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IDAHO PUBLIC
UTILITIES COMMISSION

Attorneys for Intervenor 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
PETITION FOR
RECONSIDERATION AND/OR IN
THE ALTERNATIVE FOR
CLARIFICATION AND PETITION
FOR STAY**

Building Contractors Association of Southwestern Idaho ("Building Contractors"), by and through its attorneys of record, Givens Pursley LLP, and pursuant to Idaho Code § 61-626 and IDAPA 31.01.01.331, 325 and 324 respectively, petitions the Idaho Public Utilities Commission ("Commission") for reconsideration of its Order 30853 ("Order") in the above-captioned matter with respect to those Commission findings and conclusions regarding terminal facilities allowances, per-lot refunds and the time period in which vested interest refunds may be made. The Order approves an inherently discriminatory rate structure for line extensions by imposing unequal charges on customers receiving the same level and conditions of service. This

discrimination exists both as between existing customers and new customers *and* as among new customers depending only upon whether they receive service inside or outside of a subdivision and the number of new customers to be served by the requested facilities.

The Order does not acknowledge any grounds for not extending the vested-interest refund period from five to ten years other than that Staff opposes it. In its 1997 order concerning Idaho Power Company's ("Company") line extension tariff, the Commission approved a ten-year refund for platted, undeveloped subdivisions because it recognized the unique circumstances affecting those developments. The current economic climate also presents unique circumstances which, if they continue for any extended period, quite likely will result in a windfall to the Company and its existing customers and an additional unreimbursed line extension cost to developers. Building Contractors request a hearing at which parties may cross-examine those persons who filed testimony and examine member(s) of the Commission Staff with primary responsibility for preparing Staff's Comments.

If reconsideration is not granted, then for judicial economy, Building Contractors request in the alternative that the Commission clarify the Order to: 1) clearly confirm that the Commission now is rejecting its heretofore, longstanding policy that new customers are entitled to a Company level of investment equal to that made to serve existing customers in the same class; 2) to confirm that the Commission recognizes and intends the disparity in Company investment (and customer charges) as between existing and new customers and as among new customers inside and outside of subdivisions created by the Order; and 3) to enumerate the Commission's reasoning for its momentous change in policy.

Because imposition of the Order will have immediate and significant financial impacts on certain Building Contractors' members—namely those members who are, or will be, requesting

line extensions during the pendency of this matter—Building Contractors also request a stay of those portions of the Order affecting the current terminal facilities allowance, customer refunds and vested interest refunds.

GROUND FOR RECONSIDERATION

In its 1997 Order 26780 in Case No. IPC-E-95-18, the Commission considered the same Company line extension tariff at issue today. There, the Company sought to “shift more of the cost of new service attachments and distribution line installations or alterations from the system revenue requirement to new customers requesting the construction.” Order 26780 at 3. The reason given by the Company for the proposed change was to “keep all customers on a level playing field [by ensuring] everyone pays the average rate base embedded in rates,” and because “the anticipated revenues from the new customer are not sufficient to cover the costs of new distribution facilities.” Order 26780 at 5 (summarizing Company position). The Commission Staff agreed with the Company’s position that “the Company’s investment in facilities for each new customer should be equal to the embedded costs of the same facilities used to calculate rates, and those costs in excess of embedded costs should be borne by the customers requesting service. . . .” Order 26780 at 5 (summarizing Staff position). Building Contractors opposed the proposed tariff amendments.

The Commission specifically concluded that

new customers are entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class. Recovery of those costs in excess of embedded costs must also be provided for and the impact on rates of existing customers is an important part of our consideration.

Order 26780 at 13 (emphasis added). The Commission also acknowledged that “requiring the payment of all costs above embedded investment from new customers could have severe economic effects.” *Id.*

Today the Company proposes a change to the Rule H tariff allowances and refunds simply to reduce Company expense and an alleged but undemonstrated upward pressure on rates without any pretense of maintaining a level playing field or crediting revenues from new customers. If that were the purpose, all that would be necessary is a relatively simple true-up of embedded distribution costs, current materials, labor and overhead costs and an allocation as between the terminal facilities and line extensions. *See* Order 26780 at 13 (whether the allowance is applied in exact proportions toward the terminal facilities component, the line extension component, or both, is not critical, but the amount is).

