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IDAHO PUBLIC UTILITIES COMMISSION

BARTON L. KLINE
Senior Attorney

July 29, 2008

VIA HAND DELIVERY

Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
P.O. Box 83720
Boise, Idaho 83720-0074

Re: Case No. IPC-E-08-15
*In The Matter of Idaho Power's Application For Approval of an Amendment
To an Agreement Between Avimor, LLC, and Idaho Power Company
And
For Authority to Implement a Line Capacity Charge*

Dear Ms. Jewell:

Enclosed please find for filing an original and seven (7) copies of Idaho Power's Application in the above matter.

In addition, enclosed are an original and eight (8) copies of the testimony and exhibit of Timothy E. Tatum that are being submitted in support of Idaho Power's enclosed filing. One copy of the testimony has been designated as the "Reporter's Copy."

Finally, I would appreciate it if you would return a stamped copy of this letter for my file in the enclosed stamped, self-addressed envelope.

Very truly yours,

Barton L. Kline
Senior Attorney for Idaho Power Company

BLK:csb
Enclosures

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LISA D. NORDSTROM, ISB # 5733
Idaho Power Company
1221 West Idaho Street
P. O. Box 70
Boise, Idaho 83707
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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Idaho Power Company

Street Address for Express Mail:

1221 West Idaho Street
Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER'S)
APPLICATION FOR APPROVAL OF AN) CASE NO. IPC-E-08-15
AMENDMENT TO AN AGREEMENT)
BETWEEN AVIMOR, LLC, AND IDAHO) APPLICATION
POWER COMPANY)
)
AND)
)
FOR AUTHORITY TO IMPLEMENT A LINE)
CAPACITY CHARGE)

COMES NOW, Idaho Power Company ("Idaho Power" or the "Company") and hereby requests that the Commission issue its Order approving the enclosed Amendment No. 1 ("the Amendment") to the August 17, 2006, Agreement between Idaho Power and Avimor, LLC, ("Avimor"). The August 17, 2006, Agreement ("Agreement") provides for Avimor to pay for the construction of certain transmission and substation facilities needed

to provide electric service to Avimor's real estate development located north of Eagle, Idaho. A copy of the Amendment is enclosed as Attachment No. 1. For the convenience of the Commission, a copy of the Agreement is also enclosed as Attachment No. 2.

BACKGROUND

1. In Case No. IPC-E-06-23, the Company presented the Agreement to the Commission for approval. As noted in its Application in that case, Avimor is developing a substantial planned residential subdivision north of Eagle, Idaho, (the "Project"). The Agreement called for Idaho Power to design and construct the transmission and substation facilities needed to provide electric service to the Project. During the pendency of Case No. IPC-E-06-23, Avimor paid Idaho Power the full \$4,300,000 cost to construct the facilities specified in the Agreement and the Company completed construction of the facilities.

2. In accordance with the terms of Section 8 of the Agreement, on September 27, 2006, Idaho Power submitted the Agreement to the Commission for approval. In Order No. 30322, issued on May 24, 2007, the Commission denied Idaho Power's request for approval of the Agreement with Avimor. In its Order, the Commission described several changes to the Agreement that the Commission would require as a condition of approval of the Agreement. Avimor subsequently petitioned for reconsideration of Order No. 30322 and in Order No. 30396 the Commission accepted some of Avimor's requested changes to the prior Order, but rejected others. Avimor then appealed the Commission's final Orders to the Idaho Supreme Court. Prior to the filing of this Application, Avimor dismissed its appeal of the above-mentioned Orders.

DESCRIPTION OF AMENDMENT PROVISIONS

3. In the above-referenced Orders, the Commission noted that the refund amounts, set out in paragraph 4.2 of the Agreement, would be greater than the Company's then-current embedded cost for customer connections. The Commission concluded in the Orders that the higher refund amount specified in the Agreement did not properly allocate Project risk between Avimor and the Company's existing customers. As a result, in its findings, the Commission concluded that the refund amount for Avimor should be limited to \$1,000 per customer connection. See Order Nos. 30322 & 30396.

