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IDAHO PUBLIC
UTILITIES COMMISSION

LISA D. NORDSTROM
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March 23, 2016

VIA HAND DELIVERY

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

Re: Case No. IPC-E-15-26
Transfer and Sale of Certain Assets to the FBI – Idaho Power Company's
Answer to the Industrial Customers of Idaho Power's Petition for
Reconsideration

Dear Ms. Jewell:

Enclosed for filing in the above matter please find an original and seven (7) copies of Idaho Power Company's Answer to the Industrial Customers of Idaho Power's Petition for Reconsideration.

If you have any questions about this filing, please do not hesitate to contact me.

Very truly yours,

Lisa D. Nordstrom

LDN:csb
Enclosures

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 IDAHO PUBLIC
 UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S APPLICATION TO)	CASE NO. IPC-E-15-26
APPROVE THE TRANSFER AND SALE)	
OF CERTAIN ASSETS TO THE UNITED)	IDAHO POWER COMPANY'S
STATES DEPARTMENT OF JUSTICE,)	ANSWER TO THE INDUSTRIAL
FEDERAL BUREAU OF INVESTIGATION.)	CUSTOMERS OF IDAHO
)	POWER'S PETITION FOR
)	RECONSIDERATION
)	

Idaho Power Company ("Idaho Power" or "Company"), in accordance with *Idaho Code* § 61-626 and RP 331.05, hereby responds to the Industrial Customers of Idaho Power's ("ICIP") Petition for Reconsideration filed on March 16, 2016 ("Petition").

I. INTRODUCTION

On November 25, 2015, Idaho Power applied to the Idaho Public Utilities Commission ("Commission") requesting an order approving the sale and transfer of certain assets to the United States Department of Justice Federal Bureau of

Investigation (“FBI”). The sale and transfer of the assets (the “Sale”), which were approved by the Commission in Order No. 33470 issued on February 24, 2016, would result in the FBI owning, operating, and maintaining all facilities installed beyond the point of delivery (“POD”) at the FBI’s facility.

ICIP explicitly did not object to the Sale in its Comments filed on January 26, 2016, or at the public technical hearing held on February 22, 2016. ICIP Comments at 1; Tr. at 8-9. Consequently, ICIP is prohibited from taking an incompatible position under the doctrine of judicial estoppel. *A & J Const. Co. v. Wood*, 141 Idaho 682, 684, 116 P.3d 12, 14 (2005). Insofar as ICIP requests the Commission reconsider “its decision not to initiate a proceeding to establish parameters for the price for the sale of Idaho Power-owned assets subject to Rule M,” ICIP misunderstands Rule M, Facilities Charge Service (“Facilities Charge Service”) as well as the Commission’s ruling. Petition at 9.

II. FACILITIES CHARGE SERVICE IS A VOLUNTARY, NON-MONOPOLY SERVICE

Facilities Charge Service. Rules B (Definitions) and M (Facilities Charge Service), as well as Schedules 9 (Large General Service) and 19 (Large Power Service) of Idaho Power’s tariff, set forth the general rule for primary and transmission service level customers to wit: The Company provides energy to a POD at the customer’s location and the customer is responsible for the transformation of power to the voltage at which it can be used by that customer.

Some Idaho Power customers cannot or choose not to own, operate, and maintain facilities required beyond the POD and instead seek relief from such obligation in exchange for payment through a Facilities Charge Service. Customers may request

the Facilities Charge Service for a variety of reasons, such as not wanting to expend capital to construct their own facilities, and/or not having the personnel, expertise, equipment, inventory, or desire to operate and maintain the facilities in the 24/7 manner that Idaho Power does.

When a customer requests and the Company agrees to provide the Facilities Charge Service, Idaho Power provides the electrical facilities necessary to supply service beyond the POD which are owned, operated, and maintained by Idaho Power in exchange for the customer's payment of a monthly facilities charge. Customers are required to pay a monthly facilities charge only if the Company is providing the Facilities Charge Service. Idaho Power provides the Facilities Charge Service at the customer's request and the Company's option to the approximately 260¹ Idaho jurisdictional customers that have requested it.

A Voluntary Service. Customers requiring electrical facilities necessary to supply service beyond the POD have three available options at the time of interconnection: (1) customers may own, operate, and maintain their own facilities on the customers' side of the POD; (2) customers may choose to contract with a third party to operate and maintain their facilities; or (3) customers may request the Company provide a Facilities Charge Service in exchange for customers' payment of a monthly facilities charge.

Although customers obtain Facilities Charge Service at their convenience and Idaho Power's option, certain customers made it clear in Case No. IPC-E-11-08 that they wanted the option to purchase those Idaho Power-owned facilities subject to the facilities charge. As a general rule, Idaho Power is not in the business of selling

¹ In 2015, Idaho Power had approximately 316 Idaho primary and transmission service level customers.

