 after 11/19/93;

u. Customer Information System report showing meter reading history from 9/30/99 to 11/3/06. No trouble codes reported for this account;

v. Customer Information System archived information on microfiche showing account history from 4/30/95 through 3/29/2000; and

w. Idaho Power response to Jerene Phillips' settlement offer.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 6: Please produce a copy of each and every document, diagram, sketch, photograph or other items of tangible physical evidence which you might use as an exhibit at a hearing.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Idaho Power objects on the grounds that the Company cannot ascertain what evidence Idaho Power will present, or the substance of testimony expected to be elicited at hearing, until Ms. Phillips prefiles direct testimony.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 7: Please produce copies of any Idaho Public Utilities Commission Orders where back billing has been denied or refused.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Idaho Power objects on the grounds that the interrogatory seeks information that is publicly available to the extent that it exists and is no more burdensome for the Petitioner to locate than it is for Idaho Power.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of any written statements given by the Petitioner in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Other than documents filed by Petitioner's legal counsel in this matter, the only written communication Idaho Power has received from Ms. Phillips was a settlement offer letter dated October 26, 2006. The settlement offer letter was produced in response to Production Request No. 1.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 9: Please produce the written training manual and materials provided to employees on the correct installation of meters back in 1994.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: At the time the meter was installed, Idaho Power required a Journeyman Meterman to install transformer rated meters. A Meterman must complete a four-year apprenticeship that includes classroom and on the job training. Installation of transformer rated metering is covered in classroom and on the job training. Idaho Power training materials have been produced in response to Production Request No. 1.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that Jerene Phillips was denied the opportunity to implement conservation measures to reduce consumption of power over the three (3) years that she is now being back billed for.

RESPONSE TO ADMISSION NO. 1: Idaho Power denies that Jerene Phillips was denied the opportunity to implement conservation measures to reduce her power consumption. All customers have the opportunity to conserve energy and have been frequently encouraged to do so by Idaho Power and the Idaho Public Utilities Commission.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR ADMISSION NO. 2: Please admit that Jerene Phillips promptly paid her monthly account with Idaho Power from 1994 until the current dispute arose.

RESPONSE TO ADMISSION NO. 2: According to Idaho Power's records, Jerene Phillips has promptly paid her Idaho Power account from 1994 until this billing dispute arose in 2006.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR ADMISSION NO. 3: Please admit that the error in utilizing the incorrect multiplier was solely that of Idaho Power and not as a result of anything that Jerene Phillips did or did not do.

RESPONSE TO ADMISSION NO. 3: Idaho Power admits that the error in utilizing the incorrect multiplier was solely its own and not that of Jerene Phillips.

The response to this request was prepared by Mark Heintzelman, Delivery Services Leader, Idaho Power Company and Bill Homan, Delivery Services Representative, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

RESPECTFULLY SUBMITTED this 28th day of March 2007.

Lisa D. Nordstrom

Lisa D. Nordstrom

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March 2007, I served a true and correct copy of the within and foregoing upon the following party by the methods indicated below and addressed to the following:

Stanley J. Tharp Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered P.O. Box 1368 Boise, ID 83701	X Hand Delivered __ U.S. Mail __ Overnight Mail __ Electronic Mail __ FAX
Jerene Phillips 16625 Basin Way Boise, ID 83714	__ Hand Delivered X U.S. Mail __ Overnight Mail __ Electronic Mail __ FAX
Cecelia A. Gassner Deputy Attorney General Idaho Public Utilities Commission P.O. Box 83720 Boise, ID 83720-0074	X Hand Delivered __ U.S. Mail __ Overnight Mail __ Electronic Mail __ FAX

Lisa D. Nordstrom

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Attorneys for Idaho Power Company

Street Address for Express Mail:

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Boise, Idaho 83702

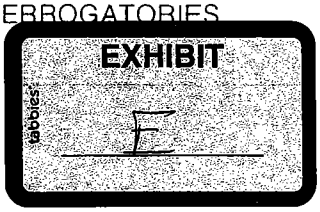
BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

JERENE PHILLIPS, Petitioner, IDAHO POWER COMPANY, Respondent.	))))))))	CASE NO. IPC-E-07-01 **IDAHO POWER COMPANY'S RESPONSE TO PETITIONER'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

TO: PETITIONER AND HER ATTORNEY OF RECORD:

COMES NOW Idaho Power Company ("Idaho Power" or the "Company") by and through its attorneys of record and responds and objects to Petitioner's Second set of Interrogatories and Requests for Production of Documents as follows:

This response is qualified by virtue of the fact that discovery is not yet complete in this matter. Other pertinent facts and witnesses on which Respondent may rely during the course of the matter may be discovered and Respondent reserves the right to supplement this response to set forth such facts and witnesses. It is premature to



require a full and complete response to this discovery and a limited objection is made on that basis.