With little comment and no concession to prior precedent or policy or the disparate effect the Order will have on new customers, the Commission has approved a flat \$1,780 terminal facilities allowance and discontinued per-lot refunds within subdivisions. Consequently, although the estimated per customer embedded cost for distribution ranges between \$1,002 (2008 IPCo GRC cost of service study) and \$1,232 (Staff estimate), the Company investment in distribution for new customers will vary from \$1,780 for a customer requesting service to a single location outside a subdivision to as low as \$149 for a customer receiving identical service within a sixty-lot subdivision. This is because the \$1,780 terminal facilities allowance approved by the Commission, being the only allowance recognized, must be apportioned among the new customers who share those terminal facilities (i.e., the transformer), and a transformer serves anywhere from one to ten customers.

Staff overlooked this fact when it stated its support for line extension rules that “provide a new customer allowance that can be supported by electric rates paid by that customer over time,”¹ when it deemed the \$1,444 cost of overhead terminal facilities (i.e., transformer) to be “fairly close” to the Company’s average investment of \$1,232 for existing customers, and then, for simplicity’s sake, recommended that overhead terminal facilities become the surrogate for appropriate Company investment per new customer. In other words, Staff mistakenly categorized a \$1,780 “per transformer” allowance as a “per new customer” allowance, which it clearly is not.

The effect this mischaracterization has on the Company investment per new customer (or conversely, on the charge to a new customer to receive service) is illustrated in the following table, which is derived from data provided in Attachment 9 to Staff’s Comments.

Comparison of Existing Rule H with Company and Staff Proposals					
Subdivision example	1	2	3	4	5
Design Number	61114	67186	60197	24482	27729
No. of Lots	3	10	32	60	101
Average embedded cost (Staff comments at 5)	<u>\$ 1,232.44</u>				
Total design cost per lot	\$3,524	\$1,512	\$1,576	\$1,209	\$1,433
Total allowance (Company)/ Eligible for Refund (Staff)	\$3,560	\$1,780	\$7,120	\$8,900	\$17,800
<u>Company investment per lot</u>					
Staff	\$1,187	\$178	\$222	\$149	\$176
Company	\$1,187	\$178	\$222	\$149	\$176
Existing Rule H	\$1,959	\$1,279	\$1,159	\$1,061	\$1,050

¹ I.e., at least equal to embedded costs, whether that be \$1,100 or \$1,232.

Developer (Customer) investment per lot

Staff	\$2,337	\$1,334	\$1,354	\$1,060	\$1,257
Company	\$2,337	\$1,334	\$1,354	\$1,060	\$1,257
Existing Rule H	\$1,565	\$233	\$417	\$148	\$383

Total developer investment plus embedded cost per lot

Staff	\$3,569	\$2,566	\$2,586	\$2,292	\$2,489
Company	\$3,569	\$2,566	\$2,586	\$2,292	\$2,489
Existing Rule H	\$2,797	\$1,465	\$1,649	\$1,380	\$1,615

Over-recovery of cost

Staff	\$45	\$1,055	\$1,010	\$1,084	\$1,056
Company	\$45	\$1,055	\$1,010	\$1,084	\$1,056
Existing Rule H	(\$727)	(\$46)	\$73	\$172	\$182

