

Michael C. Creamer, ISB #4030
Conley E. Ward, ISB # 1683
GIVENS PURSLEY LLP
601 W. Bannock St.
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Intervenors The Building Contractors
Association of Southwestern Idaho

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

**BUILDING CONTRACTORS
ASSOCIATION OF
SOUTHWESTERN IDAHO'S
REQUEST FOR CONSIDERATION
AND GRANTING OF LATE-FILED
REQUEST FOR INTERVENOR
FUNDING**

The Building Contractors Association of Southwestern Idaho ("Building Contractors"), by and through its attorneys of record, Givens Pursley LLP, and pursuant to Idaho Code 61-617A and IDAPA 31.01.01.161 - 165, respectfully makes application to the Idaho Public Utilities Commission ("Commission") for intervenor funding in the above-captioned matter. This application is late-filed. For the reasons set forth below, however, Building Contractors request that the Commission exercise its discretion to waive the Commission Rule 164 filing deadline, accept this request as timely filed, and grant Building Contractors' request for intervenor funding.

GROUNDS FOR LATE-FILING

The reason for the Building Contractor's late-filing of this application is the inadvertent and unintentional oversight by its legal counsel with respect to the correct timing for submission of requests for intervenor funding. Counsel for Building Contractors was under the misapprehension that such applications would be filed after issuance of the Commission's decision on the merits. This would have been consistent with counsel's experience in civil litigation and the assumption that the materiality of Building Contractors' contribution to the decision rendered by the Commission would best be discerned by review of the decision itself.

Counsel was mistaken. Commission Rule 164 requires filing of a request for intervenor funding no later than fourteen days after the last evidentiary hearing or deadline for submitting briefs, proposed orders or statements of position. Although this matter was under modified procedures and intervenors submitted comments as opposed to briefs, orders or statements of position, a strict reading of the rule would make the deadline for submitting this request May 15, 2009, which was fourteen days after the May 1 deadline for filing of reply comments.

Building Contractors submit that whether to accept its late-filed intervenor funding request is a matter of the Commission's discretion. Idaho Code § 61-617A does not impose a jurisdictional deadline that would constrain the Commission's consideration of the Building Contractors' request, and the Idaho Supreme Court has deemed the consideration of intervenor funding requests as a matter for the Commission's discretion. *See Idaho Fair Share v. Idaho Public Utilities Commission*, 113 Idaho 959, 751 P.2d 107 (1988). As discussed below, the Building Contractors satisfy the criteria in I.C. § 61-617A and Commission Rule 165 for an award of intervenor funding. Building Contractors submit that neither Idaho Power Company ("Idaho Power" or the "Company") nor its ratepayers would be prejudiced by consideration and

granting of this request, and that equity warrants the same, given that this late-filing was unintentional.

REQUEST FOR INTERVENOR FUNDING

1. A summary and itemized statements of the Building Contractors' legal and consultant expenses for which it seeks recovery is attached as Exhibit A.

2. The Building Contractors' Developer's Council Subcommittee and staff were actively involved with legal counsel and Dr. Richard Slaughter in evaluating Idaho Power's proposed changes to its line extension tariff, and the economic impacts those changes would have on both the Building Contractors' members and the public in southwest Idaho. Although this case involved only one set of tariffs, the factual and policy issues raised were complex and important. Dr. Slaughter was retained as the Building Contractors' consultant due to his familiarity with Idaho Power's rate structure generally and its line extension tariff specifically, having testified before the Commission in Case No. IPC-E-95-18. This helped to reduce the time and expense required to establish a foundation of understanding of the Rule H tariff, to analyze the proposed amendments and to generate reasoned comments for the Commission's consideration.