Petitioner's interrogatories and document requests are objectionable to the extent that they seek or may be deemed to seek information which is protected from disclosure by attorney-client or other privilege, as attorney work-product, or as containing mental impressions, conclusions, opinions, or legal theories of one or more of Respondent's attorneys.

Petitioner's interrogatories are objectionable to the extent that they are overly broad, general interrogatories such as those that ask defendant to state all facts on which a contention is based.

Documents will be produced at a time and place mutually convenient to counsel for the parties, and/or reasonable under the circumstances.

Confidential information will be produced only subject to entry of an appropriate protective order.

INTERROGATORIES

INTERROGATORY NO. 26: Please identify whether Idaho Power has ever allowed a customer to pay less than the full amount of a back billing which arose from a billing error.

RESPONSE TO INTERROGATORY NO. 26:

Idaho Power objects to the extent the Interrogatory is not limited to any stated period of time or relates to a 90+ year time period that is longer than is relevant for purposes of the issues in this docket; such discovery is overly broad and unduly burdensome. Without waiving this objection, Idaho Power attempts to apply a consistent interpretation of the Corrected Billings section of Rule G -- Billings and Utility Customer Relations Rule 204.02 -- Corrections (IDAPA 31.21.01.204.02) when sending corrected billings to customers.

Idaho Power Company's current managers responsible for Metering and Customer Service are not aware of any instance in the last five (5) years, in which a customer with a Current Transformer (CT) installation involved in a billing error due to an incorrect meter multiplier (meter constant) was allowed to pay less than the full back-billed amount resulting from the billing error when accurate meter data existed.

Idaho Power Company's current managers responsible for Metering and Customer Service are aware of one instance in the last five (5) years, in which a customer was allowed to pay less than the full back-billed amount resulting from a billing error due to a mix-up in premises locations for a new tenant sign-up. In deviation from the Company's general practice, regional metering representatives made an

inappropriate field decision in January 2006 to reverse (forgive) the re-billing charges ($315.79) for the elderly woman living at the premises during the 4-month period a different individual was erroneously identified as the customer of record for that location and received her bills. The Company did not seek further payment because the decision to reverse the charges had already been communicated to the customer. To ensure future billing errors would be handled properly, the Idaho Power Manager of Customer Service instituted a multi-department management review of the statutes and rules governing billing to ensure future billing error situations would be handled in accordance with rules and statues.

The response to this request was prepared by Toby Clayton, Manager, Customer Service, Idaho Power Company, in consultation with Duane Van Patten, Manager, Metering, Idaho Power Company, and Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 27: Please identify whether Idaho Power, within the last five years, has allowed a customer to pay less than the full amount of a back billing, as a compromise of a disputed bill.

RESPONSE TO INTERROGATORY NO. 27:

As stated in its Response to Interrogatory No. 26, Idaho Power attempts to apply a consistent interpretation of the Corrected Billings section of Rule G -- Billings and Utility Customer Relations Rule 204.02 -- Corrections (IDAPA 31.21.01.204.02) when sending corrected billings to customers. Idaho Power Company's current managers responsible for Metering and Customer Service are aware of only the instance described in the Response to Interrogatory No. 26, in the last five (5) years in which it allowed a customer to pay less than the full back-billed amount resulting from a billing error when accurate meter data existed.

Idaho Power Company has, on occasion, adjusted a back-billed amount in compromise of a disputed bill in circumstances where accurate meter data did not exist. These situations typically involve a meter that fails to register or an unavailable meter reading for a specific date on which a change in premises occupants is to be processed. The Company determines the service delivered and the energy consumed in these situations on the basis of the best available data and creates estimated and/or prorated billings. The Company is willing to revisit these estimated and/or prorated billings when the usages upon which the billings are based are disputed by the customers. Where the dispute is resolved in the customer's favor, the charges associated with the disputed

amounts plus any associated late payment charges are deleted from the Customer's account.

