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LISA D. NORDSTROM
Lead Counsel
lnordstrom@idahopower.com

April 4, 2012

VIA HAND DELIVERY

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

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 are an original and seven (7) copies of Idaho Power Company's Answer to Petitions for Reconsideration filed in the above matter.

Very truly yours,

Lisa D. Nordstrom

Lisa D. Nordstrom

LDN:csb
Enclosures

1221 W. Idaho St. (83702)
P.O. Box 70
Boise, ID 83707

LISA D. NORDSTROM (ISB No. 5733)
PATRICK A. HARRINGTON (ISB No. 3423)
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-5825
Facsimile: (208) 388-6936
lnordstrom@idahopower.com
pharrington@idahopower.com

Attorneys for Idaho Power Company

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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.	)	CASE NO. IPC-E-08-22 IDAHO POWER COMPANY'S ANSWER TO PETITIONS FOR RECONSIDERATION

Pursuant to the Idaho Public Utilities Commission's ("Commission" or "IPUC") RP 331.05, Idaho Power Company ("Idaho Power" or "Company"), by and through its attorneys of record, hereby submits its Answer to the Petitions for Reconsideration filed by the Ada County Highway District ("ACHD") and Build Idaho Inc. ("Build Idaho") in this case on March 28, 2012. The Petitions for Reconsideration were filed in response to the Commission's Order No. 32476, which approved with modifications Idaho Power's revised Rule H, Section 10, filed with the Commission on January 11, 2012.

I. BACKGROUND

Following is a brief summary of the proceedings to date in this matter.

Commission Order No. 30853. On November 30, 2009, the Commission issued Order No. 30853 approving the addition of Sections 10 and 11 to Idaho Power's Rule H line extension tariff. Sections 10 and 11 set forth certain rules authorizing Idaho Power to recover the cost of distribution line relocations from public road rights-of-way from private beneficiaries.

ACHD v. IPUC. ACHD objected to Sections 10 and 11 and appealed the Commission's decision in Order No. 30853 to the Idaho Supreme Court, claiming that Sections 10 and 11 exceeded the Commission's statutory authority. The Supreme Court issued its decision in *Ada County Highway Dist. v. Idaho Public Utilities Commission*, 253 P.3d 675 (Idaho 2011) ("*ACHD v. IPUC*") on May 25, 2011, holding that Sections 10 and 11 exceeded the Commission's authority under Idaho's public utility statutes.

Amended Section 10. In response to the Supreme Court's decision in *ACHD v. IPUC*, Idaho Power filed its Amended Motion to Accept Conforming Rule H Section 10 Tariff with the Commission on January 11, 2012 ("Conforming Motion"). The Conforming Motion proposed to replace Rule H Sections 10 and 11, which the Supreme Court found to be deficient in *ACHD v. IPUC*, with a new amended Rule H Section 10 ("Amended Section 10"). Idaho Power's Conforming Motion was made under Idaho Code § 61-629, which provides that if an order of the Commission is set aside in whole or in part by the Supreme Court, any party to the proceeding may file a motion with the Commission to amend the order appealed from to meet the objections of the Court.

Idaho Power consulted with ACHD over the course of several months in an attempt to reach an agreement on the wording of Amended Section 10. As described in the Conforming Motion, Idaho Power accepted ACHD's revisions to Idaho Power's

proposed wording of the first two paragraphs of Amended Section 10, but the parties could not agree on the wording of the final sentence of the third paragraph of Amended Section 10. Idaho Power proceeded with its filing of the Conforming Motion, including the language proposed by ACHD.

Responses to Amended Section 10. In response to Idaho Power's Conforming Motion, ACHD filed its Memorandum in Opposition on January 25, 2012. ACHD's Memorandum in Opposition objected to all three paragraphs of Idaho Power's Amended Section 10, asserting that the language of Amended Section 10 "expressly contradicts the Idaho Supreme Court's opinion" in *ACHD v. IPUC*. Idaho Power then filed its Answer to ACHD's Memorandum in Opposition on February 10, 2012, addressing the arguments set forth in ACHD's Memorandum in Opposition and maintaining that Amended Section 10 conformed to the Supreme Court's decision in *ACHD v. IPUC*, notwithstanding ACHD's arguments.