4. With one exception, the Amendment implements the changes to the Agreement exactly as specified by the Commission in Order Nos. 30270 and 30396. In the Amendment, refunds for connections within the Project boundaries are set at \$110 per kW of estimated demand for electric facilities to provide residential service. In the Amendment, the estimated kW demand for each permanent residential service connection is set at 10 kW per service connection, thereby setting a maximum refund amount of \$1,100 for each permanent residential service connection. In the Amendment, refunds for non-residential loads are calculated by multiplying \$110 times the kVA rating of the distribution transformers serving each such non-residential account.

LINE CAPACITY CHARGE

5. In Order No. 30322, the Commission indicated its concurrence with the suggestion that other customers outside the Project boundaries using the transmission and substation facilities paid for by Avimor, could reasonably be expected to contribute to the cost of those facilities with those contributions being refunded to Avimor. Idaho Power has, in the past, with Commission approval, implemented similar arrangements to collect contributions from connecting customers in a wider geographic area to more equitably

apportion the cost of substation and transmission facilities. The most recent example of such an expanded cost-apportionment program was the contract for transmission and substation facilities between Idaho Power and Tamarack Resort, LLC. (Case No. IPC-E-04-12, Order No. 29589). Similar to that case, Idaho Power requests authority to implement a line capacity charge ("LCC") under which Idaho Power will collect monies from customers located outside the Project when service to those customers will utilize the transmission and substation facilities paid for by Avimor. LCCs would be assessed as follows:

a. Customers receiving service under Schedule 01 would pay \$1,100 per connection.

b. Customers receiving service under non-residential service schedules would pay \$110 times the kVA rating of the distribution transformers service of each such non-residential account.

c. In the case of subdivisions subject to Rule H, allowances are not applied to LCCs. LCCs will be collected in addition to regular Rule H charges.

6. Refunds, including refunds of LCCs collected, would be paid to Avimor for ten (10) years or until Avimor has received the full \$4,300,000 amount, whichever occurs first.

7. The Amendment includes provisions consistent with these proposed changes.

SUBSTANTIAL COMPETENT EVIDENCE SUPPORTS THIS APPLICATION

8. On January 9, 2008, the Parties filed a Motion for Approval of Stipulation for Settlement of Appeal in which the Parties asked the Commission to approve a refund amount of \$1,100 per residential hook-up in lieu of the \$1,000 previously adopted by the Commission in Order No. 30322. The Commission rejected the Stipulation on the grounds

that the Parties had not presented sufficient substantial, competent evidence in the record that would allow the Commission to approve the requested \$1,100 amount even if the Commission had been inclined to do so.

9. To provide the Commission with the record it needs to approve the Amendment, Idaho Power has filed with this Application the testimony of Timothy E. Tatum. In his testimony, Mr. Tatum provides information taken from the Company's 2007 General Rate Case filing (IPC-E-07-08) that explains how the \$1,100 per-customer refund amount contained in the Amendment was determined and why that amount is consistent with the rationale the Commission used to support its finding that the \$1,000 per customer limit on refunds in Order No. 30322 was just and reasonable. In addition to the testimony of Mr. Tatum, Commission Staff has indicated it will present evidence supporting and verifying Mr. Tatum's analysis.

MODIFIED PROCEDURE

10. The Company believes that consideration of this Application by the Commission will not require an evidentiary proceeding and, therefore, respectfully requests the Application be processed under RP 201 allowing for consideration of issues under modified procedure, that is by written submission rather than evidentiary hearing.