The response to this request was prepared by Toby Clayton, Manager, Customer Service, Idaho Power Company, in consultation with Duane Van Patten, Manager, Metering, and Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 28: Is it Idaho Power's policy not to accept anything but the full amount of the back billed amount?

RESPONSE TO INTERROGATORY NO. 28:

Idaho Power is required to follow the Utility Customer Relation Rules (UCRR) and utility tariffs on file with the Idaho Public Utilities Commission. Their purpose is to provide a set of fair, just, reasonable and non-discriminatory rules to address recurring areas of disagreement between utilities and customers such as billing. Although it has no written "policy" on this issue, Idaho Power has attempted to apply consistent interpretation of Corrected Billings section of Rule G -- Billings and Utility Customer Relations Rule 204.02 -- Corrections (IDAPA 31.21.01.204.02) when sending corrected billings to customers. It is Idaho Power's practice to accept for payment nothing less than the full back-billed amount resulting from a billing error when accurate meter data existed.

The response to this request was prepared by Toby Clayton, Manager, Customer Service, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 29: If your answer to the proceeding Interrogatory is in the affirmative, please identify the date that the Company policy was first adopted along with the name of the individual responsible for instituting said policy.

RESPONSE TO INTERROGATORY NO. 29:

As explained in the response to Interrogatory No. 28, Idaho Power does not have a written policy on this matter.

The response to this request was prepared by Toby Clayton, Manager, Customer Service, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 30: Please identify the basis upon which Idaho Power maintains that it does not have any discretion in reducing the amount of a back bill.

RESPONSE TO INTERROGATORY NO. 30:

Idaho Power Company applies billing corrections as required by the Utility Customer Relations Rules (IDAPA 31.21.01). Utility Customer Relations Rule 204.02 -- Corrections (IDAPA 31.21.01.204.02) does not leave the amount of the back bill to the utility's discretion; it states that if the time when the "error or failure to bill began can be reasonably determined, the corrected billings shall go back to that time, but not to exceed the time provided by Section 61-642, Idaho Code, (three (3) years)." (Emphasis added).

Idaho Code § 61-313 provides that no public utility shall "collect or receive a greater or less or different compensation" for any service rendered to the public than the charges applicable to such service as specified in its tariffs on file with the Commission and in effect at the time. As explained in greater detail by Commission Order No. 28329 and the U.S. Supreme Court cases referenced therein, the policy of non-discriminatory rates is violated when similarly situated customers are allowed to pay different rates for the same services.

The Company is also bound by the *Idaho Code* § 61-315 prohibition against offering preferential rates or treatment to any customer. The practice of rebilling the full underpaid amount back three years was upheld by Commission Order Nos. 28212 and 28298 after an incorrect multiplier insufficiently billed customers for actual usage. The

Commission explained that the customers' requested relief from paying the back billed amount constituted preferential treatment prohibited by *Idaho Code* § 61-315.

The response to this request was prepared by Toby Clayton, Manager, Customer Service, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

INTERROGATORY NO. 31: Please provide a graph, spreadsheet or breakdown of the power usage at Petitioner's Residence from March 1, 2005 to the present.

RESPONSE TO INTERROGATORY NO. 31:

See Premise Billing History dated 5/11/07 provided in response to Production Request No. 10. Energy usage information was also provided in Idaho Power's Response to Request for Production No. 5.

The response to this request was prepared by Toby Clayton, Manager, Customer Service, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 10: Please produce any and all documents identified in or relating in any way to your answers to Petitioner's Second Set of Interrogatories and Requests for Production of Documents.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

With the exception of the confidential customer information pertaining to a specific billing incident referenced in Interrogatory Nos. 26 & 27 the above-referenced documents are attached as follows:

a. Idaho Power Company Tariff No. 101, Rule G – Billings;

b. Utility Customer Relations Rules;

c. Idaho Code §§ 61-313, -315, and -642;

d. Idaho Public Utilities Commission Order Nos. 28212, 28298 and 28329; and

e. Premise Billing History provided in response to Interrogatory No. 31 and Production Request No. 11.

