

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

PAMELA AND SCOTT BOWERS,)
) **CASE NO. IPC-E-07-14**
 COMPLAINANTS,)
)
 v.)
) **ORDER NO. 30615**
 IDAHO POWER COMPANY,)
)
 RESPONDENT.)

This is a customer complaint case regarding utility practices of Idaho Power Company. On July 3, 2007, the Commission received a “formal” complaint from Pamela and Scott Bowers (the Bowers) against Idaho Power. The Bowers supplemented their complaint with additional information on July 26, 2007. The Bowers requested in their complaint that new rules or laws be enacted to prohibit the practice of allowing two adjacent business customers to use or “share” a single transformer. On September 5, 2007, the Commission issued Order No. 30421, opening an investigation and directing Idaho Power to respond to the issues raised in the Bowers’ complaint. On October 5, 2007, the Company submitted a timely response explaining the events surrounding the Bowers’ complaint. Idaho Power asserted that its actions were in full compliance with the applicable tariffs.

On October 22, 2007, the Bowers submitted a reply to the Company’s response. On January 17, 2008, the Staff submitted comments in this case. On January 18, 2008, the Company submitted a late-filed exhibit of a large-format Plat showing the Bowers’ lot within the “20/26 Commercial Park” subdivision. On April 21, 2008, the Bowers filed additional reply comments. Having developed an adequate record in this matter, the Commission issues this Order.

BACKGROUND

In December 2004, the Bowers obtained service from Idaho Power at their business, Bowers Transportation, in Caldwell. The Bowers’ business is located in a commercial subdivision (the 20/26 Commercial Park) primarily served by underground facilities. The Bowers’ property is lot No. 2 in the subdivision. Idaho Power located “sector” boxes throughout the subdivision. A sector box (also known as a junction box) is an aboveground enclosure where the buried circuit cable is brought “aboveground” when necessary to make cable connections.

As shown on the map in Attachment 1 to Idaho Power's response, the surface-mounted sector box (marked as "S") serving the Bowers is located in the utility easement in adjacent lot No. 1. There is an underground cable from the sector box to the surface-mounted transformer on the Bowers' property. *Id.* The surface-mounted transformer serving the Bowers was placed on their property, adjacent to their side-lot property line. Staff Exh. 202. Finally, an underground service line runs from the transformer to the Bowers' service panel shown in Staff Exhibit 201 on the right side of the photograph.¹ The Bowers paid Idaho Power a connection fee of \$1,461 to partially defray the cost of the distribution facilities (transformer, meter, cable, etc.).

In December 2006, Idaho Power provided service to the Bowers' neighbor, Terra-West, Inc. Terra-West's lot is adjacent to the Bowers and labeled as interior lot No. 1 on the Plat. Based upon Terra-West's requested load and the fact that the transformer on the Bowers' lot had the required capacity to serve both customers, Idaho Power used this single transformer to also serve Terra-West. Idaho Power buried a service cable from the transformer (on the Bowers' lot) to Terra-West's service panel. In other words, both customers take service from the same transformer – there is a service line to the Bowers' service panel and another service line to Terra-West's service panel.

The Bowers have several complaints about this arrangement. They complained that Terra-West "has no right to use and access our property" because they paid the service connection charges for the new distribution facilities. Fax of September 26, 2007 at 2. They also complained about the "utility easement" on their property and alleged that Terra-West cut a padlock and "illegally entered our property" to allow Idaho Power access to hook up Terra-West's electric service from the transformer. *Id.* at 2.

They also argued it was inequitable that they had to pay for the distribution facilities to obtain service and Terra-West did not. They also claimed they are the only lot owners in their commercial subdivision required to share a transformer. The Bowers argued Terra-West got special treatment because Terra-West is a subcontractor for Idaho Power. Finally, the Bowers complained that because of the shared usage of the transformer, the transformer may not have sufficient capacity to serve their future load if they construct additional buildings on their lot. If

¹ The utility "pedestal" shown in the foreground on the right-side of the photograph in Staff Exhibit 202 is a telephone company pedestal unrelated to this complaint.

such is the case, they allege they will have to pay for upgrading the transformer – whereas Terra-West has paid nothing.