SERVICE OF PLEADINGS

11. Service of pleadings, exhibits, orders and other documents relating to this proceeding should be served on the following:

Barton L. Kline
Lisa D. Nordstrom
Idaho Power Company
P.O. Box 70
Boise, ID 83707
bkline@idahopower.com
lnordstrom@idahopower.com

John R. Gale
Timothy E. Tatum
Idaho Power Company
P.O. Box 70
Boise, ID 83707
rgale@idahopower.com
ttatum@idahopower.com

NOW, THEREFORE, based on the foregoing, Idaho Power Company respectfully requests the Commission issue its Order approving, without change or condition, the Amendment No. 1 to the August 17, 2006, Agreement between Idaho Power Company and Avimor.

Respectfully submitted this 29th day of July 2008.



BARTON L. KLINE
Attorney for Idaho Power Company

CERTIFICATE OF MAILING

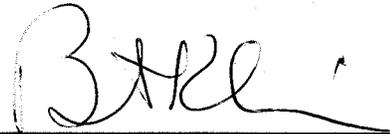
I HEREBY CERTIFY that on the 29th day of July 2008 I served a true and correct copy of the within and foregoing APPLICATION upon the following named parties by the method indicated below, and addressed to the following:

Weldon B. Stutzman
Deputy Attorney General
Idaho Public Utilities Commission
472 West Washington
P.O. Box 83720
Boise, Idaho 83720-0074

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Email Weldon.stutzman@puc.idaho.gov

John R. Hammond
FISHER PUSCH & ALDERMAN, LLP
U.S. Bank Plaza, 5th Floor
101 South Capitol Boulevard
P.O. Box 1308
Boise, Idaho 83701

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Email jrh@fpa-law.com



Barton L. Kline

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-08-15

IDAHO POWER COMPANY

ATTACHMENT NO. 1

AGREEMENT TO PROCEED

THIS AGREEMENT, dated August 17, 2006, is by and between AVIMOR, LLC ("Avimor"), an Idaho Limited Liability Company, with its principal offices at 485 East Riverside Drive, Eagle, Idaho, and IDAHO POWER COMPANY ("Idaho Power" or the "Company"), an Idaho corporation, with its principal offices at 1221 West Idaho Street, Boise, Idaho. Avimor and Idaho Power may also be referred to individually as "Party" or collectively as "Parties."

RECITALS

A. The Parties have entered into an Agreement to Provide Electric Transmission and Substation Facilities dated August 17, 2006 (the "Electric Agreement").

B. The Electric Agreement is subject to the approval of the Idaho Public Utilities Commission ("IPUC" or the "Commission"), which approval has not been granted to date.

C. If the Electric Agreement is approved by the IPUC, Idaho Power will design and construct certain transmission and substation facilities (the "Requested Facilities") to be used by Avimor's multi-use development project known as Avimor and located in Ada County, Idaho.

D. Idaho Power will not expend funds for projects subject to IPUC approval until the Company has received an Order from the Commission approving those projects. However, Avimor requests that Idaho Power proceed with design of the Requested Facilities and the purchase of certain materials required to construct the Requested Facilities prior to the Commission's

consideration of an application approving the Electric Agreement and prior to the Commission issuing an Order authorizing the design and construction of the Requested Facilities. Idaho Power agrees to do so only if the Company is assured that it will recover all of its costs of designing the Requested Facilities and purchasing certain materials for said facilities if the Commission does not approve the Electric Agreement.

E. At the time of execution of the Electric Agreement, Avimor paid Idaho Power Two Million One Hundred Fifty Thousand and no/100 Dollars (\$2,150,000.00) as an initial installment payment for the Requested Facilities ("Initial Payment"). Avimor wishes to authorize the use of the Initial Payment by Idaho Power for any costs incurred by Idaho Power for design work and material purchases for the Requested Facilities prior to Commission approval of the Electric Agreement.

F. The Parties wish to set out procedures for the use by Idaho Power of Avimor's Initial Payment to pay for any and all costs incurred by Idaho Power for design work undertaken and any materials purchased for the Requested Facilities either prior to the Company's receipt of Commission approval of the Electric Agreement and or in the event the Commission does not approve the Electric Agreement.