Commission Order No. 32476. The Commission issued its Order No. 32476 in this case on March 7, 2012, approving Idaho Power's Amended Section 10 with certain modifications ("Revised Section 10").

Petitions for Reconsideration. ACHD and Build Idaho[1] filed Petitions for Reconsideration[2] of the Commission's Order No. 32476 on March 28, 2012. The Petitions for Reconsideration maintain that Revised Section 10 does not conform to *ACHD v. IPUC* and thus that the Commission should reconsider its decision in Order No. 32476.

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[1] Build Idaho has not petitioned to intervene and is not a party, although it has petitioned for reconsideration.

[2] Neither ACHD nor Build Idaho served Idaho Power with its Petition for Reconsideration as required by RP 63.01.

II. ARGUMENT

ACHD objects to all three paragraphs of Revised Section 10 approved in Order No. 32476 in the ACHD Petition for Reconsideration ("ACHD Petition"), while Build Idaho objects only to the third paragraph of Revised Section 10 in its Petition for Reconsideration ("Build Idaho Petition"). The following analysis addresses each paragraph of Revised Section 10 in order.

Section 10, Paragraph 1. The first paragraph of Revised Section 10 reads as follows:

> 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 as provided in Idaho Code § 40-210.

The ACHD Petition argues on page ten that the second sentence of this paragraph "mandates at least three things: (1) that ACHD provide notice to Idaho Power of road improvement projects; (2) that Idaho Power meet with ACHD; and (3) that ACHD meet with Idaho Power." If nothing else, this strained argument highlights ACHD's determined effort throughout this proceeding to find adverse impacts of Section 10 on Public Road Agencies where none exist. Nothing in the second sentence directs the Public Road Agency take any action whatsoever. The sentence is directed exclusively at Idaho Power and simply instructs the Company to meet with Public Road Agencies on road improvement projects, as the Company is expressly authorized to do under Idaho Code § 40-210. The intent of the second sentence is so clear and innocuous, and its

reference to Public Road Agencies so inconsequential, that, in Idaho Power's view, no reconsideration of the first paragraph of Revised Section 10 is necessary or warranted.

Section 10, Paragraph 2. The second paragraph of Revised Section 10 reads as follows:

> If a Public Road Agency determines that the Company's facilities incommode the public use of any road, highway or street, the Public Road Agency can require the Company to relocate or remove the facilities. If a Public Road Agency determines that the Company's facilities must be relocated or removed 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.

ACHD objects to this paragraph in the ACHD Petition, stating on page 12 that:

> Regardless of Idaho Power's intent, the language in the Proposed Amended Rule H indicates that the only circumstance under which a Public Road Agency "can require" utility relocation is "[i]f a Public Road Agency determines that the Company's facilities must be relocated or removed because they incommode the public use [of the right-of-way]." (Emphasis added.)

Idaho Power disagrees with this assertion. Nothing in the second paragraph of Revised Section 10 states that the paragraph describes the "only" situation under which Idaho Power is required to relocate its facilities at the request of a Public Road Agency. As indicated on page six of Idaho Power's Answer to ACHD's Memorandum in Opposition dated February 10, 2012, the second paragraph of Revised Section 10 is not intended to provide an exhaustive list of all conditions under which Idaho Power is to relocate or remove its facilities from the public road right-of-way. It simply states by far the most common reason, for descriptive purposes, where the Company's facilities "incommode the public use." It is also worth reiterating that "incommode the public use"

is not a mere term of convenience; it is the statutory standard for the location electric utility facilities in county road rights-of-way in Idaho. More specifically, Idaho Code § 62-705 provides that electric utilities may locate facilities in public road rights-of-way within Idaho counties "in such manner and at such places as not to incommode the public use of the road, highway, street or railroad." Reciting this statutory standard in the second paragraph of Section 10 is entirely appropriate and consistent with Idaho Power's actual relocation practices.