The Bowers identified the following six changes to rules or laws they believe would make this matter “fair for all parties”:

1. Shared equipment shall be installed on the property line equally, not on one property owner’s land and lines run under the fence and onto the other property owner’s lot-land.
2. No prescriptive easements or clouding a title on just one of the two lot owner’s property can be given to Idaho Power.
3. The taking of another person’s property should be illegal.
4. Each party receives the same amount of power-amps.
5. Notice shall be given to both-each lot owner, prior to installing equipment. Either in writing, phone calls, etc. ... Breaking and entering should be illegal.
6. A written agreement should be required for both parties and with Idaho Power. Spelling out what is expected of and from each and all parties etc. ... Making each lot owner equally responsible for payment and or damages etc.

Fax of September 26, 2007 at 2.

IDAHO POWER RESPONSE

Idaho Power (or Company) responded that it followed its standard procedures and practices when it installed the Bowers’ service in December 2004, and that it had correctly followed the applicable sections of its tariff Rule H (“New Service Attachments and Distribution Line Installations”). Rule H is the Company’s tariff that specifies the procedures for extending facilities to new customers. Idaho Power Response; Atch. No. 3. The new distribution facilities (e.g., the transformer, cable and conduit) were designed and installed based upon the information provided by the Bowers in their application for service. *Id.*; Atch. No. 2. The Bowers requested service for a 200-amp panel and identified a load of 30 kW of single-phase demand and 50 kW of connected load. Idaho Power Response at 2; Atch No. 2. The transformer, which is the property of the Company, was designed and sized to meet the actual requirements identified in the Bowers’ application and the Company’s judgment as to the typical requirements for a commercial customer. The Company normally sizes transformers in commercial subdivisions

based upon the requested load of the first applicant, and the assumption of use for the adjacent lot, unless the usage of both lots is known before the work order is prepared. *Id.* at 2, 5-6.

Idaho Power stated that the transformer was placed within the permanent ten-foot wide utility easement (five feet on either side of the side-property lines in the subdivision). The side yard utility easements are identified on the Plat of the subdivision dated June 16, 2000. The Plat was recorded with the Canyon County Recorder on July 13, 2000. *See* Idaho Power Response at 1-2; Plat.²

The Company calculated its costs to provide service to the Bowers totaled \$2,660. *See* Idaho Power Response at 2; Atch. 2, p. 2. The Bowers received the standard Overhead Terminal Facilities Allowance or “credit” of \$1,199, as specified in Rule H, leaving a balance of \$1,461 to be paid by the Bowers. The Bowers also paid \$102.45 for the one-time Underground Service Attachment Charge, plus \$144 in engineering fees for the work order design. The combined total of all charges paid by the Bowers was \$1,707.45. Idaho Power Response at 2-3.

In November 2006, Terra-West requested service for its lot adjacent to the Bowers. Based upon the information in its service application, Idaho Power determined that the existing transformer located on the Bowers’ lot had sufficient capacity to serve both customers’ loads. *Id.* at 4. Because a new transformer was not required, Terra-West did not incur any charges for new distribution facilities, except for paying the Underground Service Attachment Charge of \$128.70. The Company indicated it believed the requirements of both customers were being adequately served by the facilities installed by the Company. *Id.* at 5.

Idaho Power stated that subsequent to the installation of the transformer, the Bowers erected a chain link fence that fully enclosed their property, including the utility easement and the transformer. *Id.* at 4. When it initially attempted to provide service to Terra-West, Idaho Power discovered the fence, and informed Terra-West of its inability to access the transformer to provide Terra-West with service. *Id.* at 4. Idaho Power indicated that Terra-West advised Idaho Power personnel that Terra-West would arrange for access to the transformer with the Bowers on the designated service date. When Idaho Power arrived to install Terra-West’s service, the utility said that the gate to the Bowers’ property was open. *Id.* at 5.

² The Plat contains two notations pertinent here. First, “SIDE YARD LOT LINES HAVE A 5' WIDE PERMANENT PUBLIC UTILITIES AND DRAINAGE EASEMENT, UNLESS NOTED OTHERWISE.” Second, the Plat states that “THE RIGHT TO USE SAID EASEMENTS IS HEREBY PERPETUALLY RESERVED FOR UTILITY PURPOSES. . . .”

Idaho Power next explained that “vested interest refunds” for the joint-use of distribution facilities under Rule H or its predecessor (Schedule 71) are not available to commercial customers. Therefore, the Bowers were ineligible for a refund under Rule H. *Id.* at 7. Such refunds are currently available in only three circumstances: (1) for payments for line installations outside a subdivision; (2) for line installation charges inside a residential subdivision when a permanent residence connects to the service; and (3) for undeveloped subdivisions platted prior to January 1, 1997. The Bowers’ situation does not fall within any of these three categories. *Id.* at 6-7 (emphasis added). The Bowers were credited with the “overhead allowance” of \$1,199. *Id.* at 3; Atch. 2, p. 2 at ¶ 2.