NOW, THEREFORE, in consideration of the mutual obligations and understandings set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Avimor and Idaho Power agree as follows:

AGREEMENTS

1. At the request of Avimor and subject to the terms and conditions of this Agreement, Idaho Power agrees to proceed to design the Requested Facilities and to order certain materials required to construct the Requested Facilities prior to the Company's receipt of an Order from the Commission approving the Electric Agreement and authorizing the design and construction of the Requested Facilities.

2. Avimor agrees that, in the event the IPUC does not issue an Order approving the Electric Agreement, all costs and expenses incurred by Idaho Power for design work completed for the Requested Facilities, including the costs of survey work and permitting, and all costs and expenses incurred by Idaho Power for materials purchased to construct the Requested Facilities prior to receipt of the Commission's Order shall be the sole responsibility of Avimor and that no costs associated with either the design of the Requested Facilities or the purchase of materials for the Requested Facilities shall be borne by Idaho Power.

3. The Parties agree that the cost of any design work undertaken and materials ordered for the Requested Facilities prior to Idaho Power's receipt of an Order from the IPUC approving the Electric Agreement will be charged against Avimor's Initial Payment to the Company and that Idaho Power will incur no costs associated with either the design of the Requested Facilities or the purchase of materials required to construct the Requested Facilities in the event the Commission does not order approval of the Electric

Agreement. Ownership and possession of the design plans shall remain with Idaho Power.

4. Idaho Power will keep a record of all design and material costs charged against the Initial Payment.

5. Said design work and material purchases shall not exceed the amount of the Initial Payment. The parties agree that Idaho Power shall immediately discontinue design work and material purchases if the cost of that work and those purchases equals the amount of the Initial Payment.

6. If the IPUC does not approve the Electric Agreement authorizing the design and construction of the Requested Facilities, Idaho Power will (a) immediately discontinue any further design work on the Requested Facilities; (b) cease ordering materials for construction of the Requested Facilities; (c) cancel any orders placed for materials which have not been shipped and which are cancellable; and (d) return any materials ordered and shipped for the Requested Facilities from any and all suppliers who will accept return of any of the ordered and shipped materials.

7. The Parties agree that Idaho Power will store any received materials in accordance with its usual and customary storage practices and shall not be required to employ storage practices beyond those that are usual and customary for the Company.

8. For any materials either ordered and not shipped or ordered, shipped and returnable, Idaho Power shall cancel those orders that are cancellable, return any materials to the suppliers who will accept return of the

materials and credit Avimor for the cost of those materials less any adjustments made by the suppliers including, but not limited to, cancellation charges, restocking fees, finance charges, taxes, duties and shipping costs. Idaho Power shall salvage all shipped materials for which suppliers will not accept return of the materials. Salvage fees collected by Idaho Power, if any, shall be retained by the Company.

9. Within three (3) months of discontinuance of design work and material purchases due to IPUC non-approval of the Electric Agreement, Idaho Power shall submit an accounting to Avimor of the costs of the design work and the material purchases and shall remit a check to Avimor for any balance due Avimor for unencumbered portions of the Initial Payment. In the event Avimor disputes any portion of such accounting, Avimor shall deliver written notice of same to Idaho Power within thirty (30) days of Avimor's receipt of same. The parties shall work together in good faith to resolve any such dispute. Any dispute that the parties are unable to resolve shall be submitted to an independent third-party consultant familiar with utility design and purchasing procedures and mutually agreeable to both parties, whose decision shall be final and uncontestable.

10. Each Party will indemnify and hold harmless the other Party and its officers, directors, employees, agents, representatives, parent company, affiliates and subsidiaries from and against loss, damage or liability, exclusive of costs and attorney's fees, resulting from claims asserted by third persons against either or both Parties to this Agreement on account of injury or death to persons

or damage or destruction of property, unless such injury or damage shall have resulted from the sole negligence of the other Party or its employees, agents or contractors.

