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IDAHO PUBLIC  
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR )  
AUTHORITY TO MODIFY ITS RULE H )  
TARIFF RELATED TO NEW SERVICE ) CASE NO. IPC-E-08-22  
ATTACHMENTS AND DISTRIBUTION LINE )  
INSTALLATIONS OR ALTERATIONS )  
\_\_\_\_\_ )

IDAHO POWER COMPANY

DIRECT TESTIMONY

OF

DAVID R. LOWRY

1 Q. Please state your name and business address.

2 A. My name is David R. Lowry and my business  
3 address is 1221 West Idaho Street, Boise, Idaho.

4 Q. By whom are you employed and in what  
5 capacity?

6 A. I am employed by Idaho Power Company as the  
7 Project Manager of Highway Relocations.

8 Q. Please describe your educational background.

9 A. In May of 1977, I received my Business  
10 Associates Degree in Business Management from Boise State  
11 University.

12 Q. Please describe your work experience with  
13 Idaho Power Company.

14 A. I became employed by Idaho Power Company in  
15 1984 in the Delivery Business Unit as a lineman.

16 In 1997, I was offered and accepted a position as a  
17 Facility Representative at the Boise Operations Center. My  
18 primary function was to manage requests for new line  
19 installations in accordance with Rule H, the Company's line  
20 installation tariff.

21 In 2000, I was offered and accepted a position in  
22 the Transmission & Distribution Design Group and given the  
23 responsibility of overseeing highway relocations. My prior  
24 experience with applying Rule H played an important role in

1 this transition.

2 In 2008, I was promoted to Project Manager of  
3 Highway Relocations.

4 Q. What is the purpose of your testimony in  
5 this proceeding?

6 A. I was asked by Mr. Gregory Said to describe  
7 instances where I have observed state and local  
8 governmental entities requiring Idaho Power to pay the  
9 costs of relocating its electrical distribution facilities  
10 located on public rights-of-way when those relocation costs  
11 should have more appropriately been borne by real estate  
12 developers.

13 Q. When the Company's distribution facilities  
14 must be relocated to accommodate changes in public  
15 roadways, how are the costs of those relocations generally  
16 assigned?

17 A. Responsibility for facility relocation costs  
18 is generally assigned according to the entity making the  
19 request for the relocation. Such requests generally come  
20 from three main sources. First, Idaho Power often receives  
21 requests from governmental agencies to relocate  
22 distribution facilities to accommodate new road  
23 construction or maintenance of the present roadways. These  
24 requests may originate from the Idaho Department of



1 party is determined. Idaho Power bears the percentage of  
2 the utility relocation cost commensurate with the  
3 percentage of the Public Road Agency's funding and the  
4 third party pays the remaining percentage of the line  
5 relocation cost.

6 Q. How does the Company currently process  
7 relocation requests from government agencies?

8 A. When a request is received from a Public  
9 Road Agency for relocation of a line in a road right-of-  
10 way, the Company makes a good faith effort to determine the  
11 primary reason for the relocation. Idaho Power requests a  
12 letter from the Public Road Agency stating that the  
13 relocation is for public benefit and the primary reason for  
14 the relocation is not for a third party. If the Public  
15 Road Agency responds in the affirmative, the Company knows  
16 it will bear the total cost of the relocation. If the  
17 Public Road Agency does not respond affirmatively, further  
18 inquiry is required.

19 If the Public Road Agency plans on making  
20 improvements for the general public benefit within three  
21 years from the day the improvements begin, or from their  
22 budgeted period, Idaho Power will fund the cost of such  
23 relocation. Exceptions to this occur when Idaho Power has  
24 prior rights of occupancy.

1 Q. Please explain how prior rights of occupancy  
2 affect responsibility for relocation costs?

3 A. The Public Road Agency requesting the  
4 relocation may be responsible for the costs of the  
5 relocation if:

6 1. Idaho Power has a prior private  
7 easement; or

8 2. Idaho Power can claim prescriptive  
9 rights for facilities installed previously on private  
10 property. If a line has been relocated once at highway  
11 agency expense, future moves at that location will be at  
12 the agency's expense.

13 Q. Have you observed problems with some  
14 developers trying to avoid paying their share of relocation  
15 costs?

16 A. Yes. In some cases, developers have asked a  
17 city to make a relocation request to Idaho Power on their  
18 behalf and the city has not disclosed that the developer is  
19 involved. The discovery of the third-party developer  
20 beneficiary usually is made when the development plans are  
21 approved and released by the Public Road Agency.

22 Q. Please describe a specific instance where a  
23 local developer has shifted the costs of facility  
24 relocation to Idaho Power with the assistance of a



1 facilities. If the Idaho Transportation Department does  
2 not disclose to the Company that the LID has been formed to  
3 do additional work in the right-of-way as a third party,  
4 the LID will collect funding from nearby property owners  
5 only for the improvements and relocation of city-owned  
6 utilities but not for all the utilities in the right-of-  
7 way. ITD then requires Idaho Power and other private  
8 utility companies to fund the relocation costs of their  
9 utility facilities. Correspondence between Idaho Power,  
10 ITD, and the City of Nampa has been included as Exhibit No.  
11 1 to my testimony to illustrate how this cost shifting  
12 occurs.