The response to this request was prepared by Toby Clayton, Manager, Customer Service, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

REQUEST FOR PRODUCTION NO. 11: Please produce the graph, spreadsheet or breakdown identified in your Answer to Interrogatory No. 31.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

See Premise Billing History dated 5/11/07 for Jerene Phillips' account provided in Response to Request for Production No. 10. This information was also provided in Idaho Power's Response to Request for Production No. 5.

The response to this request was prepared by Toby Clayton, Manager, Customer Service, Idaho Power Company, in consultation with Lisa Nordstrom, Attorney II, Idaho Power Company.

RESPECTFULLY SUBMITTED this 17th day of May 2007.

Lisa D. Nordstrom

Lisa D. Nordstrom

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May 2007, I served a true and correct copy of the within and foregoing upon the following party by the methods indicated below and addressed to the following:

Stanley J. Tharp Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chartered P.O. Box 1368 Boise, ID 83701	___ Hand Delivered X U.S. Mail ___ Overnight Mail ___ Electronic Mail ___ FAX
Jerene Phillips 16625 Basin Way Boise, ID 83714	___ Hand Delivered X U.S. Mail ___ Overnight Mail ___ Electronic Mail ___ FAX
Donovan Walker Deputy Attorney General Idaho Public Utilities Commission P.O. Box 83720 Boise, ID 83720-0074	X Hand Delivered ___ U.S. Mail ___ Overnight Mail ___ Electronic Mail ___ FAX

Lisa D. Nordstrom

Lisa D. Nordstrom

Read Date	SA Type	Days	Read Code	$Amount	Usage	Customer
5/7/2007	ER-RS	31	R	$198.38	4080.00 KWH	Phillips, Jerrene
4/6/2007	ER-RS	30	R	$244.88	5160.00 KWH	Phillips, Jerrene
3/7/2007	ER-RS	29	R	$352.03	7440.00 KWH	Phillips, Jerrene
2/6/2007	ER-RS	31	R	$472.79	9800.00 KWH	Phillips, Jerrene
1/6/2007	ER-RS	31	R	$466.84	9880.00 KWH	Phillips, Jerrene
12/6/2006	ER-RS	33	R	$393.81	8520.00 KWH	Phillips, Jerrene
11/3/2006	ER-RS	30	R	$215.43	4520.00 KWH	Phillips, Jerrene
10/4/2006	ER-RS	29	R	$135.88	2720.00 KWH	Phillips, Jerrene
9/5/2006	ER-RS	32	R	$215.49	3760.00 KWH	Phillips, Jerrene
8/4/2006	ER-RS	29	R	$307.45	5440.00 KWH	Phillips, Jerrene
7/6/2006	ER-RS	30	V	$245.44	4480.00 KWH	Phillips, Jerrene
6/6/2006	ER-RS	32	R	$257.42	4680.00 KWH	Phillips, Jerrene
5/5/2006	ER-RS	29	V	$297.58	5360.00 KWH	Phillips, Jerrene
4/6/2006	ER-RS	30	R	$314.51	5520.00 KWH	Phillips, Jerrene
3/7/2006	ER-RS	32	R	$588.67	10200.00 KWH	Phillips, Jerrene
2/3/2006	ER-RS	29	R	$569.09	9880.00 KWH	Phillips, Jerrene
1/5/2006	ER-RS	31	R	$682.17	11600.00 KWH	Phillips, Jerrene
12/5/2005	ER-RS	32	R	$623.24	10480.00 KWH	Phillips, Jerrene
11/3/2005	ER-RS	30	R	$242.87	4160.00 KWH	Phillips, Jerrene
10/4/2005	ER-RS	32	R	$231.85	3840.00 KWH	Phillips, Jerrene
9/2/2005	ER-RS	29	R	$305.05	4600.00 KWH	Phillips, Jerrene
8/4/2005	ER-RS	29	R	$303.63	4640.00 KWH	Phillips, Jerrene
7/6/2005	ER-RS	30	R	$251.78	3920.00 KWH	Phillips, Jerrene
6/6/2005	ER-RS	32	R	$214.73	3920.00 KWH	Phillips, Jerrene
5/5/2005	ER-RS	29	R	$258.32	5000.00 KWH	Phillips, Jerrene
4/6/2005	ER-RS	30	R	$377.75	7160.00 KWH	Phillips, Jerrene
3/7/2005	ER-RS	32	R	$512.11	9440.00 KWH	Phillips, Jerrene
2/3/2005	ER-RS	29	R	$610.09	11400.00 KWH	Phillips, Jerrene
1/5/2005	ER-RS	33	R	$666.53	12080.00 KWH	Phillips, Jerrene
12/3/2004	ER-RS	30	R	$544.44	9760.00 KWH	Phillips, Jerrene
11/3/2004	ER-RS	30	R	$241.27	4440.00 KWH	Phillips, Jerrene
10/4/2004	ER-RS	32	R	$164.49	2920.00 KWH	Phillips, Jerrene