11. NEITHER PARTY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, PARENT COMPANY, AFFILIATES AND SUBSIDIARIES SHALL, IN ANY EVENT, BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, LOST PROFITS, REVENUE OR GOOD WILL, OR INTEREST, WHETHER SUCH LOSS IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

12. Any waiver at any time by either Party of any right with respect to any matter arising under this Agreement, or any failure to give notice provided hereunder, shall not be deemed to be a waiver with respect to any subsequent matter, nor as the establishment of or consent to any practice under this Agreement or an interpretation of any term or provision hereof.

13. Neither Party shall assign this Agreement or any portion thereof without the prior written consent of the other Party, which consent of such other Party shall not be unreasonably withheld. Upon proper assignment, this Agreement shall inure to the benefit of and be binding upon the successors in interest, assigns and legal representatives of Avimor and Idaho Power.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho without reference to its choice of

law provisions and venue for any court proceeding arising out of this Agreement shall be in Boise, Idaho.

15. This Agreement may only be amended or modified by a writing signed by the duly authorized representatives of both parties. This Agreement may be executed in counterparts, each of which, taken together, shall constitute one and the same Agreement.

16. In the event it becomes necessary for either Party to employ legal counsel or to bring an action at law or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover its costs and expenses incurred in such action from the other Party, including, without limitation, the cost of reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the day and year first above written.

IDAHO POWER COMPANY

AVIMOR, LLC, an Idaho limited liability company

By: Yvonne A. Grow
Title: VP, Delivery Eng & Ops

By: SunCor Idaho Inc., an Idaho Corporation
Its: Sole Member

By: DSB
Name: DWANE S. BLACK
Title: COO & EVP

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-08-15**

IDAHO POWER COMPANY

ATTACHMENT NO. 2

**AMENDMENT NO. 1 TO AGREEMENT TO PROVIDE
ELECTRIC TRANSMISSION AND SUBSTATION FACILITIES**

THIS Amendment No. 1, ("Amendment") dated July 22, 2008, is by and between AVIMOR, LLC ("Avimor"), an Idaho Limited Liability Company, with its principal offices at 485 East Riverside Drive, Eagle, Idaho, and IDAHO POWER COMPANY ("Idaho Power" or the "Company"), an Idaho corporation, with its principal offices at 1221 West Idaho Street, Boise, Idaho. Avimor and Idaho Power may also be referred to individually as "Party" or collectively as "Parties."

RECITALS

A. In an agreement dated August 17, 2006 ("Agreement"), Idaho Power and Avimor set forth the terms and conditions under which Idaho Power would construct transmission and substation facilities to provide electric service to Avimor's real estate development project to be located north of Eagle, Idaho. In accordance with the terms of that Agreement, Idaho Power has constructed 3.4 miles of 138 kV transmission line, and a substation with an initial capacity of 10 MVA. The transmission line and the substation facilities are collectively referred to in the Agreement and this Amendment as the "Requested Facilities".

B. The total cost of the design and construction of the Requested Facilities was \$4,300,000.00. Avimor has paid Idaho Power the full \$4,300,000 amount and the Requested Facilities have been constructed.

C. In accordance with the terms of Section 8 of the Agreement, on September 27, 2006, Idaho Power submitted the Agreement to the Idaho Public

Utilities Commission ("Commission") for approval. The Commission assigned Case No. IPC-E-06-23 to the Company's Application.

D. In Order No. 30322, issued on May 24, 2007, the Commission denied Idaho Power's request for approval of the Agreement with Avimor. In Order No. 30322 the Commission described several changes to the Agreement that the Commission would require as a condition of approval of the Agreement. Avimor subsequently petitioned for reconsideration and in Order No. 30396 the Commission accepted some of Avimor's requested changes to the prior order, but rejected others.