Idaho Power asserted that when the Commission last reviewed Rule H in February 1997, it directed the Company to revise the refund provisions for vested interests in Rule H. The utility was instructed to examine the number of additional applicants for refunds and the refund period in a manner that “balance[d] the competing objectives of fairness and administrative complexity.” Order No. 26780 at 16. The Company complied with that Order by eliminating vested interest refunds for commercial subdivisions in the tariffs filed on February 27, 1997. The Rule H tariff was subsequently approved by the Commission.

BOWERS REPLY

On October 22, 2007, the Bowers filed a reply to Idaho Power’s response. In their reply, the Bowers listed 17 specific questions or matters in dispute and continue to claim that Idaho Power is treating them differently than other customers. The Bowers questioned whether they received their requested 400-amp service, or received just 200-amp as asserted by the Company. They admitted they do not understand “Watts,” and relied on the Company’s representative. Reply at p. 11, ¶¶ 1, 14.

They next asserted that the current location of the transformer was to be temporary because they had not decided upon the exact location of their building at the time service was requested. They agreed to the current location on a temporary basis, to protect the transformer from damage, until the building was complete. They indicated they were told they could later have it moved to a location next to their building by the Company’s representative, and asked if this is still possible. *Id.* at ¶ 2.

They claimed they have provided Idaho Power with a key to their gate, that they have always allowed the Company to access the property when requested, and that other customers

have also fenced their yards with locked gates. They asked if they are the “only lot owner required to leave our gate open to Idaho Power 24-7.” *Id.* at ¶ 3.

At the time of their lot purchase, the Bowers claimed they were told every lot owner was responsible for obtaining their own service at their own expense. They said they were shown on a map “where their service box was allowed.” This is the area that Idaho Power now says is a side-lot utility easement but the Bowers maintain it is actually a “setback.” The Bowers insisted the side-lot easement was not on the Plat for the subdivision and that the Company and PUC are trying to establish a prescriptive easement by denying them relief in this matter. *Id.* at p. 12, ¶¶ 5-6. They maintained all property owners in the subdivision, except Terra-West, have purchased transformers from Idaho Power and the Bowers are the only party being required to “share” facilities. *Id.* at ¶ 6.

They complained that the Company and PUC are using the “rules and regulations” to protect the interests of the Company and not the customer. *Id.* at p. 13, ¶ 9. Idaho Power will not provide them with information concerning rules or regulations, and they want to know where such information is available. They insisted they were never informed of the possibility that facilities might be shared, that they are the only instance where sharing is allowed, and that a written agreement to share facilities should be required, with each party sharing in the costs. *Id.* at ¶ 12.

They asserted that any excess capacity available in the transformer they “purchased” and installed on their property should be available for their use, and not given to a neighbor for free. *Id.* at p. 17, ¶ D. They requested an explanation as to what the Company meant by the following statement in its response: “Because existing electrical facilities were not adjacent to the Bowers lot at the time of the Bowers service request, additional investment by the Company for installation of the required transformer was necessary.” *Id.* at p. 15, ¶ 16. Finally, they requested that Rule H be changed so that vested interest refunds are available for investments paid for by customers inside of commercial subdivisions.

STAFF COMMENTS

Based upon its review of the complaint, Idaho Power’s response and the tariff, the Staff calculated that the Bowers and Terra-West were correctly charged. The Staff explained that vested interest refunds are not available for any line extension within commercial subdivisions. Staff explained that the first customer requesting service (e.g., the Bowers) is charged for all costs in excess of the commercial allowance for terminal facilities (\$1,199), and

any subsequent customer (e.g., Terra-West) may connect to the existing facilities if there is sufficient capacity. A subsequent customer only pays the installation charge for the underground service. Comments at 3.

Staff recognized that under these situations, not all commercial customers will be charged the same. However, this tariff balances the goals of treating customers equitably with the goal of reducing the administrative burdens of tracking investments and vested interest payments. In essence, the Company is recovering the facility cost from the first customer without risking the recovery of the investment. *Id.* at 4. The Commission approved the tariff filed in compliance with its Order No. 27680.