Dr. Slaughter presented reasonable and factually supported arguments on the Building Contractors' behalf as to why the proposed reallocation of costs for new distribution was inconsistent with policies that promote more efficient use of energy and would have significant adverse effects on the commercial and residential construction and real estate markets. Beyond merely criticizing the proposed tariff, Dr. Slaughter offered reasonable alternatives for the Commission's consideration. Dr. Slaughter challenged the Staff's calculations of Idaho Power's proposed investment in distribution facilities. He argued that the proposed investment to serve

new residential customers—approved by Staff—falls far short of the Company’s investment to serve existing residential customers for all but the smallest developments. Dr. Slaughter also distinguished the difference between inflation and growth as they affect Company costs.

The Building Contractors’ comments and testimony emphasized an issue of public policy affecting the general body of electric consumers—namely the extent to which growth does or ought to pay for itself through electric rates. Building Contractors urged the Commission to look beyond the phrase “growth should pay for itself,” to inquire into the real causes of increased costs, and to critically evaluate the extent to which new customers are being asked to pay more than existing customers, and whether such a policy encourages existing customers to consume more energy rather than conserve it. No other party, including Staff, addressed these issues squarely.

In the end, the Commission did not agree with the Building Contractors’ position. Its July 1st decision by and large accepts Idaho Power’s proposed tariff, as modified by Staff’s recommendations. But neither the Commission’s Rule nor the statute require the Commission to agree with an intervenor in order to award them funding. The intervenor funding statute is intended to encourage participation in proceedings so that affected customers receive fair representation before the Commission. Idaho Code § 61-617A. A “prevailing party” standard does not apply. Here, where the Building Contractors, through its comments and Dr. Slaughter’s testimony, provided reasoned analysis for the alternatives it offered, and that analysis was different from the Staff’s, it must be assumed that Building Contractors contributed materially to this case and to the Commission’s decision.

3. The Building Contractors' expenses and costs incurred in this case, as summarized in Exhibit A, total \$28,386.35.¹ This includes \$16,567.50 for legal fees (71.6 hours), \$11,462.50 for consultant fees (65.3 hours) and \$356.35 in copy charges. These expenses were reasonable and necessary. They include expenses incurred to retrieve and review Commission files for the Company's last Rule H tariff revision case that had been moved to the State Archives. They also include time and expense reviewing comments, testimony and documents submitted by other parties and the drafting of Building Contractors' own testimony and comments. This time and effort permitted the Building Contractors to meaningfully participate in these proceedings.

4. Building Contractors is a non-profit association that relies on voluntary membership and voluntary contributions to fund its operations and promote the interests of its member builders, contractors and developers. All of the Building Contractors' operations expenses, including building, employees, member mailings and participation in legal or administrative proceedings such as this case, are paid from these voluntary contributions.

The costs and expenses summarized in Exhibit A have been a significant financial burden for Building Contractors. Currently, voluntary contributions have dropped significantly due to the struggling economy generally and the depressed local real estate sector specifically. Because of the reductions in Building Contractors' income, it recently has had to impose significant budget cuts and mandatory days off for its staff. Building Contractors continues to solicit member contributions to cover its general operating costs and the costs of its intervention in this proceeding.

¹ Building Contractors recognizes that Idaho Code § 61-617A limits the amount awardable as intervenor funding to \$25,000.

The Commission previously recognized Building Contractors as eligible for intervenor funding in Case No. IPC-E-95-18 (involving a Rule H Tariff amendment), where the Building Contractors incurred \$14,250.00 in legal fees and \$12,207.50 in consultant fees. There the Commission authorized intervenor funding in the maximum statutory amount of \$25,000 payable from rates charged to the class that it deemed was primarily benefitted—namely, lots within subdivisions that require line extensions. Building Contractors submits that its appearance in this case was for the benefit of owners of lots within commercial and residential subdivisions requiring line extensions.

