

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	CASE NO. IPC-E-08-22
OF IDAHO POWER COMPANY FOR)	
AUTHORITY TO MODIFY ITS RULE H)	NOTICE OF
LINE EXTENSION TARIFF RELATED TO)	RECONSIDERATION SCHEDULE
NEW SERVICE ATTACHMENTS AND)	
DISTRIBUTION LINE INSTALLATIONS.)	INTERLOCUTORY
)	ORDER NO. 30883

On July 1, 2009, the Commission issued Order No. 30853 approving Idaho Power Company's request to modify its Rule H tariff addressing charges for installing new or altering existing distribution lines. The Ada County Highway District, City of Nampa, Association of Canyon County Highway Districts, and Building Contractors Association of Southwestern Idaho all filed timely Petitions for Reconsideration. On July 29, 2009, Idaho Power filed an Answer to the Petitions. After reviewing the Petitions and our final Order, the Commission grants in part and denies in part the Petitions for Reconsideration as set out in greater detail below.

BACKGROUND

Reconsideration provides an opportunity for a party to bring to the Commission's attention any question previously determined and thereby affords the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Co. v. Kootenai Environmental Alliance*, 99 Idaho 875, 879, 591 P.2d 122, 126 (1979). The Commission may grant reconsideration by rehearing if it intends to take additional argument. If reconsideration is granted, the Commission must complete its reconsideration within 13 weeks after the deadline for filing petitions for reconsideration. *Idaho Code* § 61-626(2). The Commission must issue its order upon reconsideration within 28 days after the matter is finally submitted. *Id.*, IDAPA 31.01.01.331-332.

THE DISTRICTS' PETITIONS

Ada County Highway District (ACHD), City of Nampa (Nampa), and the Association of Canyon County Highway Districts (ACCHD) (collectively "the Districts"), allege that the Commission's approval of Section 10 in Rule H exceeds the Commission's authority granted by statute. Section 10 of Rule H generally pertains to the relocation of utility facilities located in public rights-of-way and the allocation of relocation costs. ACHD further maintains

that Section 10 is unconstitutional because it violates Article 8, § 2 and Article 7, § 17 of the Idaho Constitution. ACHD Petition at 11. ACHD also requests that the Commission clarify its Order and revise Section 10 of the proposed tariff. *Id.* at 15. Nampa and ACCHD also insist that the Commission's Order fails to clarify the definitions of "third-party beneficiary" and "local improvement district." Petitions at 2.

The Districts' arguments are similar and specifically focused on Section 10 of Idaho Power's proposed Rule H tariff. Therefore, their Petitions will be addressed together.

First, the Districts maintain that the highway districts possess exclusive jurisdiction over the public rights-of-way under their authority. Thus, they argue that Section 10 of Rule H is "beyond the jurisdictional authority of the IPUC because it seeks to affirmatively regulate the state's public road agencies, entities of government, third parties, and developers and impose upon them the duty to pay for mandatory utility relocations in an unreasonable, one size fits all approach." ACHD Petition at 7.

Second, the Districts maintain that Section 10 is unconstitutional and an illegal attempt to abrogate or amend the common law rule that utilities placing their facilities along streets and highways (in public rights-of-way) gain no property right and must move their facilities at their own expense upon demand. Finally, the Districts seek clarification as to the definitions for "third-party beneficiaries" and "local improvement districts" ("LID") in Section 10. They generally allege that the definitions of these terms are too vague. ACCHD Petition at 2.

In its Answer to the petitions, Idaho Power acknowledges that the definition of "LID" should be further clarified. Answer at 17. The Company also conceded that the filing of written briefs is a proper means of addressing legal issues. *Id.* at 19.

Commission Decision: The Commission acknowledged the limits of its authority in Order No. 30853 by stating that "Section 10 in no way grants Idaho Power or this Commission authority to impose [relocation] costs on a public road agency." Order No. 30853 at 13. We further clarified that "[j]ust as the Commission cannot compel the highway agency to pay for the relocation of utility facilities in the public right-of-way made at the agency's request, the agency cannot restrict the Commission from establishing reasonable charges for utility services and practices." *Id.* However, given the complexity of the constitutional and jurisdictional arguments posed by the Districts on reconsideration and the Company's acknowledgement that the term

LID should be clarified, the Commission finds it appropriate to grant their petitions regarding the disputed language contained in Section 10. In order to adequately address the issues raised on reconsideration, the Commission first directs that Idaho Power update the language of Section 10, including a clarified definition of “third party beneficiary” and “local improvement district.” Idaho Power shall file its updated Rule H, Section 10 with the Commission and the parties no later than August 28, 2009.

After Idaho Power clarifies its proposed Section 10 language, the District parties may file additional briefs (if necessary). Pursuant to Rule 332, we adopt the following schedule for reconsideration of Section 10:

<u>Action</u>	<u>Date</u>
Idaho Power file amended Section 10	August 28, 2009
Districts file briefs	September 11, 2009
Idaho Power response brief	September 21, 2009
Oral argument	To be determined

BCA's PETITION

In its Petition, BCA requests reconsideration of the Commission's findings and conclusions regarding: (1) terminal facilities allowances; (2) per-lot refunds; and (3) vested interest refunds. If reconsideration is not granted, BCA requests that the Commission clarify why it is departing from existing policy regarding investment in distribution facilities. Finally, BCA requests a stay of the Commission's Order No. 30853 pending a final decision on its Petition for Reconsideration.