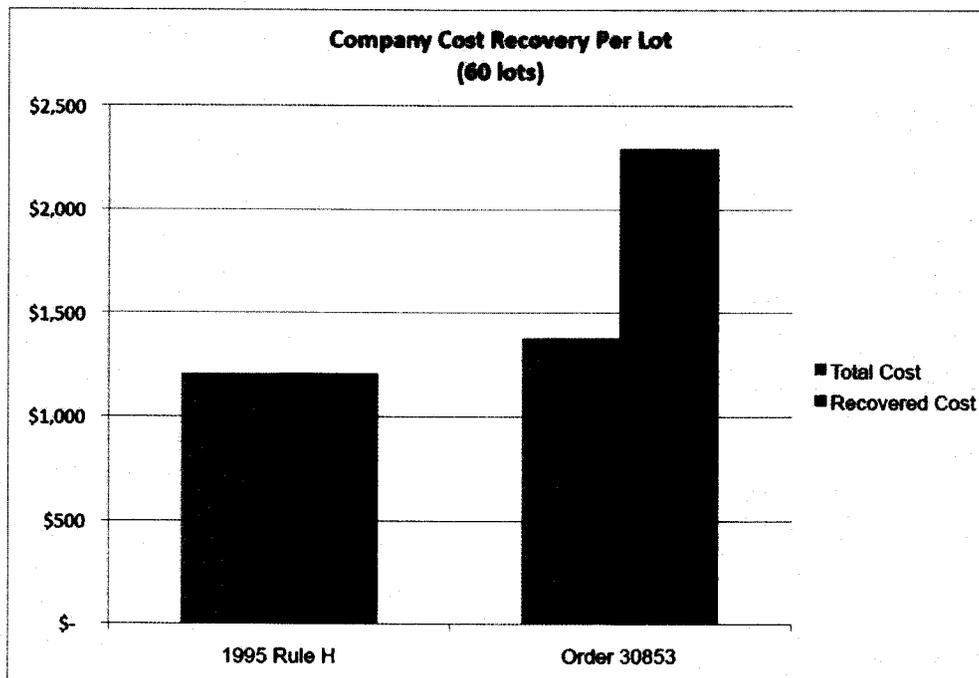
Source: Staff Attachment 9, Page 2 of 4; Staff comments at 5.

Company investment per lot is total design cost per lot less developer (customer) investment per lot

As the above table shows, depending on the subdivision example used, per customer Company investment in multiple-lot subdivisions ranges from \$149 to \$1,187. Only the three-lot subdivision example produces a per customer Company investment approximating its average embedded cost. Consequently, the Order raises the new customers' investment in distribution to make up the difference, except for new customers outside subdivisions who apparently will receive a windfall as compared to existing customers and new customers within subdivisions.²

² The data in the above table also shows that the approved new tariff results in the Company collecting from "new customers," through their contributions to line extension costs and rates, almost 200% of its line extension costs. If upward pressure on rates exists, it must be attributable to increased generation and transmission costs, which new customers now will be paying, in part through their line extension charges. This runs afoul of *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984) and *Boise Water Corp. v. Public Utilities Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996)

The extent of the increased cost to new customers within subdivisions depends primarily on the number of platted lots receiving electrical service. What should be of particular interest to the Commission is the fact that the shift in costs to the new customers approved by the Order actually can result in the Company's recovered costs exceeding the actual new distribution facilities cost. This is illustrated in the chart below which compares total new customer investment to total facilities costs in a sixty-lot subdivision based on data from the above table.



That result should not be surprising since, as even Staff has observed

. . . Idaho Power has done no analysis to prove that growth is not paying for itself, nor has the Company done any analysis to determine specifically what amounts of allowances and refunds can alleviate upward pressure on rates. . . The Company concludes that a reduction in Company investment in new distribution plant is necessary and proposes a reduction in allowances based strictly on policy without supporting analysis.

Staff Comments at 3. In other words, the Company's proposed allowance is a shot in the dark that is as likely to miss a "growth pays for itself" target as hit it.

The Commission perhaps did not apprehend the distinction between "per transformer" investment and "per new customer investment" when it found in the Order that

. . . the overall distribution allowance provided to developers, whether in the form of a subsequent refund or an upfront reduction in developer contribution (i.e., allowances), is properly based on the amount of distribution investment that can be supported by new customer rates. The Company has reasonably calculated that amount in its upfront, per lot distribution allowance. Any additional distribution cost refund to the developer would exceed the distribution investment that new customer rates could support. Therefore, the Commission finds it fair, just and reasonable to accept the Company's per lot distribution allowance and eliminate lot refunds.

