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IDAHO PUBLIC
UTILITIES COMMISSION

21 August 2007

Ms. Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
P O Box 83720
Boise ID 83720-0074

RE: **Case No. IPC-E-07-16**

Dear Ms. Jewell:

Enclosed please find an original and seven (7) copies of the **FORMAL COMPLAINT OF SOUTH ELMORE IRRIGATION COMPANY TO IDAHO POWER COMPANY.**

I have also enclosed an extra copy to be service-dated and returned to us for our files. Thank you.

Sincerely,

Nina Curtis
Administrative Assistant

encl.

Peter J. Richardson
ISB No. 3195
Richardson & O'Leary PLLC
515 N. 27th Street
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Attorneys for South Elmore Irrigation Company

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IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

SOUTH ELMORE IRRIGATION COMPANY

Complainant,

vs.

IDAHO POWER COMPANY,

Respondent.

CASE NO. IPC-E-07-

FORMAL COMPLAINT

COMES NOW, SOUTH ELMORE IRRIGATION COMPANY, by and through its attorneys of record, Richardson & O'Leary, and pursuant to this Commission's Rules of Procedure, Rule 54 IDAPA 31.01.01.054 hereby files this Formal Complaint against the Respondent, the Idaho Power Company.

Communications regarding this Formal Complaint should be sent to:

South Elmore Irrigation Company
c/o Peter J. Richardson
Richardson & O'Leary PLLC
515 N. 27th St
P.O. Box 7218
Boise, Idaho 83702
Telephone: (208) 938-7901
Fax: (208) 938-7904
peter@richardsonandoleary.com

Copies of all pleadings, production requests, production responses, Commission orders and other documents should be provided to Peter J. Richardson as noted above and to:

Terry Ketterling, Secretary
South Elmore Irrigation Company
P.O. Box 396
Mountain Home, ID 83647
(208)-599-1010
(208) 587-5930 Fax
tlket@starband.net

FACTUAL ALLEGATIONS

1. The Complainant, South Elmore Irrigation Company, is an Idaho Corporation in good standing with its principle place of business in Elmore County, Idaho.
2. Complainant is an irrigation company that purchases electricity from Respondent, Idaho Power Company.
3. Terry Ketterling is the Secretary/Treasurer of the South Elmore Irrigation Company.
4. Jack Post is the President of the South Elmore Irrigation Company.
5. On or about June 11, 2007, Quentin Nesbitt, with Idaho Power Company, sent Mr. Ketterling and Mr. Post a letter advising that Idaho Power Company had discovered a billing error regarding metered energy and associated charges for the electricity consumed by South Elmore Irrigation Company between November 2002 and April 2007 for the South Irrigation Pump Location 05S07E2801 – 8,800 Horsepower at Flying H substation.
6. Among other things, Idaho Power Company's letter, referenced above, stated:

- A. That the billing error had been discovered during a routine inspection at the meter site on 5/16/07;
- B. That the billing error was Idaho Power's fault;
- C. That the billing error resulted from an Idaho Power Company employee mistakenly changing the meter reading multiplier for the account on Idaho Power's customer billing system on 11/18/2002 from 12,000 to 6,000; (The employee was not identified and the circumstances under which the employee changed the meter reading multiplier were not explained.)
- D. That, as a result of the billing error, South Elmore Irrigation Company was billed for only half of the energy it consumed at the referenced site from 11/18/02 to 04/26/07;
- E. That according to its tariffs and Idaho Public Utilities Commission rules, Idaho Power is required to prepare a corrected billing;
- F. That the corrected billings are to be for the time period in which the error occurred, but for no more than three years;
- C. And that South Elmore Irrigation Company owes Idaho Power Company \$916,702.24 for energy use that was not billed between the three-year period 5/26/04 through 4/26/07.

7. A copy of the above-referenced letter is attached hereto as Exhibit A.¹

¹ Although Idaho Power's letter is addressed to the South Elmore Canal Company, as are all bills received, the correct name is the South Elmore Irrigation Company.

8. Complainant timely and fully paid all bills received from Idaho Power Company during the relevant period of time.

9. Prior to receiving the above-referenced letter from Idaho Power Company, Complainant did not know that the billings were erroneous and had no reason to know that the billings were erroneous.

10. The Idaho Public Utilities Commission has jurisdiction over this matter.

11. The Idaho Public Utilities Commission has approved rules and regulations governing electric utilities' billing practices and procedures.

COUNT ONE

12. IDAPA 31.21.01.204 provides in relevant part: “[w]henever the billing for utility service was not accurately determined because the meter malfunctions 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.”

13. Because the reason for the erroneous billing was that Idaho Power had wrongly changed the reading meter multiplier, and not that the meter failed or malfunctioned, Idaho Power lacks authority to bill the Complainant for the undercharges referenced in its letter.

COUNT TWO

14. The jurisdiction of the Idaho Public Utilities Commission is limited and has to be found entirely within the enabling statutes.