NO. _____ FILED
A.M. _____ P.M. 3:00

FEB 21 1997

J. DAVID NAVARRO, Clerk
By _____ DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JOHN P. MARCH, Plaintiff, -vs- FORD MOTOR COMPANY and BOB RICE FORD, INC., Defendants.	)	Case No. CV OC 95-05974 DECISION ON MOTION TO DISMISS

The motion to dismiss filed by the defendant Ford Motor Company (herein "Ford") was heard on February 6, 1997. Ford was represented by Thomas B. Humphrey; the defendant Bob Rice Ford, Inc., (herein "Bob Rice") was represented by Patrick J. Inglis; and the plaintiff John P. March (herein "Mr. March") was represented by Stephen W. Beane.

On October 4, 1993, Mr. March took delivery of a new 1994 F-150 Ford pickup which he had purchased from Bob Rice. On September 28, 1994, the pickup caught fire and burned up. Mr. March was insured by ITT Hartford. It paid Mr. March for his loss and took control of the pickup. On October 13, 1994, ITT Hartford hired Shane Hartgrove to examine the pickup to determine the cause of the fire. Mr. Hartgrove inspected the pickup and concluded that the fire was caused by a short in the ignition switch. On January

EXHIBIT
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2, 1995, ITT Hartford wrote to Ford demanding that it reimburse ITT Hartford for the loss, and four days later ITT Hartford had the pickup destroyed.

On December 4, 1995, Mr. March commenced this action to recover under the theories of strict liability, breach of warranty, negligence, and Idaho's lemon law. With the exception of Mr. March's deductible and any treble damages he may be awarded under Idaho's lemon law, ITT Hartford is the real party in interest in this litigation.

Ford and Bob Rice have moved to dismiss this action because ITT Hartford destroyed evidence (the pickup) critical to their being able to defend this case. Although Idaho appellate courts have not addressed this issue, various courts have held that a trial court has inherent power to impose sanctions, including dismissal of the lawsuit, where the plaintiff has destroyed key evidence. *Allstate Ins. Co. v. Sunbeam Corp.*, 53 F.3d 804 (7th Cir. 1995); *Dillon v. Nissan Motor Co., Ltd.*, 986 F.2d 263 (8th Cir. 1993); *Unigard Security Ins. Co. v. Lakewood Eng'g & Mfg. Corp*, 982 F.2d 363 (9th Cir. 1992); *Headley v. Chrysler Motor Corp.*, 141 F.R.D. 362 (D. Mass. 1991); *American Family Ins. Co. v. Village Pontiac GMC, Inc.*, 585 N.E.2d 1115 (Ill Ct. App. 1992); *Graves v. Daley*, 526 N.E.2d 679 (Ill. Ct. App. 1988); *Ries v. Olympian, Inc.*, 747 P.2d 910 (Nev. 1987).

When deciding whether to impose a sanction, and what sanction to impose, the Court should consider: (1) the degree of culpability in the destruction of the evidence; (2) the prejudice to the opposing party; and (3) what sanction is appropriate. Each of these factors will be discussed separately.

(1) <u>The degree of culpability in the destruction of the evidence</u>.

In this case, the pickup was intentionally destroyed at the direction of ITT Hartford. This is not a situation in which the evidence was simply lost somehow, or in which it was inadvertently or negligently destroyed.