The Staff also noted that the “sharing” of a transformer is common practice. The Company has approximately twice as many customers as transformers. Transformers are the Company’s property, not the customer’s property. *Id.* The decision whether a transformer will be used to serve more than one customer is an engineering decision made by the Company based upon the loads and locations of the customers. *Id.* Staff also noted that Idaho Power maintains that Terra-West was not and has never been a contractor or sub-contractor to the Company.

Staff indicated that the Bowers are correct when they claim they are the only customers in the subdivision to have a shared transformer. However, Staff also noted there are vacant lots in the subdivision so there may be shared facilities in the future. *Id.* If the Bowers add a building that would require a larger transformer, the Company will replace the existing transformer with a larger one at no cost to either customer. *Id.*; Staff Exh. 203. However, if the Bowers decide to move the transformer or locate future uses on their lots too far from the existing transformer, they may incur additional charges as specified in Rule H. *Id.*

Staff observed that the Bowers were the first customers in more than ten years since Rule H was implemented to complain about the lack of vested interest refunds. A review of the Staff files over the most recent four years did not reveal any complaints of this type. *Id.* at 5.

DISCUSSION AND FINDINGS

The Bowers have raised a broad array of issues including but not limited to trespass, damage to private property, the taking of private property, easements, the demarcation between utility and customer property, the practices of the Company and the assessment of charges under applicable tariffs. Although some of these issues are beyond the Commission’s jurisdiction, we find there is sufficient evidence in the record for us to resolve those issues within our purview.

The Commission is an agency of limited jurisdiction and may only exercise that authority delegated to it by the Legislature. *Washington Water Power v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). Once the Commission's jurisdiction is clear, then it may exercise all power necessary to effectuate its purpose. *Id.* The Commission has jurisdiction to hear and decide parts of this dispute pursuant to *Idaho Code* §§ 61-502, 61-503, 61-507, and 61-612.³ The Commission is not empowered to award damages for losses or injuries. *Idaho Code* § 61-702.

1. The Distribution Facilities. We begin our examination of the complaint by reviewing how Idaho Power provided service to the Bowers. As indicated in Idaho Power's Attachment 2, the Company provides underground services to the 20/26 Commercial Park. This means that most of the cable is buried underground but there are aboveground sector boxes and transformers. In particular, after the Bowers requested service, the Company ran a buried cable from the sector box on lot No. 1 (subsequently Terra-West's lot) to the installed aboveground transformer on the Bowers' property. See Staff Exhibit 202, 201. From the transformer, Idaho Power then ran an underground cable to the Bowers' service panel on their building.

Although the Bowers were assessed installation charges, the Bowers do not acquire an ownership interest in the distribution facilities provided by the Company. We find that the sector box, cables, transformer and other facilities up to the Bowers' service panel or meter base are the property of Idaho Power. Response at 3-4; Staff Comments at 4, Exh. 203; Tariff Rule H, § 2(b) ("The Company will own all distribution line installations and retain all rights to them.").

2. Sharing. The Bowers object to "sharing" the transformer with Terra-West. However, as indicated previously, the Bowers do not "own" the transformer – it is the property of Idaho Power. Because the transformer had sufficient capacity to serve both the Bowers and Terra-West, Idaho Power provided service to Terra-West from the transformer located on the Bowers' lot. The Staff commented that it is a common practice for the utility to use transformers to serve more than one customer. Comments at 4. This is indicative of the fact that the Company "has approximately twice as many customers as transformers. The decision whether a transformer will be used to serve more than one customer is an engineering decision made by the Company, based upon the loads and locations of the customers." *Id.* We agree and find that the

³ The Commission cannot address issues of trespass or damage to the Bowers private property (i.e., cutting the padlock). These are matters outside our jurisdiction.

practice of using transformers to serve more than one customer is a typical and cost-effective practice of providing electric service.

3. Location of the Facilities. We next turn to the placement and the use of the transformer on the Bowers' property. As we have previously mentioned, a cable runs from the sector box on lot No. 1 to the transformer located on the Bowers' side of the common, side property line. Apparently, the location of the transformer did not become contentious until Idaho Power intended to use this transformer to serve Terra-West.

The Bowers complain that Terra-West has no right to use or access the Bowers' property. However, it is only Idaho Power's facilities that are located on the Bowers' property. More specifically, we find the line that goes from the transformer on the Bowers' property to Terra-West's service panel is the property of Idaho Power, not Terra-West. Idaho Power has the right to access the utility easement and install utility facilities.