E. This Amendment is intended to implement the needed changes in the Agreement identified by the Commission in Orders Nos. 30322 and 30396.

NOW, THEREFORE, in consideration of the mutual obligations and undertakings set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Avimor and Idaho Power agree to amend the Agreement as follows:

AGREEMENTS

1. Defined terms in the Agreement have the same meanings in this Amendment.

2. Section 4.2 of the Agreement is hereby deleted in its entirety and the following substituted in its place.

"4.2 Refunds by Idaho Power. Avimor has timely made all of the Payments as provided herein and has otherwise performed its obligations under this Agreement. As a result, Avimor will be eligible to

receive periodic refunds from Idaho Power for either (a) a period of ten (10) years from the date of completion of the Requested Facilities (Section 3.1 of the Agreement) or (b) until Avimor has been refunded \$4,300,000, whichever occurs first. Refunds will be computed as follows:

4.2.1 Refunds for Connections Within the Project Boundaries. Idaho Power will refund Avimor \$110.00 per kW of estimated demand for electrical facilities installed within the Project to supply residential service under the Idaho Power's Rate Schedule 01, Residential Service, including any revisions to that schedule or any successor schedules. For purposes of this Agreement, the estimated kW demand for each permanent residential service connection will be 10kW per service for a refund amount of \$1,100.00 per permanent residential electrical service connection.

4.2.2 Refunds for non-residential loads taking service under Idaho Power's Schedules 07, 09, 19 or 24, including any revisions to those schedules or any successor schedules, will be calculated by multiplying \$110.00 times the kVA rating of the distribution transformers serving each such non-residential account.

4.2.3 Refunds to Avimor will accrue when a residential customer within the Project taking service under Schedule 01 permanently connects service or when a non-residential customer within the Project, taking service under Schedules 07, 09, 19 or 24,

has both permanent electrical service installed and the meter for said account is energized.

4.3 Refunds for Connections Outside the Project Boundaries.

4.3.1 Line Capacity Charge. Idaho Power will collect line capacity charges (LCCs) from all customers located outside the Project boundaries attaching to facilities that utilize the Requested Facilities to receive electric service. LCCs, would be assessed as follows:

(i) Customers receiving service under Schedule 01 or its successor rate schedule would pay \$1,100 per connection.

(ii) Customers receiving service under Schedules 07, 09, 19 or 24 or their successor rate schedules, would pay \$110 (times the kVA rating of the distribution transformers serving each such non-residential account.

4.3.2 Planned developments such as subdivisions will pay LCCs to Idaho Power at the time of the application (when the lots are "served") and not at the time of the physical power connection to the individual lot. LCCs for other customers would accrue in the same manner described in Section 4.2.3.

4.3.3 LCCs collected by Idaho Power will be paid to Avimor on a quarterly basis without interest.

4.3.4 LCCs will be collected in addition to regular Rule H charges. Cash allowances through Rule H would not be applicable to reduce LCCs."

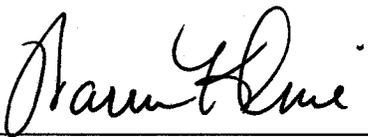
3. Except for the changes described in Section 2 above, all of the other terms and conditions of the Agreement will remain in full force and effect.

4. This Amendment shall be subject to the approval of the Commission and the respective rights and obligations of the Parties hereunder shall be subject to the continuing jurisdiction and regulatory authority of the Commission.

IN WITNESS WHEREOF, the Parties have entered into this Amendment effective as of the day and year first above written.

IDAHO POWER COMPANY

AVIMOR, LLC, an Idaho limited liability company

By: 

By: 
SunCor Idaho, Inc., an Idaho Corporation

Its: Sole Member

Title: VP, CUSTOMER SERVICES
REGIONAL OPERATIONS

By: 
Name: Dan Richter
Title: President