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IDAHO PUBLIC UTILITIES COMMISSION



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Sara M. Baker, Commissioner

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
IDAHO POWER COMPANY FOR AUTHORITY)	CASE NO. IPC-E-08-22
TO MODIFY ITS RULE H LINE EXTENSION)	
TARIFF RELATED TO NEW SERVICE)	COMMENTS OF THE
ATTACHMENTS AND DISTRIBUTION LINE)	ADA COUNTY HIGHWAY
INSTALLATIONS.)	DISTRICT
)	
)	

The ADA COUNTY HIGHWAY DISTRICT (hereinafter "ACHD") hereby submits the following comments in the above-captioned matter pursuant to the Idaho Public Utilities Commission's (hereinafter "IPUC") January 12, 2009 *Notice of Modified Procedure, Notice of Scheduling, Order No. 30719.*

ACHD COMMENT NO. 1

Proposed Section 10 of Rule H is Beyond the Jurisdictional Authority of IPUC

Pursuant to Idaho Code § 40-1310(1) & (8), highway districts have *exclusive* general supervision and jurisdiction over all highways and public rights-of-way within their highway system and full power to establish design standards, establish use standards. This includes the unqualified ability to demand that electric utility facilities within the public rights-of-way relocate per Idaho Code § 62-705. Proposed Section 10 of Rule H is an illegal usurpation of the highway districts' *exclusive* general supervision and jurisdiction over all highways and public rights-of-way because it purports to regulate and control electric utility relocations by assigning financial liability for such relocations. Such is strictly in the power and authority of the highway districts and should be left in the hands of the highway districts, working in a coordinated effort with local government officials and utility companies to develop an approach that is mutually beneficial. This local approach was taken by ACHD with great success in 1986 and resulted in ACHD Resolution 330; upon which proposed Section 10 of Rule H appears to be loosely based.

The usurpation of the highway district's exclusive general supervision and jurisdiction over the highways and public rights-of-way through proposed Section 10 of Rule H is clearly contrary to *Village of Lapwai v. Alligier*, 78 Idaho 124, 299 P.2d 475 (1956), in which the Idaho Supreme Court established clear lines of authority over the public rights-of-way and the relocation of utility facilities within public rights-of-way, stating: ". . . *the [Public Utilities Law] does not contain any provision diminishing or transferring any of the powers and duties of the municipality to control and maintain its streets and alleys.* Moreover, the legislature, in providing for the use of streets and alleys by utilities, expressly required the consent of the municipal authorities, and authorized the municipal authorities to impose reasonable regulations upon such use. The legislature recognizing the duty it imposes upon the municipality to control and maintain its streets and alleys, *has preserved to the municipality the power to deny their use to a utility, or to impose reasonable regulations thereon, when necessary to the use of such streets and alleys by the public in the usual manner.* . . . we conclude that the *village was not required to procure the consent of the [public utilities] commission* as a condition to discontinuance of appellants' service and their ouster from its streets and alleys." (Emphasis added) *Id.* at 478.

ACHD respectfully requests that the IPUC strike from Idaho Power's proposed Rule H Tariff, anything whatsoever attempting to regulate in any manner, the relocation of utilities in the public rights-of-way.

ACHD COMMENT NO. 2

Proposed Section 10 of Rule H Appears to be Unconstitutional:

In *Rich v. Idaho Power Company*, 81 Idaho 487, 346 P.2d 596 (1959), the Idaho Supreme Court struck down as unconstitutional, Idaho Code § 40-120(27) which established upon the Idaho Board of Highway Directors (predecessor to the Idaho Department of Transportation) and affirmative obligation to pay for utility relocations associated with state highway projects. To the extent that proposed Section 10 of Rule H imposes a duty upon the state to pay for utility relocations associated with state highway projects, it appears to violate Article 8 § 2 and possibly Article 8 § 17 of the Idaho Constitution. Applying *Rich v. Idaho Power Company* to proposed Section 10 of Rule H as it relates units of local government and local improvement districts created by units of local government, proposed Section 10 of Rule H also appears to violate Article 8 § 4 of the Idaho Constitution which operates in the same manner as Article 8 § 2 to prohibit the loaning of a local government's credit to any individual, association, municipality, or corporation.

ACHD respectfully requests that the IPUC strike from Idaho Power's proposed Rule H Tariff, anything whatsoever attempting to regulate in any manner, the relocation of utilities in the public rights-of-way.

ACHD COMMENT NO. 3

Third Party Beneficiary:

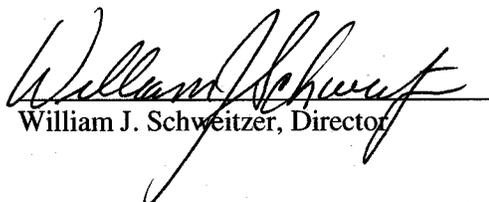
As currently written, the proposed Section 10 of Rule H includes an overly broad and potentially troublesome definition of "third party beneficiary" which could be construed to include a highway district whose roadways are being improved strictly as a result of another political subdivision's public project. For example, road improvements occurring in the course of a city sewer project. From the highway district's perspective, road improvements benefit the general public as a whole, whether undertaken as a highway district planned and coordinated project or by another entity improving its own facilities. Therefore, ACHD requests that proposed Section 10 of Rule H be modified to expressly exclude public entities and political subdivisions from the definition of "third party beneficiary".

Local improvement districts created by a highway districts under Idaho Code § 40-1322 and organized and operated under Title 50, Chapter 17 of the Idaho Code are limited to the "construction, reconstruction and maintenance of highways and accompanying curbs, gutters, sidewalks, paved medians . . . ", all of which are improvements that ultimately benefit the general public as a whole. Therefore, ACHD requests that proposed Section 10 of Rule H be modified to expressly exclude Local Improvement districts created by highway districts under Idaho Code § 40-1322 from the definition of "third party beneficiary".

Thank you in advance for your consideration of ACHD's comments in the above-captioned matter.

Dated this 3rd day of March, 2009.

ADA COUNTY HIGHWAY DISTRICT


William J. Schweitzer, Director

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of March, 2009, I caused to be mailed by U.S. Mail (postage prepaid) a true and correct copy of the foregoing COMMENTS OF THE ADA COUNTY HIGHWAY DISTRICT as follows:

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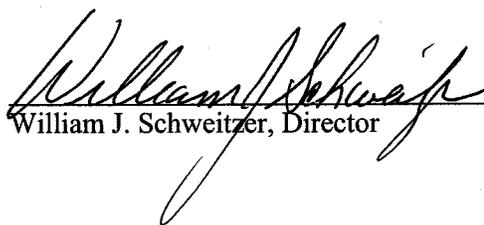
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ADA COUNTY HIGHWAY DISTRICT


William J. Schweitzer, Director