We further find that Idaho Power's transformer and cable to serve Terra-West are located in a clearly marked utility easement as designated on the recorded Plat. Despite the Bowers' assertion that this five-foot space represents a property "setback" and not a utility easement, the recorded Plat clearly contradicts this assertion. The Plat states that "SIDE YARD LOT LINES HAVE A 5' WIDE PERMANENT PUBLIC UTILITIES AND DRAINAGE EASEMENT. . . ." The Plat also notes that "THE RIGHT TO USE SAID EASEMENTS IS HEREBY PERPETUALLY RESERVED FOR UTILITY PURPOSES. . . ." Plat at 1-2. In addition, the legend of the Plat denotes that a dash line is an "easement line." Side-lot easements are shown for each lot on the Plat – including the 10-foot easement (five feet on either side) of the side yard property line between the Bowers and Terra-West.

As shown in Staff Exhibit 202, the transformer (labeled "BT 1") is placed within five feet of the property line denoted by the chain link fence between lot No. 1 and lot No. 2. In our experience, it is common practice that subdivisions have only easements adjacent to side yard, property lines. *Idaho Code* § 50-1305 requires that subdivision plats show "the easements." The City of Caldwell also requires developers to denote "utility easements" on final plats. Caldwell City Code, Ch. 11 (Subdivisions), Art. 2, 11-02-07 (4)A. and D.; www.sterlingcodifiers.com/ID/Caldwell/index. Based upon our finding that Idaho Power's

facilities are clearly located in the side yard permanent utility easement, we do not need to address the issue of prescriptive easement.⁴

We also decline to implement the Bowers' suggestion that "shared" facilities be installed on the property line itself. We find such a requirement would be unreasonable and inappropriate given the fact that in many instances property owners install fences or other structures on or at their property lines. Placing utility structures on the property line would encumber lot owners from fencing their property. It is more appropriate to place utility facilities on one side or the other of a shared property line.

4. Charges. We next turn to the Bowers' complaint that they have been treated unfairly. More specifically, they object to the fact that they were charged approximately \$1,700 to obtain service consisting of installing the transformer and the underground cabling while Terra-West only paid for the underground cable from the transformer to its service panel. They also assert they are the only business in the subdivision to "share" a transformer. After reviewing the Rule H tariff, we find that the Bowers were appropriately charged for obtaining their initial service. As set out above, the Company calculated its costs to provide service to the Bowers as approximately \$2,660. The Bowers received the standard overhead "credit" of \$1,199 as specified in Rule H. When Terra-West requested service two years later, the transformer installed on the Bowers' property had sufficient capacity to serve both the Bowers and Terra-West. Consequently, Terra-West was only charged for the underground cable from the transformer to its meter base.

As was the case here, the first customer to take service bears more costs for common facilities than a subsequent customer. In this subdivision, Idaho Power has no way of knowing when lots will be sold and service requested. Indeed, in this case Terra-West did not request service until two years after service was provided to the Bowers and the Staff reports there are still unoccupied lots. We find that Rule H's pricing structure ensures that the Company adequately recovers its costs in a timely manner.

We further find that Rule H allows Idaho Power to recover most of the facility costs from the first customer without carrying the risk of unrecovered investment if other lots do not sell. As noted above, the first customer pays most of the costs for the distribution facilities but

⁴ *Beckstead v. Price*, ___ Idaho ___, ___ P.3d ___ (2008) (2008 WL 2415830) (discussing the requirements for a prescriptive easement in Idaho).

also receives the overhead credit. We find that Rule H balances the investment risk to the Company (and ultimately to ratepayers), against the administrative burden of tracking vested interest refunds for commercial customers.

5. Upgrading the Transformer. Finally, we note that if the Bowers require a larger service in the future, Staff indicates that the Company will replace the existing transformer with a larger one at no cost to the Bowers. Staff Comments at 4, Exh. 203.


In conclusion, we find that the Bowers' complaint should be dismissed. We find that the distribution property in question is owned by the utility and not the Bowers. We further find that the Company is acting in compliance with its tariffs and that it charged the Bowers appropriately.

ORDER

IT IS HEREBY ORDERED that the Bowers' complaint against Idaho Power Company be dismissed.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this case may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 7th
day of August 2008.



MACK A. REDFORD, PRESIDENT

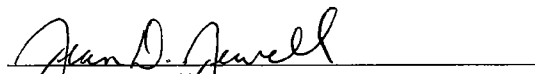


MARSHA H. SMITH, COMMISSIONER



JIM D. KEMPTON, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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