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IDAHO PUBLIC
UTILITIES COMMISSION

LISA D. NORDSTROM
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July 14, 2011

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-08-22
**IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY
FOR AUTHORITY TO MODIFY ITS RULE H LINE EXTENSION TARIFF
RELATED TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE
INSTALLATIONS**

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of Idaho Power Company's Motion to Accept Conforming Rule H Section 10 Tariff in the above matter.

Very truly yours,

Lisa D. Nordstrom

LDN:csb
Enclosures

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 IDAHO PUBLIC
 UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF IDAHO POWER COMPANY FOR)	CASE NO. IPC-E-08-22
AUTHORITY TO MODIFY ITS RULE H)	
LINE EXTENSION TARIFF RELATED TO)	IDAHO POWER COMPANY'S
NEW SERVICE ATTACHMENTS AND)	MOTION TO ACCEPT
DISTRIBUTION LINE INSTALLATIONS.)	CONFORMING RULE H SECTION
)	10 TARIFF
)	

Idaho Power Company ("Idaho Power" or "Company"), in accordance with RP 056 and Idaho Code §§ 61-624 and -629, hereby moves that the Idaho Public Utilities Commission ("Commission") issue an order approving Section 10 of the Rule H line extension tariff, conforming it to Idaho Supreme Court Opinion No. 56 issued in *Ada County Highway Dist. v. Idaho Public Utilities Com'n*, --- P.3d ----, 2011 WL 2023259, on May 25, 2011 ("Opinion").

This Motion is based on the following:

I. BACKGROUND

1. On October 30, 2008, Idaho Power filed an Application seeking authority to update and clarify its line extension tariff. R. Vol. I, pp. 1-55. Specifically, the

Company sought to update the charges that recover the costs it incurs for installing new service lines and relocating existing electric distribution facilities for private parties. The existing language on relocations was expanded to include recovery of utility relocation costs within the public right-of-way from those receiving a private benefit.

2. On July 1, 2009, the Commission issued Order No. 30853 partially approving the Company's request to modify its line extension tariff. R. Vol. II, pp. 313-326. The Ada County Highway District ("ACHD") timely filed a Petition for Reconsideration in which it argued that the Commission exceeded its statutory authority in approving the changes to Sections 10 ("Relocations in Public Road Rights-of-Way") and 11 ("Eliminating or Minimizing Relocation Costs in Public Road Rights-of-Way") of the tariff. In Order No. 30883 issued August 19, 2009, the Commission granted reconsideration to review the legal arguments, scheduling briefs and an oral argument on October 13, 2009. R. Vol. III, pp. 405-410. After reviewing the initial record and the reconsideration testimony and briefs, the Commission issued final Order No. 30955 on reconsideration affirming, rescinding, amending, and clarifying parts of its initial Order pursuant to Idaho Code § 61-624. R. Vol. IV, pp. 648-678.

3. On January 10, 2010, ACHD filed an appeal to the Idaho Supreme Court from the Commission's final Order, contending that Sections 10 and 11 of the amended tariff infringed upon its exclusive jurisdiction to determine whether a third party is required to reimburse a utility for all or a portion of its cost of relocating the utility's distribution facilities that are in a public right-of-way and that the Commission exceeded the authority granted it by the legislature. R. Vol. IV, pp. 679-683. Appellate briefs were filed by ACHD; the Commission; Idaho Power; and the Idaho Association of Highway

Districts, the Association of Idaho Cities, and the Idaho Association of Counties. On May 9, 2011, the ACHD, the Commission, and Idaho Power argued the matter to the Idaho Supreme Court (“Court”). The Court later issued its Opinion on May 25, 2011.

4. The Court found that tariff Section 10, providing that when a utility was required to relocate its distribution facilities within a public right-of-way for the benefit of a private beneficiary, such beneficiaries may be required to pay some or all of the costs incurred in doing so, did not usurp ACHD’s exclusive jurisdiction over the public rights-of-way. Opinion at 4-9.

5. The Court agreed that the Commission has the authority to determine the costs that the Company can charge a private person who requests services from the Company. *Id.* at 10. However, the Court ruled that the Commission exceeded its authority when it adopted that portion of Section 10 that would have allowed the Commission to require a third party to pay for services it did not request from Idaho Power if the Commission determined a relocation required by a public road agency benefited the third party. *Id.* at 11. Because parties such as county highway districts are not entities regulated by the Commission, the Court also found that the Commission exceeded its authority when it adopted Section 11 of the tariff, which could be interpreted as giving the Commission the authority to order non-utility parties to use their best efforts to find ways to minimize or eliminate the cost of relocating utility facilities. *Id.* at 12. Accordingly, the Court set aside Sections 10 and 11 of the Rule H tariff.

6. In situations where the Idaho Supreme Court sets aside the Commission’s order in whole or in part, Idaho Code §§ 61-624 and -629 provide that the Commission

will alter or amend the order appealed from to meet the ruling of the Court. In the manner provided by these statutes, Idaho Power requests the Commission approve Section 10 as set forth in the proposed tariff included with this Motion as Attachment No. 1. Idaho Power does not propose a new Section 11.