Order at 12. The Company's and Staff's \$1,780 terminal facilities allowance patently is not a per lot distribution allowance.

If the Company's investment of \$1,780 in distribution facilities to serve a single new customer outside a subdivision can be recovered through rates charged to that new customer (which for purposes of this Petition, Building Contractors concede), then on what factual or legal basis can new customers within subdivisions be charged as much as \$1,631 more for electrical service than existing customers and the single new customer outside a subdivision?

From a factual standpoint, the Commission has acknowledged Staff's "concern that Idaho Power had not provided any analysis to determine specifically what amounts of allowances and refunds would alleviate upward pressure on rates," and that "to properly establish an allowance, a refund and the potential for additional customer contribution, a detailed analysis of distribution investment embedded in existing electric rates must be conducted." Order at 4. Despite Staff's concern, and the lack of any subsequent analysis by the Company, the Order, nevertheless, finds that "[t]he Company has reasonably calculated [the amount of distribution investment that can be

supported by new customer rates] in its upfront, per lot distribution allowance.” Order at 12 (emphasis added). The lack of substantial evidence to support this finding, and the fact that the Company is not proposing a “per lot distribution allowance” renders the Commission’s decision in this regard arbitrary and capricious. See *Oregon Short Line R.R. v. Idaho Public Utilities Comm’n*, 47 Idaho 482, 276 P. 970 (1920) (order based on finding made without evidence, or upon a finding made upon evidence which clearly does not support it, is an arbitrary act against which the courts afford relief).

A legal basis for the disparity in per new customer Company investment (and conversely, per new customer line-extension charges) is equally lacking. *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984) and *Boise Water Corp. v. Public Utilities Comm’n*, 128 Idaho 534, 916 P.2d 1259 (1996) hold that any differences in rates and charges must be justified by a corresponding classification of customers that is based on factors such as cost of service, quantity of electricity used, differences in conditions of service or the time, nature or pattern of use. Neither the Company’s nor Staff’s comments nor the Commission’s Order touch on these factors.

The current disparity in per customer Company investment and conversely per new customer line extension charges will not pass this test. Particularly not when the Commission acknowledges that new customers are entitled to a level of Company investment in distribution that can be supported by rates (i.e., the same level of investment as received by existing customers), and particularly not when the resulting variable level of Company investment is driven solely by whether the new customer is situated inside or outside a subdivision or within a relatively larger or smaller subdivision.

Granted, not all “discrimination” in rates and charges is improper, but where the Commission establishes the kind of discrimination present here, it must demonstrate that the differences in rates and charges are based on one or more of the factors enumerated in *Homebuilders*. Its decision also must be based on substantial, competent evidence and the Commission must explain the reasoning it employed. *Boise Water Corp.*, 128 Idaho at 537 (citing *Washington Water Power v. Idaho Public Utilities Comm’n*, 101 Idaho 567, 617 P.2d 1242 (1980)). None of the enumerated factors have been acknowledged by the Order, let alone used to rationalize the new disparate line extension charges and allowances, or to explain why the highly variable Company investment/new customer charge is consistent with the principle that new customers are entitled to a level of distribution investment that can be supported by rates. Almost by definition, the Order in this regard is arbitrary and capricious, exceeds the Commission’s authority, and violates the new customer’s right to non-discriminatory rates and charges under *Homebuilders* and *Boise Water Corp.*

For the foregoing reasons, Building Contractors respectfully request the Commission’s reconsideration of Order 30853, and that the Commission provide for an evidentiary hearing at which the parties’ witnesses may be examined and/or cross-examined on their pre-filed testimony and all matters within the scope of same, the purpose of which would be to establish an appropriate value of current Company embedded costs for distribution facilities, a method to true up those costs over time, and a fair method for line extension costs, allowances and refunds to be paid going forward.