13 Q. Is this method of avoiding payment of  
14 relocation expenses a recent trend?

15 A. Probably not. However, the discovery of the  
16 frequency of Public Road Agencies inappropriately  
17 facilitating a shift of relocation expenses is recent. The  
18 Company's decision to consolidate review of Public Road  
19 Agency requests for relocations under one person in 2006  
20 has given the Company a better overall knowledge of the  
21 projects and how they are financed.

22 Q. How frequently does this cost shifting  
23 occur?



**BEFORE THE**  
**IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-08-22**

**IDAHO POWER COMPANY**

**LOWRY, DI**  
**EXHIBIT NO. 1**



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WARDEN

June 27, 2007  
Via Fax: 208-388-6906

David Lowry  
Relocation Leader  
Idaho Power Company  
PO Box 70  
Boise, ID 83707

Dear Mr. Lowry:

I have reviewed your letter of June 25, 2007, written on behalf of Idaho Power and Qwest, to Sue Higgins, Secretary to the Idaho Transportation Board.

Pursuant to Idaho Code 40-312(3), utilities are permissive users of Department right of way and shall relocate in accordance with the Order of the Idaho Transportation Board (Board). A Board Order was issued last week following an extensive review of the history of both the project and the more recent posturing concerning payment for the relocation.

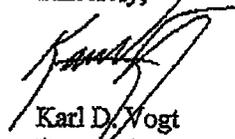
Please be advised that the construction project is a state funded highway improvement, the utilities are within our right of way, relocation is necessary to avoid delay to our project and to avoid inconvenience to the traveling public. Idaho Power and Qwest have been aware of the need for this relocation for many months, and the Department will not accept your failure to remove the utilities in a timely manner.

I have reviewed numerous letters and e-mails that suggest Idaho Power and Qwest will only relocate their facilities upon a commitment of reimbursement for the costs. While I acknowledge the argument you attempt to advance, be advised that the Board Order requires relocation at your expense. Potentially the financial responsibility for the relocation could be addressed concurrent with the relocation or following it, however, the Department will not tolerate payment to be used as a bargaining tool prior to you starting work.

David Lowry  
June 27, 2007  
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Please be further advised that the failure to relocate your facilities could significantly delay our project and further inconvenience the traveling public. Should such delay occur, the Board will seek reimbursement and other appropriate relief from the Utilities responsible. Please govern yourself accordingly.

Sincerely,



Karl D. Vogt  
Deputy Attorney General  
Idaho Transportation Department

KDV/jc



June 29, 2007

Mr. Karl D. Vogt  
Deputy Attorney General  
State of Idaho  
Idaho Transportation Department  
Contracts & Administrative Law Division  
P.O. Box 7129  
Boise, ID 83707-1129

Re: ITD Nampa-Boulevard Relocation

Dear Mr. Vogt:

Idaho Power and Qwest have reviewed your letter dated June 27, 2007, regarding the relocation of pole line facilities from ITD's Nampa-Caldwell Boulevard right-of-way. The utilities will proceed with their relocation of the facilities as previously indicated, and within the end of July timeline requested by the City of Nampa and ITD.

Please understand that in our prior correspondence Idaho Power and Qwest were not seeking to disrupt the improvement work in question. We were merely trying to confirm ahead of time that the cost of the relocation work would be reimbursed to the utilities, since the facilities would be relocated to make way for the LID #136 improvements. The initial request for the relocation came from the City of Nampa in connection with the LID improvements, and the poles are being removed from the same area where the LID improvements are to occur. Under this situation, the utilities are routinely reimbursed for the cost of relocating their facilities to make way for the third-party development.

In any event, we appreciate the willingness expressed in your letter to address the reimbursement issue further. Idaho Power and Qwest believe that it would be best to sit down with ITD and the City of Nampa/LID #136 representatives to discuss the relocation. The utilities greatly value our ongoing relationships with the Department and the City, both with regard to cooperative roadway work and in our broader relations, and we look forward to resolving this matter amicably.

Sincerely,

Douglas J. Dockter, P.E.  
T&D Design Leader

cc: Mary Dobson (Qwest)  
Pat Harrington  
Dave Lowry  
Colleen Ramsey  
Ed Kosydar  
Mike Ybarguen



An IDACORP Company

IDAHO POWER COMPANY  
P.O. BOX 70  
BOISE, IDAHO 83707

Michael Fuss, P.E.  
Public Works Director  
City of Nampa  
Public Works Department  
411 Third St. South  
Nampa, ID 83651

July 16, 2008

Re: Nampa LID #136

Dear Michael,

Thank you for your latest response regarding the relocation of Idaho Power facilities from the Nampa-Caldwell Boulevard right-of-way. There have been several moving parts to this discussion so I thought it would be good to restate Idaho Power's policy on power line relocations.