15. Administrative regulations cannot exceed the bounds of authority granted to it by the legislature. Thus, Idaho Power's billing authority is limited via statute and its authority cannot exceed the bounds of the statute.

16. As a regulated electric utility subject to this Commission's jurisdiction, Idaho Power must charge only such rates and charges as are authorized by the Commission.

17. Idaho Code Section 61-642 does not allow Idaho Power to back bill Complainant for three (3) years as Idaho Power asserts in its letter to Complainant.

COUNT THREE

18. Principles of equity apply in administrative proceedings.

19. A customer of an electric utility should be able to expect that the utility will accurately measure and bill the customer for its electric usage.

20. An electric utility should not be protected from the consequences of its own negligence.

21. It is unjust to require an innocent consumer to bear the entire cost of a supplier's mistake because, armed with absolute immunity for a three year period, the supplier has little incentive to establish reasonable procedures to guarantee that its meters are properly calibrated or that its bills are computed accurately.

RIGHT TO AMEND

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

WHEREFORE, Complainant respectfully requests the following relief:

- A. This Commission enter an Order determining the following:
1. That Complainant will suffer extraordinary hardship if it is required to pay the amount demanded by Idaho Power Company;
 2. That the erroneous billing giving rise to this matter was solely the fault of Idaho Power Company;
 3. That Idaho Power Company has no basis to demand that Complainant pay the undercharges referenced in its letter;
 4. That Complainant is relieved from its obligation, if any it has, to pay the under charges referenced in Respondent's letter;
 5. That, in order to further the public policy that a utility be encouraged to establish procedures to ensure that its meters are properly calibrated, Idaho Power be prohibited from recouping the amount it failed to bill Complainant from its other ratepayers;
 6. That, to the extent authorized by law, Complainant be awarded its reasonable attorneys' fees and costs; and
 7. For such other and further relief as the Commission considers just and equitable.

DATED this 21st day of August 2007.

Richardson & O'Leary, LLP

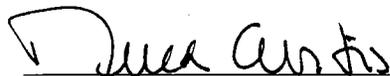
By 
Peter J. Richardson
RICHARDSON & O'LEARY
Attorneys for South Elmore Irrigation Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August, 2007, a true and correct copy of the within and foregoing FORMAL COMPLAINT, was served by personal service to:

Barton Kline
Monica Moen
Idaho Power Company
PO Box 70
Boise, Idaho 83707-0070

Jean Jewell
Commission Secretary
Idaho Public Utilities Commission
472 West Washington
Boise, Idaho 83702



Nina Curtis
Administrative Assistant

EXHIBIT A

June 11, 2007

South Elmore Canal Company
Terry Ketterling & Jack Post
PO Box 396
Mountain Home, ID 83647

Dear Terry & Jack,

This letter is in regards to your metered energy and associated charges for the electricity that was consumed between November 2002 and April 2007 for South Elmore Pump Location **05S07E2801** -- 8,800 Horsepower at Flying H substation.

We have discovered a billing error during this period for the energy consumed at this service point. This billing error resulted from an employee mistakenly changing the meter reading multiplier for the account on our customer billing system. The meter reading multiplier was changed on 11/18/2002 from 12,000 to 6,000. The error was discovered during a routine inspection at the meter site on 05/16/07 and the customer billing system has been corrected. As a result of the error you were billed for only half of the energy consumed at the site from 11/18/2002 to 04/26/2007.

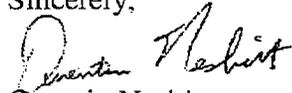
According to our tariffs and Idaho Public Utilities Commission rules we are required to prepare corrected billings in these types of instances. The corrected billings are to be for the time period during which the error occurred but for no more than three years. Therefore, the total dollar amount of the rebilling for energy use that was not billed between the three-year period 05/26/2004 through 04/26/2007 is \$916,702.24. If all of the billings over the four-year period during which the error occurred had been corrected, the total dollar amount of the rebilling would have been approximately \$1,344,000.

We realize \$916,702.24 is a very large sum of money and we are willing to work with you on a repayment plan. Also, we realize this error has affected your kWh and Property Tax credits which are issued each December. Your credits this December will include the incremental usage amounts associated with this rebilling. In addition irrigation customers receive a Bonneville Power Administration credit at the end of each year. Because this credit caps out at 222,000 kWhs each month, South Elmore's usage in each of the affected months is well above this number. Therefore, the credit amount is not affected by the corrected kWh data.

This error was Idaho Power's fault and we apologize for having incorrectly billed your account. However, the energy was used and we must bill you for it according to our tariffs. If you have

any additional questions or concerns regarding this matter, please feel free to contact me at 388-2519 or e-mail me at qnesbitt@idahopower.com or contact Lisa Nordstrom in our legal department at (208) 388-5825.

Sincerely,



Quentin Nesbitt

cc: Lisa Nordstrom
Tim Fenwick
Sam Turner