Idaho Power continues to believe that the second paragraph of Section 10 provides important background information for the reader's understanding of the Company's relocation practices within public road rights-of-way in Idaho. Idaho Power further believes that the second paragraph has no impact whatsoever on the rights of ACHD or any other Public Road Agency with respect to the relocation of Idaho Power facilities from public road rights-of-way. Accordingly, the Company asserts that no reconsideration of the second paragraph by the Commission is necessary or warranted.

Section 10, Paragraph 3. The third paragraph of Revised Section 10 reads as follows:

> If one or more Private Beneficiaries has, directly or indirectly through a Public Road Agency, requested that the Company's facilities be relocated or removed, the Company will use reasonable efforts to recover that portion of the total Relocation or removal costs attributable to the request from the Private Beneficiaries. If the Private Beneficiaries dispute the Company's calculation of the Private Beneficiaries' cost responsibility, either the Company or the affected Private Beneficiaries may initiate a proceeding to have the Commission establish the reasonableness of the Company's calculation of the Relocation or removal cost responsibility as between the Company and the Private Beneficiaries.

Both ACHD and Build Idaho object to the phrase "directly or indirectly through a Public Road Agency" in this paragraph. The Petitions for Reconsideration of ACHD and Build Idaho as to paragraph three mirror each other and references to ACHD herein are equally applicable to Build Idaho with respect to paragraph three. ACHD indicates that Idaho Power and the Commission could simply treat any relocation request by a Public Road Agency as "an 'indirect' request for service from a private party." This objection strains credibility when you consider that both Idaho Power and the Commission must base their actions on substantial, competent evidence. *See Citizen's Utility Co. v. Idaho Pub. Utilities Comm'n,* 112 Idaho 1061, 1063, 739 P.2d 360, 362 (Idaho 1987). However, in order to avoid any misunderstanding related to the third paragraph, the Company would not object if the Commission modified Revised Section 10 to delete the phrase "directly or indirectly through a Public Road Agency" so that the Section 10 would read as follows:

> If one or more Private Beneficiaries has requested that the Company's facilities be relocated or removed, the Company will use reasonable efforts to recover that portion of the total Relocation or removal costs attributable to the request from the Private Beneficiaries. If the Private Beneficiaries dispute the Company's calculation of the Private Beneficiaries' cost responsibility, either the Company or the affected Private Beneficiaries may initiate a proceeding to have the Commission establish the reasonableness of the Company's calculation of the Relocation or removal cost responsibility as between the Company and the Private Beneficiaries.

This language would square precisely with the Supreme Court's finding in *ACHD v. IPUC* that "IPUC certainly has the authority to determine the costs that Company can charge a private person who requests services from Company." *ACHD v. IPUC*, 253 P. 3d at 682.

Idaho Power also notes that ACHD, and now Build Idaho, refuse to recognize the difference in jurisdictional authority over cost causation and cost recovery. A myriad of authorities, including public road agencies, can and do impose costs on Idaho Power as the utility that provides electrical service. These various public authorities do not determine how Idaho Power will recover the costs that are imposed to provide for the service. The Idaho Legislature has specifically delegated the authority to investigate and fix rates and charges for utility services (which include relocation of facilities) to the Commission in Idaho Code § 61-503. Complaints concerning the reasonableness of utility charges and the cost recovery thereof are subject to the Commission's jurisdiction, with review by the Idaho Supreme Court upon exhaustion of the parties' administrative remedies. *See Idaho Code §§ 61-612 and 61-621* and *Grindstone Butte Mutual Canal Co. v. Idaho Pub Utilities Comm'n,* 102 Idaho 175, 178, 627 P.2d 804, 807 (Idaho 1981).

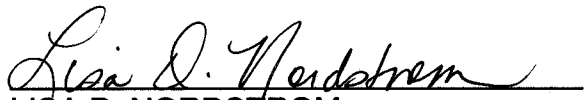
ACHD has noted in the ACHD Petition that Rule H also addresses relocations in Section 6. However, Idaho Power believes that relocations from road rights-of-way are of particular importance because of the coordination that is required with Public Road Agencies, as referenced in Revised Section 10. For that reason, Idaho Power believes it is appropriate to address road right-of-way relocations separately in Revised Section 10, including the expanded background explanation provided in that Section.