First, BCA alleges in its Petition for Reconsideration that the Commission's Order “approves an inherently discriminatory rate structure for line extensions by imposing unequal charges on customers receiving the same level and conditions of service.” BCA Petition at 1. BCA seeks reconsideration “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.” *Id.* at 10.

BCA also disputes the Commission's elimination of per-lot refunds and the decision to leave the five-year vested-interest refund period undisturbed. BCA argues that the

Commission provides no reasoning for its decision to maintain a 5-year vested-interest refund period as opposed to adopting the 10-year period suggested by BCA. *Id.* at 2.

Commission Decision: The Petition for Reconsideration filed by BCA is granted in part and denied in part. The Commission finds it appropriate to grant reconsideration on the limited issue of the amount of appropriate allowances. As stated in its final Order, “[t]he Commission recognizes that multiple forces put upward pressure on utility rates.” Order No. 30853 at 10. Allowances are intended to reflect an appropriate amount of contribution provided by new customers requesting services in an effort to relieve one area of upward pressure on rates. BCA may address what allowance amount is reasonable based on the cost of new distribution facilities.

Pursuant to Rule 332, we adopt the following schedule for the limited reconsideration of how the allowances in Order No. 30853 were calculated and whether the calculation had a reasonable basis:

<u>Action</u>	<u>Date</u>
BCA file direct testimony	September 11, 2009
Responsive testimony filed	September 25, 2009
Technical hearing	To be determined

We deny reconsideration of the five-year vested-interest refund period and the per-lot refunds for several reasons. First, our procedural Rule 331 requires that petitions for reconsideration “set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law.” IDAPA 31.01.01.331.01. BCA’s petition fails to specifically address why the five-year vested-interest refund period or the elimination of the per-lot refund is unreasonable or erroneous.

Second, as we stated in our prior Order, “BCA’s request to extend the refund period to ten years is not supported by documentation or cogent argument.” Order No. 30853. In that Order we denied Idaho Power’s request to shorten the period to 4 years and declined to extend the period to 10 years. Instead, we maintained the current refund period of five years. The Company’s current administrative system is based upon five years. Staff also commented that with the current economic conditions “more refunds will be made in the fifth year now that

building activity has slowed.” Staff Comments at 12. Without elaboration, Idaho Power also opposed BCA’s recommendation to increase the period to 10 years. Response Comments at 10. Given this record we find that BCA did not provide sufficient or persuasive evidence to support its proposal to move to a 10-year lot refund policy. Consequently, we determined that the status quo of five years should be continued and deny BCA’s request to change the vested-interest refund period.

Finally, as we explained in our prior Order, increasing the amount of up-front allowance was in part to balance the elimination of the per-lot refunds. Order No. 30853 at 12. Elimination of the per-lot refund has a direct impact on the general body of ratepayers because the Company’s rate base will no longer grow by the refunded amounts. BCA does not address why an up-front reduction in developer contribution through an increased allowance is somehow inferior (and therefore unreasonable) to a subsequent refund policy. Moreover, allowing developers a reduced up-front contribution in lieu of a refund reduces the developers’ speculative risk that properties will sell.

As set out above, we grant limited reconsideration on the issue of the initial allowance. BCA will have an opportunity to present evidence of whether the allowance amount is sufficient.

Finally, we deny BCA’s Petition for a stay. Idaho Power’s Rule H changes will not become effective until November 1, 2009. Given the delayed effective date, we find there is sufficient time to conduct reconsideration and issue our Order on reconsideration prior to the approved effective date.

O R D E R

IT IS HEREBY ORDERED that the Petitions for Reconsideration of Ada County Highway District, City of Nampa and Association of Canyon County Highway Districts are granted. Reconsideration shall be accomplished as set out above.

IT IS FURTHER ORDERED that Idaho Power submit an updated Rule H, Section 10, consistent with the directives provided in Commission Order No. 30853 no later than August 28, 2009.

IT IS FURTHER ORDERED that the Building Contractors Association’s Petition for Reconsideration is granted in part and denied in part. More specifically, reconsideration is


granted on the issue of allowances and denied on the issues of per-lot refunds and vested-interest refunds.

IT IS FURTHER ORDERED that the Building Contractors Association's Petition for Stay is denied.

IT IS FURTHER ORDERED that the parties conform to the schedules set out above. The Commission will issue an Order scheduling the date(s) for the Districts' oral argument and BCA's technical hearing.

THIS IS AN INTERLOCUTORY ORDER. The Commission has not finally decided all of the matters presented in this case because it has granted reconsideration on at least some of the issues.

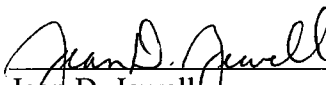
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19th day of August 2009.


JIM D. KEMPTON, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


MACK A. REDFORD, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

O:IPC-E-08-22_ks5