CONCLUSION

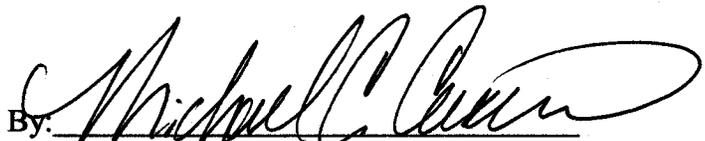
This request for intervenor funding is late-filed given a strict application of Commission Rule 164, which requires such applications to be filed within fourteen days of the filing of the last brief (or, in this case, comments). It has, however, been filed within fourteen days of the Commission's issuance of its Order in this case and at the earliest opportunity after counsel's discovery of the actual deadline. The costs that Building Contractors have incurred are reasonable given its substantial level of effort and participation in these proceedings. These costs were incurred to advance policies that benefit Building Contractors' members and the public at large. Building Contractors have materially contributed to the decision in this case and to the public debate about issues of population growth and energy costs.

Participation in this case has been, and continues to be, a financial hardship for Building Contractors. Building Contractors and its legal counsel request that the inadvertence of misapprehending the filing deadline should not result in further financial hardship, and they respectfully request that the Commission exercise its broad discretion to accept and grant this request for intervenor funding, to be paid from the class of customers primarily affected and

benefitted—namely, lots within subdivisions that require line extensions. Inasmuch as Idaho Code § 61-617A allows this cost to be a business expense in the Company's next rate case, Building Contractors respectfully submits that granting this request is not prejudicial to the Company.

DATED this 13th day of July, 2009.

GIVENS PURSLEY, LLP

By: 

Michael C. Creamer

*Attorneys for Intervenor The Building
Contractors Association of Southwestern Idaho*

EXHIBIT A
SUMMARY OF EXPENSES INCURRED BY
BUILDING CONTRACTORS ASSOCIATION OF SOUTHWESTERN IDAHO
IN CASE NO. IPC-E-08-22

1	Legal Fees		
		Hours	
	Michael C. Creamer (Partner)	60.7	\$ 15,175.00
	Elizabeth M. Donick (Associate)	5.5	\$ 852.50
	Tami Kruger (Paralegal)	5.4	\$ 540.00
	Subtotals	71.6	\$ 16,567.50
	Costs:		
	Copies		\$ 356.35
	Total Work and Costs		\$ 16,923.85
2	Consultant Richard Slaughter	65.3	\$ 11,462.50

TOTAL FEES AND EXPENSES: **\$ 28,386.35**

Building Contractors Association of Southwestern Idaho
Line Extension Tariff (10495 / 1)