Company-owned facilities. However, as a result of the Rule M tariff approved in Case No. IPC-E-11-08, a customer who no longer wishes to take Facilities Charge Service has the option to either request Idaho Power remove its facilities or request to purchase the Idaho Power-owned facilities from the Company. Under either scenario, the customer can then either operate and maintain the facilities or contract with another provider to do so.

A Non-Monopoly Service. Idaho Power strongly disagrees with ICIP's statement that "There is no question that the provision of facilities beyond the ratepayer's meter by Idaho Power is part and parcel of the provision of utility service." Petition at 3. The regulatory compact envisions that: (1) in return for a monopoly franchise, utilities accept an obligation to serve all customers and (2) in return for agreeing to commit capital to the business, utilities are assured a fair opportunity to earn a reasonable return on that capital.² Idaho Power has no monopoly beyond the POD; a Facilities Charge Service cannot be "part and parcel of utility service" when it is beyond the POD and provided as a voluntary service. Idaho Power's tariff plainly states that primary and transmission customers are responsible for owning and maintaining facilities that may be required beyond the Company's POD. Moreover, not all primary and transmission service level customers request the Company provide a Facilities Charge Service.

Idaho Power is not the only option available for customers who do not wish to operate or maintain electric facilities on the customer side of the POD. Numerous contractors operating in Idaho Power's service area, including but not limited to, Anderson & Wood Construction; Quality Electric, Inc.; Andersen Construction; Track

² Phillips, Charles F. Jr., *The Regulation of Public Utilities, Theory and Practice*, Public Utilities Reports, Inc. (1993), p. 21.

Utilities, Inc.; and United Electric Co-Op, Inc., currently provide these services to Idaho Power customers. In short, Idaho Power does not hold a monopoly on providing, operating, or maintaining facilities on the customer side of the POD.

III. COMMISSION OVERSIGHT OF FACILITIES SALES PROTECTS OTHER CUSTOMERS, NOT THE INDIVIDUAL PURCHASER

While Idaho Power agrees with ICIP that the “public service” language in *Idaho Code* § 61-328(2)(c) is awkward for utility asset sales to individual customers benefitting from the same, the Company disagrees that the statute is inapplicable to these types of sales. *Idaho Code* § 61-328 broadly covers transactions involving “property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public *or any portion thereof* . . .” (emphasis added). The statute does not exclude sales benefitting a single customer; instead, it appears to purposely include them.

Commission orders issued pursuant to *Idaho Code* § 61-328 enable the utility to provide clear title and authorize removal of facilities from the utility’s system of accounts governed by *Idaho Code* § 61-524. The Company’s Commission-approved facilities charge is designed to provide a levelized rate of cost recovery from individual customers using the same cost components included for similar facilities under the Company’s approved non-levelized determination of the revenue requirement.³ In the Company’s non-levelized determination of class-specific base rate revenue requirements, the Company determines the total revenue required for recovery on all distribution facilities-related investments (including those investments beyond the POD), as well as the associated operating, maintenance, and administrative expenses. This

³ The Rebuttal Testimony of Michael J. Youngblood filed in Case No. IPC-E-11-08 provides a more detailed explanation of how facilities charges are calculated. Tr. at 237-310.

determination is made for each class of customers and the Company's revenues for providing facilities charge services are directly assigned as a revenue credit, or reduction, to the revenue requirement of the associated class of customers. As a result, any differences between the non-levelized revenue requirement and the levelized revenue requirement associated with the rate of return exist as intra-class subsidies between customers paying facilities charges and customers not paying facilities charges within each customer class. Therefore, the Commission must ensure the price established between two willing parties is "consistent with the public interest" under *Idaho Code* § 61-528(3)(a) such that other customers are not negatively impacted.

Because the sale of facilities on the customer's side of the POD falls outside the regulatory compact, the Commission has no obligation—statutory or otherwise—to establish prospective parameters for determining the sale price of utility assets located on the customer's side of the meter. The Commission's role is to protect the general body of customers from negative impacts resulting from the sale; it is not the Commission's duty to protect an individual in an arm's length transaction to procure facilities or services that can be acquired from other providers. Absent the governmental exercise of eminent domain, it is within the utility's sole prerogative to decide at what price it is willing to enter into an asset sale transaction.