When it had the evidence destroyed, ITT Hartford knew that it was necessary to preserve the pickup in order to evaluate the cause of the fire. Within one week of the fire, ITT Hartford's records show that it decided to investigate the cause of the fire in order to determine whether Ford or Bob Rice could be liable, and that it was necessary to preserve the pickup in order to conduct that investigation. The activity log comments by ITT Hartford personnel include the following:

09/30/94 ACTL KLM	S/W ADJUSTER FROM IDAHO INTERMOUNTAIN. HE SAID THEY TRUCK IS BURNT TO A CRSP YOU CANNOT EVEN GET THE VIN. THERE IS NO WAY TO DETERMINE WHAT THE CAUSE OF LOSS IS.
10/04/94 INST MMT	KRISTI - PLEASE FIND OUT IF INSD CAN DOCUMENT WHAT WAS REPAIRED BY PROVIDING COPIES OF THE REPAIR ORDERS, ETC HAVE HIM GIVE US THE NAME / ADDRESS / CONTACT INFO FOR THE DEALERSHIP WHICH DID THE WORK AND WE'LL CONTACT THEM AND PUT THEM ON NOTICE OF SUBRO THNX
10/04/94 ACTL MMT	A 1994 VEHICLE SHOULDN'T BE JUST UP AND BURNING TO THE GROUND FOUND OUT HOW TO PUT FORD MOTOR COMPANY ON NOTICE TO, AND SEE IF THEY WILL SEND SOMEONE OUT TO INVESTIGATE WE'LL NEED TO PRESERVE THE SALVAGE THNX
10/04/94 INST MMT	CHERYL - INSD STATES HE HAS HAD THIS 1994 PICKUP WORKED ON AT THE DEALERSHIP 3 TIMES BECAUSE HE SMELLED BURNED SMELL UNDER DASH. THEY DID SOME REPAIRS, AND ENGINEER ISOLATED CIRCUITS APPARENTLY, AND THOUGHT NOTHING WAS WRONG. THE PICKUP THEN BURNED TO THE GROUND ON THE ABOVE DATE INTERESTING ON 7/22/93 THE INSURED HAD A 1993 FORD

PICKUP BURN TO THE GROUND. OUR INITIAL POLICY PERIOD IS 9/22/93 - 94 SO THIS IS FIRST RENEWAL FOR INSD.

I FEEL WE SHOULD GET A CAUSE/ORGIN EXPERT OUT IN OREGON TO DETERMINE IF THERE IS ANY WAY TO SPECIFY CAUSE OF LOSS. VEHICLE BADLY BURNED, INSD STATES IT STARTED UNDER DASH.

A THOROUGH REVIEW WOULD INDICATE WHETHER AN INDENDIARY SOURCE STARTED THE FIRE, ETC

PLEASE ADVISE

THNX

Because ITT Hartford knew that it was necessary to preserve the pickup in order for its investigator to determine the cause of the fire, it also knew that neither Ford nor Bob Rice could investigate the cause of the fire without also being able to inspect the pickup.

(2) The prejudice to the opposing party.

Ford and Bob Rice were prejudiced by the destruction of the remains of the pickup. The investigator hired by ITT Hartford testified that it was necessary to inspect the vehicle in order to render an opinion about the cause of the fire. He testified that if he was working for either Ford or Bob Rice, he would want to inspect the pickup in order to render an opinion, and that it would be necessary to do so in order to arrive at the best opinion possible. (Hartgrove Depo. p. 35, L. 23, to p. 36, L. 7)

Ford and Bob Rice are now in a position in which they cannot have their experts inspect the pickup to determine if there is evidence of another cause for the fire. The suspicion that there could be evidence of some other cause is not groundless. This was the third successive pickup owned by Mr. March which had electrical problems. Mr. March previously owned a 1993 Ford F-150 pickup, which burned up in July 1994 because of an apparent electrical

fire, and a 1991 Ford F-150 pickup which had electrical problems but did not catch fire. He installed a wiring harness on each of the three pickups, he used each of the pickups to pull the same boat trailer, and each pickup had similar electrical problems.