Date	ID	Type	Hours	Amount	Description
2/9/2009	MCC	Fee	0.50	125.00	Meeting with J. Risch and J. Kunz.
2/10/2009	MCC	Fee	2.30	575.00	Review IPUC pleadings; research prior tariff proceedings and testimony; review and edit notice of substitution of counsel.
2/11/2009	MCC	Fee	4.40	1,100.00	Continued review of IPUC orders on prior IPCo tariff revisions; review staff and party testimony in prior proceedings; forward documents to J. Kunz; coordinate obtaining old files on line extensions from state archives; file notice of substitution of counsel.
2/11/2009	TLK	Fee	3.80	380.00	Conference with M. Creamer regarding files; travel to/from Idaho State Historical Society; review files; obtain copies of same; conference with M. Creamer; call to R. House (archivist).
2/12/2009	MCC	Fee	4.00	1,000.00	Review IPUC documents; prepare for and attend meeting with clients.
2/12/2009	TLK	Fee	1.60	160.00	Travel to/from Idaho Historical Society to review documents.
2/13/2009	MCC	Fee	0.70	175.00	Review and forward IPCo supplemental discovery responses; telephone call to Kroger counsel; telephone call to C. Ward.
2/17/2009	MCC	Fee	0.40	100.00	Initial review of discovery responses from IPCo/IPUC; correspondence with J. Kunz re same.
2/18/2009	MCC	Fee	1.50	375.00	Telephone conference with K. Sasser; telephone conference with C. Ward; telephone conference with J. Kunz; telephone conference with R. Slaughter; forward documents; telephone conference with R. Slaughter.
2/19/2009	MCC	Fee	2.40	600.00	Prepare for meeting and meet with R. Slaughter to outline issues/analysis to respond to IPCo tariff filing.
2/23/2009	MCC	Fee	0.30	75.00	Review IPUC/IPCo documents/discovery responses.
2/24/2009	MCC	Fee	0.80	200.00	Review economic reports; correspond with R. Slaughter; correspond with J. Kurtz.
2/25/2009	MCC	Fee	1.10	275.00	Telephone conference with R. Slaughter; coordinate preparation of requests for production; further review of NAHB economic reports; review status of pending legislation.
2/27/2009	MCC	Fee	3.60	900.00	Telephone conference with R. Slaughter; draft requests for production; telephone conference with L. Nordstrom, attorney for IPCo; telephone conference with K. Sasser at IPUC; telephone conference with intervenor counsel; draft and file request for extension of time.
3/5/2009	MCC	Fee	0.40	100.00	Review IPUC website; office conference re large eg pumper position on line extension tariff.
3/10/2009	MCC	Fee	0.50	125.00	Review ACHD comments; review staff decision memo; telephone conference with K. Sasser; draft correspondence to J. Kunz and R. Slaughter re: extension of comment period.
3/20/2009	MCC	Fee	0.50	125.00	Review and forward Idaho Power Company's response to Building Contractors Association's Request for Production of Documents.
3/31/2009	LMD	Fee	1.10	170.50	Research Idaho Power case regarding August 25th fires.
3/31/2009	MCC	Fee	0.40	100.00	Correspondence with R. Slaughter; coordinate research re: Idaho Power Company--Oregon Trail Fire.
4/2/2009	LMD	Fee	1.30	201.50	Continue researching Idaho Power case regarding August 25th fire.
4/2/2009	MCC	Fee	3.80	950.00	Telephone conference with R. Slaughter; review pleadings and discovery response.
4/3/2009	LMD	Fee	0.60	93.00	Meet with M. Creamer to discuss research results; continue researching Idaho Power case regarding August 25th fires.
4/3/2009	MCC	Fee	2.80	700.00	Meeting with R. Slaughter; review IPUC orders.
4/3/2009	MCC	Fee	2.60	0.00	Meeting with R. Slaughter to outline comments.
4/8/2009	LMD	Fee	2.50	387.50	Review tort claims files at the courthouse for claims regarding Idaho Power and August 25th fire; meet with M. Creamer to discuss; draft research summary.
4/8/2009	MCC	Fee	0.20	50.00	Telephone conference with R. Slaughter.
4/10/2009	MCC	Fee	1.10	275.00	Review and edit R. Slaughter testimony telephone conference with R. Slaughter; forward housing price-out information to R. Slaughter.
4/11/2009	MCC	Fee	6.00	1,500.00	Review and edit draft testimony.
4/13/2009	MCC	Fee	3.90	975.00	Telephone conference with R. Slaughter; review revised testimony; meeting with R. Slaughter; telephone conference with C. Ward; further review of Slaughter testimony.
4/14/2009	MCC	Fee	0.40	100.00	Review pleadings.
4/16/2009	MCC	Fee	2.70	675.00	Review and forward draft testimony; coordinate finalizing same.
4/17/2009	MCC	Fee	6.80	1,700.00	Review and finalize Slaughter testimony; draft comments supporting/transmitting same; review highway districts' comments.

Review and forward IPA and Highway Districts' comments; review IPUC docket sheet
 Review IPUC staff comments; telephone call to R. Slaughter.
 Telephone conference with R. Slaughter.
 Review and respond to correspondence re response to staff comments.
 Review and forward draft comments; telephone conference with R. Slaughter; begin drafting response.
 Review and edit draft comments; forward to C. Ward and R. Slaughter; telephone conference with R. Slaughter.
 Review IPCo reply comments and forward to client and to R. Slaughter.
 Review and respond to correspondence from J. Kunz; telephone call to K. Sasser at IPUC (twice).
 Telephone conference with R. Slaughter.
 Review R. Slaughter correspondence.
 Review order.