7. Idaho Power believes the proposed Rule H Section 10 tariff satisfies the objections of the Court. Incorporating the language of Idaho Code § 40-210 that was previously found in tariff Section 11, the proposed tariff Section 10 clarifies the Commission's expectation that Idaho Power will participate in public road agency planning and coordination meetings to minimize or eliminate utility relocation costs. The proposed language removes mention of "other parties" using their best efforts to minimize or eliminate utility relocation costs from the tariff.¹

8. The last paragraph of the proposed tariff Section 10 requires that:

If, however, during the process provided in Idaho Code § 40-210, the Company determines that one or more Private Beneficiaries has, directly or indirectly through a Public Road Agency, requested that the Company's facilities be relocated for the benefit of the Private Beneficiaries, the Company shall recover the Relocation Costs associated with such request from the Private Beneficiaries. If there is a dispute, the Company may initiate a proceeding to have the Commission establish the reasonableness of the Company's calculation of the Relocation cost responsibility as between the Company and the Private Beneficiaries.

This language is consistent with the Court's finding that the Commission has authority to determine the costs that the Company can charge a private person who requests Company services. *Id.* at 10. It also recognizes that the Commission has jurisdiction

¹ Participant inclusive language continues to be part of Idaho Code § 40-210(2), which states: "While recognizing the essential goals and objectives of the public highway agency in proceeding with and completing a project, the parties shall use their best efforts to find ways to (a) eliminate the cost to the utility of relocation of the utility facilities, or (b) if elimination of such costs is not feasible, minimize the relocation costs to the maximum extent reasonably possible." (Emphasis added.)

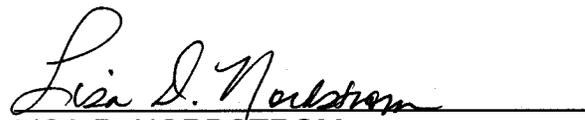
under Idaho Code § 61-507 to regulate any utility "service," which reasonably includes removing and reinstalling distribution facilities. *Id.* The proposed Section 10 makes clear that the Commission has authority to determine the costs that the Company can charge for relocation services in situations where private parties have requested Idaho Power to relocate its facilities indirectly through a Public Road Agency. The proposed tariff language does not exert jurisdiction over non-utility third parties, nor does it claim that the Commission can enforce collection of relocation costs from third parties (which the Company would seek in a court of law). *Id.* at 11-12.

9. Idaho Power submits that the record in this proceeding is complete and that after public notice, the Commission may approve the Company's proposed Rule H Section 10 tariff.

II. CONCLUSION

For the reasons cited herein, Idaho Power respectfully submits that the enclosed Rule H Section 10 tariff conforms to and is consistent with the Idaho Supreme Court's Opinion issued in *Ada County Highway Dist. v. Idaho Public Utilities Com'n.* The Company hereby requests that the Commission issue its order after public notice approving the Company's proposed Section 10 of the Rule H line extension tariff.

DATED at Boise, Idaho, this 14th day of July 2011.


LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of July 2011 I served a true and correct copy of IDAHO POWER COMPANY'S MOTION TO ACCEPT CONFORMING RULE H SECTION 10 TARIFF upon the following named parties by the method indicated below, and addressed to the following:

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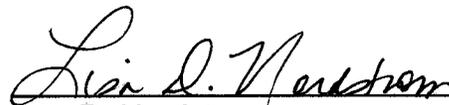
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Lisa D. Nordstrom

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION**

CASE NO. IPC-E-08-22

IDAHO POWER COMPANY

ATTACHMENT NO. 1

RULE H
NEW SERVICE ATTACHMENTS
AND DISTRIBUTION LINE
INSTALLATIONS OR
ALTERATIONS
(Continued)

10. Relocations in Public Road Rights-of-Way

The Company often locates its distribution facilities within state and local public road rights-of-way under authority of Idaho Code § 62-705 (for locations outside Idaho city limits) and the Company's city franchise agreements (for locations within Idaho city limits). When the Company is notified of a road improvement project pursuant to Idaho Code § 40-210, the Company will meet with the Public Road Agency to review plans, understand the goals, objectives, and funding sources for the proposed project, provide and discuss recommendations to reasonably eliminate or minimize relocation costs, limit the disruption of utility services, eliminate or reduce the need for present or future utility facility relocation, and provide reasonable schedules to enable coordination of the highway project construction and utility facility relocation as may be necessary.

If the Company's facilities must be relocated because they incommode the public use of the road, highway or street, the Company will relocate its distribution facilities from or within the public road rights-of-way and the Company will bear the costs of such relocation.

If, however, during the process provided in Idaho Code § 40-210, the Company determines that one or more Private Beneficiaries has, directly or indirectly through a Public Road Agency, requested that the Company's facilities be relocated for the benefit of the Private Beneficiaries, the Company shall recover the Relocation Costs associated with such request from the Private Beneficiaries. If there is a dispute, the Company may initiate a proceeding to have the Commission establish the reasonableness of the Company's calculation of the Relocation cost responsibility as between the Company and the Private Beneficiaries.

11. Existing Agreements

This rule shall not cancel existing agreements, including refund provisions, between the Company and previous Applicants, or Additional Applicants. All Applications will be governed and administered under the rule or schedule in effect at the time the Application was received and dated by the Company.