Mr. March had brought the pickup involved in this case into Bob Rice several times complaining of the electrical problems. Bob Rice was unable to locate any problem in the pickup's wiring, and suggested that the problem may be in the wiring on the boat trailer. Bob Rice personnel asked Mr. March to bring the trailer in to have it checked, but he declined to do so. He has since sold it. According to Bob Rice's records, Mr. March had also installed improper fuses in the pickup, although he denies doing so. Mr. March told Bob Rice personnel that the pickup had been blowing fuses for the tail lights and dash lights. Those are on a different circuit than the ignition switch.

If this case went to trial, Ford and Bob Rice would be relegated to the position of trying to challenge the opinions of the expert hired by ITT Hartford without being able to have their own experts examine the pickup to see if they could find evidence of another cause of the fire. They would be at a distinct disadvantage. It is not sufficient merely to say the Ford and Bob Rice could hire experts to review the findings made by ITT Hartford's expert, and to examine the wires he retrieved from the pickup and the photographs he took. ITT Hartford's expert only retrieved the wires he concluded supported his opinion. The defendants would not have any opportunity to inspect the pickup to determine if there is evidence of some other cause. *American Family Ins. Co. v. Village Pontiac GMC, Inc.*, *supra* at 1119. Not only would Ford's and Bob Rice's experts be precluded from examining the pickup to look for evidence of another cause, but it would be difficult to overcome the argument that because the plaintiff's expert actually examined the pickup, his opinion should

be more persuasive that the opinions of experts who did not do so.

By the intentional actions of ITT Hartford, Ford and Bob Rice have been deprived of an opportunity to review relevant evidence. That prejudice cannot be cured, and the evidence which ITT Hartford had destroyed was crucial to the case against the defendants.

(3) What sanction is appropriate.

In this case, the appropriate sanction for the destruction of the evidence is dismissal of the lawsuit. The cause of the fire is the central issue involved in this lawsuit. The destruction of the pickup has deprived the defendants of any realistic opportunity to develop evidence regarding that cause.

In some instances, the appropriate sanction for the destruction of evidence is to exclude testimony regarding the evidence destroyed. For example, one option would be to exclude the testimony of plaintiff's expert so that both parties are in an equal position regarding the inspection of the pickup. Doing so would not eliminate the prejudice to the defendants, however. Mr. March's testimony could still establish a prima facie case that the pickup was defective. *Murray v. Farmers Ins. Co.*, 118 Idaho 224, 796 P.2d 101 (1990); *Fouche v. Chrysler Motors Corp.*, 107 Idaho 701, 692 P.2 345 (1984). The defendants would still be unable to effectively challenge that testimony because of their inability to have the pickup examined to determine if there was evidence that the fire resulted from a cause not attributable to the defendants.

Under the circumstances of this case, the only way to eliminate the prejudice to the defendants would be to bar all evidence, direct and circumstantial, concerning the cause of the fire. Doing so, however, would in effect result in the dismissal of the plaintiff's claim. Therefore, instead of barring the evidence, and then dismissing the claim due to the plaintiff's lack

of evidence, the Court will simply dismiss the claim.

ITT Hartford argues that it destroyed the pickup simply to save the expense of storing it, and that the defendants had sufficient time to examine the pickup before it was destroyed. Within a week after the fire, Mr. March complained about the fire to Bob Rice, and on October 10, 1994, he mailed a letter to the customer service division of Ford in Englewood, Colorado, demanding payment for both of his pickups. The Court does not find this argument persuasive.

As shown by the activity log comments, by October 5, 1994, ITT Hartford had decided to inspect the pickup to determine whether it had a subrogation claim against either Ford or Bob Rice.

> 10/05/94 INST CMS MIKE QUESTION IS: IS THERE ENOUGH OF THE IV LEFT TO HAVE AN ENGINEER LOOK AT? MAY NOT BE. SUGGEST WE FIND OUT ALL WE CAN ABOUT THE DEALER AND GET INVOICES FOR ALL THAT WORK.
>
> (UNLESS YOU ALREADY HAVE I DIDN'T CHECK ENTIRE ACTL) I THINK WE MIGHT HAVE SUBRO OPPORTUNITY WITH THEM OR THE MFG. APPEARS SUBRO SOMEPLACE HOPEFULLY WE CAN PINPOINT WHERE.

In the activity log comments dated October 6, 1994, ITT Hartford personnel also discussed contacting Bob Rice and Ford, noting that Ford may also want to inspect the pickup.