Date	ID	Type	Quantity	Amount
4/20/2009	MCC	Fee	0.50	125.00
4/21/2009	MCC	Fee	0.80	200.00
4/26/2009	MCC	Fee	0.40	100.00
4/27/2009	MCC	Fee	0.40	100.00
4/29/2009	MCC	Fee	0.90	225.00
4/30/2009	MCC	Fee	3.90	975.00
5/1/2009	MCC	Fee	0.80	200.00
5/11/2009	MCC	Fee	0.30	75.00
5/19/2009	MCC	Fee	0.30	75.00
5/20/2009	MCC	Fee	0.40	100.00
7/2/2009	MCC	Fee	0.50	125.00
Total of Fees:				\$ 16,567.50

Date	ID	Type	Quantity	Amount	Code
2/11/2009	ch1	Cost	56	\$8.40	Photocopies
2/11/2009	MCC	Cost	1	\$10.00	Messenger Service [PUC]
2/11/2009	TLK	Cost	1	\$93.00	Copy Expense [Idaho Historical Society Copies]
2/12/2009	MCC	Cost	1	\$10.00	Messenger Service [PUC]
2/12/2009	TLK	Cost	1	\$40.80	Copy Expense [Idaho Historical Society Copies]
2/13/2009	MCC	Cost	1	\$0.15	Long Distance
2/19/2009	ch1	Cost	68	\$10.20	Photocopies
2/27/2009	br1	Cost	55	\$8.25	Photocopies
2/27/2009	MCC	Cost	1	\$0.22	Long Distance
2/27/2009	MCC	Cost	1	\$10.00	Messenger Service [Messenger Service PCU]
3/4/2009	ch1	Cost	3	\$0.45	Photocopies
3/20/2009	ch1	Cost	44	\$6.60	Photocopies
4/17/2009	ch1	Cost	462	\$69.30	Photocopies
4/17/2009	ch1	Cost	90	\$13.50	Photocopies
4/17/2009	ch1	Cost	462	\$69.30	Photocopies
4/17/2009	ch1	Cost	90	\$13.50	Photocopies
4/17/2009	MCC	Cost	1	\$10.00	Messenger Service [PUC]
4/21/2009	ch1	Cost	38	\$5.70	Photocopies
4/30/2009	CASSIE	Cost	1	\$25.00	Copy Expense [Clerk of the Court - Copies]
5/1/2009	MCC	Cost	1	\$10.00	Messenger Service [Jean Jewell - PUC]
5/1/2009	TINA	Cost	135	\$20.25	Photocopies
7/2/2009	ch1	Cost	14	\$2.10	Photocopies
Total Cost:				\$405.72	

Richard Slaughter Associates907 Harrison Blvd
Boise, Idaho 83702**RSA, Inc.**

208 858-1223

Fax 208 345-9633

email: richard@rsaboise.com

BIN: 82-0464626

Invoice

Mr. Joe Kunz
BCASWI
6206 N Discovery Way, Suite A
Boise, ID 83713

May 20, 2009

Time billed at \$175 per hour

Date	Item	Time	Fee
IPC-E-08-22 (Rule H)			
2/16/2009	Review filings and prior testimony	2:00	350.00
2/17/2009	Review IPCo proposal	1:12	210.00
2/17/2009	Meeting with BCASWI	1:15	218.75
2/18/2009	Company testimony	4:18	752.50
2/19/2009	Prepare for meeting M. Creamer/ meeting	2:48	490.00
2/19/2009	T. Jones, data on Dist. costs; R. Sterling	1:12	210.00
2/19/2009	IPCo workpapers	0:42	122.50
2/20/2009	Production requests	1:06	192.50
2/20/2009	Indexation of contribution to rate base	1:00	175.00
2/21/2009	Staff production requests	1:00	175.00
2/23/2009	Data for refund indexation; preliminary scoping of argument	2:00	350.00
2/25/2009	Meeting with Rick Sterling; plan production request	1:36	280.00
2/26/2009	Production request	1:24	245.00
2/27/2009	Conf. on production request, M. Creamer; edit request	0:48	140.00
2/27/2009	Info request, Joe Kunz	0:06	17.50
3/10/2009	ACHD Comments	0:18	52.50
3/11/2009	Line extension contracts	0:42	122.50
3/12/2009	Line extension contracts	0:48	140.00
3/17/2009	Draft comments	0:32	93.33
3/20/2009	IPCO Prod. Request response - staff	0:24	70.00
3/23/2009	IPCO Prod. request response - IBC	0:36	105.00
3/23/2009	Digitize IPCo spreadsheet	0:30	87.50
3/27/2009	Comments draft	0:42	122.50
3/30/2009	IPCo cost data	2:42	472.50
3/31/2009	Cost allocation IPC-E-08-10	1:54	332.50
3/31/2009	Consult on IPC-E-08-10; D. Reading	1:30	262.50
4/1/2009	Write comments	1:00	175.00
4/2/2009	Inflation section	0:18	52.50
4/3/2009	Conference w/ M. Creamer	2:57	516.25
4/4/2009	Draft testimony	0:35	102.08
4/6/2009	Testimony	4:34	799.17
4/10/2009	Testimony	2:30	437.50