III. CONCLUSION

For the reasons described herein, Idaho Power maintains that Revised Section 10 is in conformance with the Supreme Court's decision in *ACHD v. IPUC.* However, Idaho Power has no objection, if the Commission finds it to be in the public interest, that the changes to Section 10 offered by the Company be approved. This would resolve any

concerns, real or imagined, raised in ACHD's and Build Idaho's Petitions for Reconsideration. If the Commission does not believe the changes proposed by Idaho Power are necessary, Commission Order No. 32476 should be affirmed.

Respectfully submitted this 4th day of April 2012.



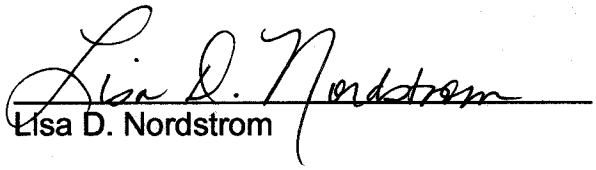
LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April 2012 I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO PETITIONS FOR RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff Weldon B. Stutzman Deputy Attorney General Idaho Public Utilities Commission 472 West Washington (83702) P.O. Box 83720 Boise, Idaho 83720-0074	_X_ Hand Delivered ____ U.S. Mail ____ Overnight Mail ____ FAX _X_ Email weldon.stutzman@puc.idaho.gov
Building Contractors Association of Southwestern Idaho Michael C. Creamer GIVENS PURSLEY, LLP 601 West Bannock Street P.O. Box 2720 Boise, Idaho 83701-2720	____ Hand Delivered _X_ U.S. Mail ____ Overnight Mail ____ FAX _X_ Email mcc@givenspursley.com
City of Nampa *AND* Association of Canyon County Highway Districts Matthew A. Johnson Davis F. VanderVelde WHITE PETERSON GIGRAY ROSSMAN NYE & NICHOLS, P.A. 5700 East Franklin Road, Suite 200 Nampa, Idaho 83687-7901	____ Hand Delivered _X_ U.S. Mail ____ Overnight Mail ____ FAX _X_ Email mjohnson@whitepeterson.com dvandervelde@whitepeterson.com
The Kroger Co. Michael L. Kurtz Kurt J. Boehm BOEHM, KURTZ & LOWRY 36 East Seventh Street, Suite 1510 Cincinnati, Ohio 45202	____ Hand Delivered _X_ U.S. Mail ____ Overnight Mail ____ FAX _X_ Email mkurtz@BKLlawfirm.com kboehm@BKLlawfirm.com
Kevin Higgins Energy Strategies, LLC 215 South State Street, Suite 200 Salt Lake City, Utah 84111	____ Hand Delivered _X_ U.S. Mail ____ Overnight Mail ____ FAX _X_ Email khiggins@energystrat.com

Ada County Highway District Scott D. Spears Ada County Highway District 3775 Adams Street Garden City, Idaho 83714	____ Hand Delivered __X__ U.S. Mail ____ Overnight Mail ____ FAX __X__ Email sspears@achd.ada.id.us
Merlyn W. Clark D. John Ashby HAWLEY TROXELL ENNIS & HAWLEY, LLP 877 Main Street, Suite 1000 P.O. Box 1617 Boise, Idaho 83701-1617	____ Hand Delivered __X__ U.S. Mail ____ Overnight Mail ____ FAX __X__ Email mclark@hawleytroxell.com jashby@hawleytroxell.com
Build Idaho Inc. J. Frederick Mack HOLLAND & HART LLP U.S. Bank Plaza 101 South Capitol Boulevard, Suite 1400 P.O. Box 2527 Boise, Idaho 83701-2527	____ Hand Delivered __X__ U.S. Mail ____ Overnight Mail ____ FAX __X__ Email fmack@hollandhart.com



Lisa D. Nordstrom