GROUND FOR REQUEST FOR CLARIFICATION

Commission Rule 325 allows a petition for clarification to be combined with a petition for reconsideration or to be stated in the alternative. Building Contractors seek clarification in

the alternative. If reconsideration is not granted because the Commission stands by the decision and resulting disparate charges for new customers, Building Contractors request that the Commission clarify for the record that the Commission now is rejecting its heretofore longstanding policy that new customers are entitled to a Company investment in distribution facilities equal to that made to serve existing customers in the same class, and that the Commission recognizes and intends the disparity in Company investment (and customer charges) as between existing and new customers and as among new customers inside and outside subdivisions created by the Order. Building Contractors also believe the Commission should enumerate its justification for the departure from existing policy and for the discriminatory effect on Company customers. Building Contractors believe this clarification is necessary to clearly define the basis for, and scope of, the new policy. This will be important to Building Contractors and its members not only in the context of this proceeding but also future Company applications to amend its Rule H tariff.

GROUND FOR PETITION FOR STAY

Building Contractors have submitted evidence by way of Exhibit 203, sponsored by Dr. Slaughter and prepared by NAHB based on research conducted in the Boise-Nampa Metropolitan Statistical Area. Exhibit 203 and Dr. Slaughter's testimony documented the adverse economic effects of increased housing costs on the number of households that can afford to purchase a home and, by implication, the adverse effects on new customers and Building Contractors' members of reducing the Company's investment in distribution facilities below embedded costs. For the sixty-lot subdivision example in the above table, assuming a Company embedded cost of \$1,002, this imposes an approximately \$51,000 additional cost to the developer. For the one hundred lot example, the additional cost is nearly \$83,000. This in a

market where development capital is scarce and expensive, and the alleged impact of customer growth on rates has dropped significantly.

Building Contractors submit that the adverse impact on its members and the public of imposing the line extension tariff on terms approved by the Order far outweigh any prejudice to the Company and its existing customers that would occur if the Commission's Order were stayed pending a final decision on this Petition. Requests for line extensions likely are being or will be submitted to the Company in the next few months and would be subject to the lower Company contribution and higher developer contribution. Building Contractors therefore respectfully request the Commission grant a stay of the effective date of those portions of the Company's Rule H tariff relating to the calculation and payment of allowances and refunds, including vested interest refunds, pending a final decision on the merits.

CONCLUSION

Idaho Power Company's requested line extension tariff amendments and Order 30853 approving them are far more than an adjustment of rates and charges to address one factor putting upward pressure on utility rates. The tariff amendments, as approved, constitute a marked change in Commission policy by which new customers heretofore have been "entitled to have the Company provide a level of investment equal to that made to serve existing customers in the same class."

Under Order 30853 new customers are entitled only to a Company investment equal to whatever the quotient is when the revised terminal facilities allowance is divided by the number of new customers served. In other words, under Order 30853 Company investment (and new customer charges) now bear no relationship to embedded costs, increased facilities costs, inflation, or alleged upward pressure of growth on rates attributable to distribution facilities

serving new customers. Nor do the resulting variable rates and charges new customers pay as between themselves and existing or other new customers have any relationship to factors such as actual cost of service, quantity of electricity used, or differences in conditions of service or the time, nature or pattern of use. The result is an unlawful, arbitrary and discriminatory charge that is not based on any rational customer classification. The Order should be reconsidered.

If reconsideration is denied, Building Contractors is at least entitled to clarification of the basis for, and scope of, the Commission's decision—neither of which are currently included in the Order and part of the administrative record.

In the meantime, to avoid the likely adverse economic impacts of the approved tariff provisions on those Building Contractors members who may be requesting line extensions, the tariff provisions dealing with allowances and refunds should be stayed pending a final Commission order.

Respectfully submitted this 22nd day of July, 2009.

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By: 

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2009, a true and correct copy of the foregoing was served upon the following individual(s) by the means indicated:

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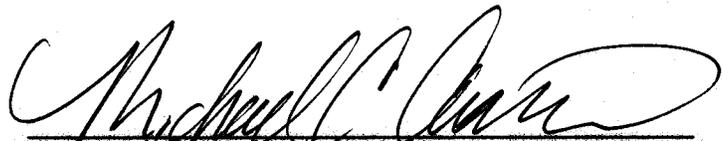
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