> 10/06/94 INST MMT KRISTI - PLEASE CALL THE I/A IN OREGON AND FIND OUT IF THEY KNOW OF A CAUSE/ORIGIN EXPERT WHO WILL BE AFFORDABLE. IF SO LET'S HAVE THEM SEE THE IV. GO AHEAD AND F/U ON ALL THE PAPERWORK INSD CAN COME UP WITH ON REPAIRS AND LET'S CONTACT THAT FACILITY AND THE MANUFACTURER. FORD MAY WANT TO INSPECT ALSO

The activity log indicates that by mid-November 1994, ITT Hartford had decided to pursue a subrogation claim, at least against Ford.

> 11/16/94 CNA SEATTLE OFFICE 1-800-262-2255 206-587-2600

ACTL KLM ADDRESS: P.O. BOX 240111 SEATTLE WA 98121
9611 RESP PARTY FORD MOTOR

11/16/94 CORRINE - PLS ENTER INTO SUBRO SEE DOCUMENTATION
INST KLM BELOW THANKS

ITT Hartford did not attempt to notify either of the defendants of its claimed subrogation interest until it sent the letter to Ford on January 2, 1995. Neither Mr. March's oral statements to Bob Rice personnel shortly after the fire, nor his letter to Ford on October 4, 1994, nor ITT Hartford's letter to Ford on January 2, 1995, notified anyone that the pickup was going to be destroyed. If ITT Hartford was concerned about its storage costs, there were certainly options available other than simply destroying crucial evidence without notice to the prospective defendants of such impending destruction.

Even assuming that Mr. March's actions put Bob Rice and Ford on notice that litigation would ensue, *American Family Ins. Co. v. Village Pontiac GMC, Inc., supra* (an angry telephone call to the car dealer from the owner of a car which burned was not notice of pending litigation), neither defendant was put on notice that crucial evidence was about to be destroyed by ITT Hartford. Even when litigation is commenced, the parties defending that litigation assume that crucial evidence will not be destroyed by the party bringing the litigation, at least without prior notice. Once it decided that it no longer needed the pickup, ITT Hartford could have notified Bob Rice and Ford that it was going to pursue a subrogation claim against them and that they could inspect or take possession of the pickup by a specified date, after which the pickup would be destroyed.

Under the circumstances of this case, dismissal of the action is the only appropriate remedy for ITT Hartford's conduct in destroying crucial evidence.

There is one other issue to discuss. The pickup was destroyed at the direction of ITT Hartford. It had no subrogation interest in the treble damages claimed by Mr. March under Idaho Code § 48-908. Therefore, Mr. March could argue that he should not be punished for the conduct of his insurer.

Courts have imposed sanctions for the destruction of evidence, even when the plaintiff was not directly responsible for such destruction. *Sipe v. Ford Motor Co., supra,* (after accident, allegedly defective product was repaired by governmental agency over which plaintiff had no control); *Fire Ins. Exchange v. Zenith Radio Corp., supra,* (allegedly defective product "lost" by expert retained by insurer); *Stubli v. Big D Int'l Trucks, supra,* (evidence destroyed by expert retained by insurer upon suggestion of insurer's counsel).

Even absent the destruction of the evidence in this case, Mr. March could not recover treble damages under Idaho Code § 48-908 To recover treble damages, Mr. March must recover pursuant to Idaho Code § 48-904. He cannot recover under that statute, however, if he has failed to resort to Ford's informal dispute resolution settlement procedure. I.C. § 48-906. It is undisputed that Ford had established the appropriate informal dispute resolution settlement procedure and that Mr. March failed to resort to that procedure. Therefore, he cannot recover under Idaho's lemon law.

For the above reasons, this action will be dismissed.

Dated: February 21, 1997

Signed: _____
District Judge

I certify that a copy hereof was this date mailed to each of the following:

Stephen W. Beane
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Bruce C. Jones
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Counsel for defendant Ford Motor Company

Patrick J. Inglis
HAMLIN & SASSER
P.O. Box 16488
Boise, Idaho 83715
Counsel for defendant Bob Rice Ford, Inc.

Dated: Feb 21, 1997

Signed: Jennie O'Connor
Deputy Clerk