The starting point for Idaho Power relocations is Rule H, on file with the Idaho Public Utilities Commission. Rule H states the basic rule that any party requesting the relocation of Idaho Power facilities must pay for the cost of the relocation. This assures that the party benefiting from the relocation pays for the cost of the work, rather than having the costs passed on to all of Idaho Power's customers.

There are additional relocation requirements that apply when Idaho Power's facilities are located within road rights-of-way. As a general rule, the owner of the road right-of-way may require Idaho Power to relocate its facilities at Idaho Power expense for the road owner's own road improvement projects (assuming Idaho Power does not have a separate easement or other property right for the facilities). These projects typically involve road widening work by the road owner, in which case Idaho Power relocates its facilities further back to the edge of the new right-of-way at its own expense.

However, Idaho Power's policy is *not* to relocate its facilities from road right-of-way at its expense if the relocation is required for the benefit of a third party rather than the road owner. A typical example of this situation is the installation of a turn lane for a new commercial development. The road owner typically will require the developer to pay for the cost of the turn lane, and Idaho Power similarly requires the developer to pay for the cost of relocating a power line to make room for the turn lane.

In Idaho Power's view this same principle applies to its power line relocation work for LID #136 last summer. Certain improvements were made within the Idaho Department of Transportation Department's (ITD) Nampa-Caldwell Blvd right-of-way for the benefit of the LID and its participants. ITD required the LID to pay for the cost of installing the improvements and

Exhibit No. 1  
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D. Lowry, Idaho Power Company  
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Telephone (208) 388-8653

similarly, Idaho Power should be reimbursed for its power line relocation work that was necessitated by these improvements.

This is Idaho Power's policy throughout its service territory - if a power line relocation is required for road improvements that benefit a specific developer or group, the Company requires the developer or group to pay for the costs of the relocation. This procedure has been formally recognized by the Ada County Highway District for many years, under ACHD Ordinance 330. Idaho Power follows the same approach in all other Idaho counties within our service territory, even though the other counties have not adopted specific relocation ordinances as ACHD has. Furthermore, Idaho Power's franchise agreements in Idaho recite the rule that Idaho Power is not required to pay for the relocation of its facilities in city rights-of-way if the relocation is for the benefit of a third party. For instance, Nampa's Franchise Ordinance No. 3181 states in Section 3 that

The Grantee [Idaho Power] shall bear the cost of relocating its facilities at the City's request, *unless the facilities are to be relocated for the benefit of a third party, in which case the third party shall pay the costs of relocation.* (Emphasis added).

This principle clearly applies to the relocation of Idaho Power's facilities from the ITD Nampa-Caldwell Boulevard right-of-way. Idaho Power's facilities were relocated for the benefit of the LID #136 project and therefore the LID should pay for the cost of the relocation work. This is Idaho Power's policy throughout its service territory.

Idaho Power's relocation policy applies to LIDs in the same manner as any other entity who requests the relocation of Idaho Power facilities. In fact, as we have discussed, Rule H includes a specific section for LID relocation requests. This section was added to Rule H to allow the participants of LIDs to pay for power line alterations through the collective LID payment mechanism, rather than paying the Company directly as any other customer or entity would.

You questioned whether Nampa LID #136 falls within the Rule H definition of LIDs, since LID #136's purposes are broader than the purpose set forth in Rule H - "the study, financing, and construction of a Distribution Line Installation or alteration". However, Idaho Power believes Rule H would apply to LID #136, since the stated purposes of LID #136 specifically include "utility improvements". Rule H does not state that power line relocations must be the *only* purpose of an LID. The clearer interpretation is that power line relocations must be one of the named purposes of the LID, regardless of any other purposes designated for the LID.

An equally important point under Rule H is that even if an LID entity is determined not to meet the Rule H definition of an LID, this does not mean that the entity is not required to pay for power line installations and alterations under Rule H. Rule H applies to *any* entity requesting a power line installation or alteration, whether it is an LID or not. As indicated above, the LID

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section of Rule H simply provides an opportunity for the participants of an LID to pay the cost of facility relocations through the collective LID payment process. If an entity does not wish to follow this process, it can simply pay the relocation costs directly to Idaho Power as a regular customer and not through the LID mechanism. In either case though the relocation payment must be made to Idaho Power.

I hope this letter answers your questions regarding Idaho Power's policy on power line relocations and how that policy applies to our relocation work for the LID #136 improvements. Idaho Power feels that it is important to apply its relocation requirements consistently and to collect monies that are due for relocation work for the benefit of all of our customers. Idaho Power again requests that the City of Nampa and LID #136 reimburse Idaho Power for its relocation costs for the project of \$71,807.00. As before, this request also includes reimbursement of the additional Qwest costs of \$48,900, which were also incurred in the same joint relocation work by the utilities (Idaho Power installed the new poles and re-attached its electrical wires to the new poles, while Qwest removed the existing poles and re-attached its communication cables to the new poles).

Please feel free to contact me if you have any further questions regarding this request.

Sincerely

Michael D. Ybarguen