4/13/2009 Testimony edits/addition; meet w/ Creamer	3:48	665.00
4/14/2009 Edits; call to IPUC	2:12	385.00
4/15/2009 Edits and draft final to GP	3:24	595.00
4/16/2009 Proof testimony and exhibits	2:18	402.50
4/17/2009 Final changes, Mike Creamer	1:00	175.00
4/24/2009 Staff comments	1:36	280.00
4/26/2009 Review staff again for errors; call M. Creamer	0:36	105.00
4/27/2009 Draft response to staff	4:18	752.50
4/30/2009 Revisions to comments; conference with M. Creamer	0:48	140.00
5/19/2009 IPCo reply comments	0:06	17.50
5/19/2009 Review IPCo reply comments	0:25	72.92
5/20/2009 Email on IPCo comments	0:30	n/c
Total	65:30	<u>\$11,462.50</u>
Please remit		\$11,462.50

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2009, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

Original Filed:

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

U.S. Mail, postage prepaid
Express Mail
Hand Delivery
Facsimile
Electronic Mail

Service Copies:

Lisa D. Nordstrom
Barton L. Kline
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
lnordstrom@idahopower.com
bkline@idahopower.com

U.S. Mail, postage prepaid
Express Mail
Hand Delivery
Facsimile
Electronic Mail

Scott Sparks
Gregory W. Said
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
ssparks@idahopower.com
gsaid@idahopower.com

U.S. Mail, postage prepaid
Express Mail
Hand Delivery
Facsimile
Electronic Mail

Kristine A. Sasser
Deputy Attorney General
Idaho Public Utilities Commission
472 W. Washington
PO Box 83720
Boise, ID 83720-0074
kris.sasser@puc.idaho.gov

U.S. Mail, postage prepaid
Express Mail
Hand Delivery
Facsimile
Electronic Mail

Matthew A. Johnson
Davis F. VanderVelde
White, Peterson, Gigray, Rossman, Nye &
Nichols, P.A.
5700 E. Franklin Rd., Ste. 200
Nampa, ID 83687
mjohnson@whitepeterson.com
dvandervelde@whitepeterson.com
*Attorneys for The City of Nampa and The
Association of Canyon County Highway
Districts*

U.S. Mail, postage prepaid
 Express Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Michael Kurtz
Kurt J. Boehm
Boehm, Kurtz & Lowry
36 E. Seventh St., Ste. 1510
Cincinnati, OH 45202
mkurtz@BKLLawfirm.com
kboehm@BKLLawfirm.com
Attorneys for The Kroeger Co.

U.S. Mail, postage prepaid
 Express Mail
 Hand Delivery
 Facsimile
 Electronic Mail

Kevin Higgins
Energy Strategies, LLC
Parkside Towers
215 S. State St., Ste. 200
Salt Lake City, UT 84111
khiggins@energystat.com
Representing The Kroeger Co.

U.S. Mail, postage prepaid
 Express Mail
 Hand Delivery
 Facsimile
 Electronic Mail



Michael C. Creamer