IV. CASE-BY-CASE COMMISSION REVIEW OF FACILITIES CHARGE SALES IS APPROPRIATE

The sale of Facilities Charge Service equipment is not a service or commodity for which the price is set by the Commission. While the sale of equipment beyond the POD may appear simple, the impact of these sales on complicated utility ratemaking is not. When the Commission reviews utility facility sales to customers in the context of the

circumstances present, it fulfills its statutory duty under *Idaho Code* § 61-328 to authorize only those transactions consistent with the public interest. This flexibility is necessary to ensure the general body of customers and other facilities charge customers are not harmed.

While the pricing methodology proposed in this case provides a reasonable framework for evaluating facilities charge asset sales in the future and may be applicable in subsequent facilities charge asset sales transactions, other circumstances may warrant different pricing methods or contract terms to reflect the value proposition present in a particular transaction. A predetermined pricing methodology could restrict the Company from selling facilities charge assets because the resulting price could be undesirable to the potential purchaser, even if the Company was willing to sell the assets at a lower price than the set pricing methodology dictates. A sale that could have resulted in operational efficiencies and improved system reliability could be negated due to the limitations of a set pricing methodology.

While net book value may be appropriate for some transactions, usually in the case of sales of assets between public utilities, it is a stretch for ICIP to characterize the Commission as “suddenly depart[ing] from its traditional book value approach to the sale of utility assets” Petition at 9. Numerous examples exist where the utility and the Commission determined something other than net book value was appropriate under the circumstances present.

- In 1993, Idaho Power received Commission authorization to sell the Hailey turbine electric generator to Longview Fibre Company for \$8 million when the turbine became redundant and was no longer economically viable to operate. The net

book value for revenue requirement purposes was approximately \$1.9 million; more than \$3.2 million of the gain was allocated to Idaho customers in the next general rate case. Case No. IPC-E-92-09, Order No. 24676.

- In order to avoid conflicts between the location of the Sun Valley Company's recreational facilities and Idaho Power's distribution facilities, the Commission approved the sale of Bald Mountain distribution facilities to the Sun Valley Company. Because salvaging the facilities or leaving them in place would be more costly to customers than the sale, the Commission placed the accounting loss of \$124,058 into a regulatory asset account to be amortized over 10 years as part of the Company's revenue requirement but did not permit the Company to earn a return in rate base. Case No. IPC-E-93-20, Order No. 25241.

- In 2007, United Water sold a non-contiguous system serving three subdivisions to the City of Kuna for \$375,000. While the net book value for the depreciable assets was \$135,255, the net proceeds at closing were expected to be \$212,255. Case No. UWI-W-07-05, Order No. 30481.

- Rocky Mountain Power sold a hydroelectric facility in Fremont County to St. Anthony Hydro in 2013 because the cost to restore or decommission it would be cost prohibitive. After restoring the plant, St. Anthony Hydro would then enter into a power purchase agreement with Rocky Mountain Power for its generation. Rocky Mountain Power sold the facility "as is," which resulted in a sale below the remaining book value. Case No. PAC-E-13-06, Order No. 32864.

In light of changes implemented after Case No. IPC-E-11-08, if a customer in a Facilities Charge Service agreement requests the Company sell Idaho Power-owned

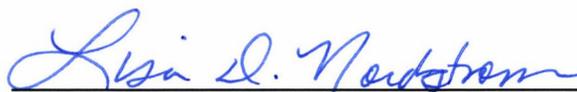
facilities on the customer's side of the POD, Idaho Power will prepare a buyout quote pursuant to Rule M that reflects a price at which (1) the Company is willing to sell its assets and (2) does not negatively impact customers or shareholders. As evidenced by its agreement to sell facilities to the FBI covered by the Facilities Charge Service, it is possible to achieve an outcome acceptable to the customer and Idaho Power.

However, Idaho Power is not required to sell facilities charge assets, especially not at a price less than what Idaho Power believes their value to be. A tenant renting a home for 20 years cannot reasonably expect or insist the homeowner sell the home for the principal remaining on the mortgage regardless of value to the landowner or in a competitive market. ICIP's insistence on net book value pricing is similarly unreasonable.

V. CONCLUSION

ICIP's request for a generic pricing methodology is not necessary or required to establish facilities charge asset pricing between a utility and a customer that ensures (1) the rates and charges of other customers are not negatively impacted and (2) that the sale is in the public interest. Consequently, and pursuant to the reasoning set forth above and in Idaho Power's previous filings in this matter, Idaho Power respectfully requests the Commission deny ICIP's Petition for Reconsideration.

Respectfully submitted this 23rd day of March 2016.



LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of March, 2016, I served a true and correct copy of IDAHO POWER COMPANY'S ANSWER TO THE INDUSTRIAL CUSTOMERS OF IDAHO POWER'S PETITION FOR RECONSIDERATION upon the following named parties by the method indicated below, and addressed to the following:

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