(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF NEW TARIFF PROVISIONS RELATING TO NEW SERVICE ATTACHMENTS AND DISTRIBUTION LINE INSTALLMENTS OR ALTERATIONS. | )  )  )  )  )  ) | CASE NO. IPC-E-95-18  ORDER NO.  26835 |

On February 6, 1997, the Commission issued Order No. 26780 granting Idaho Power’s Application for modifications to its Rule H tariff providing for charges for construction of distribution line installations or alterations.  On February 18, 1997, the Commission received a letter from Jerry Betchan asking the Commission to reconsider particular findings in Order No. 26780.  On February 27, 1997, Idaho Power filed a response to Betchan’s Petition for Reconsideration and Cross-Petition for Reconsideration.  On March 3, 1997, American Heritage filed a Petition for Reconsideration and Stay of the Commission’s Idaho Power Order No. 26780.  This Order denies both petitions for reconsideration and Idaho Power’s cross-petition.

BACKGROUND

On December 8, 1995, Idaho Power filed an Application for approval of modifications  to Rule H of its Tariff No. 101, proposing to shift more of the costs of new service attachments and distribution line installations or alterations from the system revenue requirement to the new customer or customers requesting the service.  On February 6, 1997, the Commission issued Order No. 26780 granting, with modification, Idaho Power’s Application for modification to Rule H.  Specifically the Order approved charges for distribution line installations or alterations that included changing the cost estimating methodology from average unit cost to work order cost, approved a change to construction allowances, modified the refund policy, and addressed other miscellaneous provisions of the tariff.

On February 18, 1997, the Commission received a letter from Jerry Betchan, asking the Commission to reconsider the refund period established by Order No. 26780 and to allow a longer period.  On February 27, 1997, Idaho Power filed a response to Mr. Betchan’s petition.  The Company also cross-petitioned, asking for a shorter refund period.   On March 3, 1997, American Heritage, an intervenor, filed a Petition for Reconsideration and Stay of Order No. 26780 asking for hearing and briefing on the work order cost methodology established in the Order.

Rule 331 of the Commission’s Rules of Procedure (IDAPA 31.01.01.331) provides that any person interested in a final order of the Commission may petition for reconsideration within 21 days after the date of the service of that order.  Such petitions must set forth the ground or grounds why the petitioner contends that the order is unreasonable, unlawful, erroneous or not in conformity with the law and a statement of the nature and quantity of evidence or argument that the petitioner will offer if reconsideration is granted.  The Rule further provides that any person may cross-petition within seven days after an initial petition for reconsideration is filed.

Jerry Betchan’s Petition for Reconsideration

On February 18, 1997, the Commission received a letter from Jerry Betchan asking the Commission to reconsider the refund period established in the Order.  Order No. 26780 states “ . . .  a five-year refund period is reasonable and should be retained, except in the cases of platted undeveloped subdivisions where we order a ten-year refund period.”  Id at 17.  Mr. Betchan asked that the 10-year refund period be extended to all applicants, not just the case of platted undeveloped subdivisions.   As grounds for reconsideration Mr. Betchan claims that extending the refund period to 10 years for all applications would be in the best interest of the public and more equitable.

On February 27, 1997, Idaho Power filed a response to Mr. Betchan’s Petition.  Idaho Power states that it believes the Commission can create a class of platted and undeveloped subdivisions for a special refund period, and such class would meet any discrimination or preferential test.  Idaho Power also cross-petitioned pursuant to Rule 331 arguing that the record in this proceeding demonstrates that a five-year refund rule is equitable and should be applied to all refund periods for all classes of customers.  The Company asserts that a longer refund period is burdensome since it requires Idaho Power to administer and keep track of the period of time for which a line extension contribution is eligible for refund provisions.  Moreover, the Company claims that permitting a 10-year refund period for undeveloped subdivisions will have the unintended result of encouraging developers to plat undeveloped subdivisions in the future.  Idaho Power contends that this would not be in the public interest.

In the tariff filed by Idaho Power on February 20, 1997, the Company interprets the language in Order No. 26780 extending the refund for 10 years to platted undeveloped subdivisions to apply only to undeveloped subdivisions platted prior to January 1, 1997.  Staff, on the other hand, believes that the intent of the Order was to extend the refund period to 10 years for platted undeveloped subdivisions in the future.  For the tariff filed by Idaho Power on February 26, 1997, Staff has recommended approval of all sections except for the special rule for undeveloped subdivisions platted prior to January 1, 1997.  Idaho Power and Staff have asked the Commission to clarify the intent of the Order on the refund period for platted undeveloped subdivisions.

F I N D I N G S

Having fully considered the issues raised by Mr. Betchan’s Petition for Reconsideration and Idaho Power’s Cross-Petition for Reconsideration, we find that no evidence concerning the refund period has been presented or identified that would render our Order on these issues unreasonable, unlawful, erroneous or not in conformity with the law.  We, therefore, deny the Petition and Cross-Petition for Reconsideration.

Further, as clarification to that portion of the Order concerning platted undeveloped subdivisions, we intended that a refund period of 10 years applies only to existing undeveloped subdivisions where electrical service has not yet been provided to any customers.  We believe that Idaho Power’s suggestion to use January 1, 1997, as the cutoff date before which subdivisions must have been platted in order to receive a 10-year refund period is reasonable.  A five-year refund period shall apply to all subdivisions platted after that date.

American Heritage Petition for Reconsideration and Stay

On March 3, 1997, American Heritage filed a Petition for Reconsideration and Stay of Order No. 26780.  American Heritage challenges the Commission’s decision to permit Idaho Power to use work order costs rather than average unit costs as the basis for assessing line extension charges to customers.   American Heritage states that “Idaho Power can charge whatever rate it wishes without any cost control through the work order cost.”  Petition at 6.  American Heritage argues that developers have no choice but to allow Idaho Power to install line extensions.  Petition at 6.  American Heritage asks for a stay of only those portions of the Order pertaining to residential subdivisions.

American Heritage’s Petition was filed on March 3, 1997.  According to Rule 331 of the Commission’s Rules of Procedure, petitions for reconsideration are due within 21 days of the date of the Commission’s Order, which in this case was February 27.  Rule 331(4), however, provides that the mailbox rule applies to petitions for reconsideration which allows petitions to be “postmarked” within 21 days.  American Heritage’s Petition was signed February 27, however, the envelope was postmarked February 28 and American Heritage did not give notice of the filing of the Petition with the Commission Secretary nor other parties by phone that the Petition was being filed as required by the Rule 331.  We find, therefore, that the Petition for Reconsideration was not timely filed according to the Rules of Procedure and is denied.  Nevertheless, we wish to comment on the issues raised by American Heritage’s petition.

American Heritage challenged that the work order cost method as ordered by the Commission does not have “any cost control.”  Petition at 6.  American Heritage implies that Idaho Power may charge any price it chooses for work order costs without any mechanisms to insure the reasonableness of those costs.  In support of its position, American Heritage submitted an affidavit of Mike Bird, an owner of American Heritage.  American Heritage also included as an attachment a work order and an average unit cost estimate which was already part of the record in this case, and which was addressed in direct and rebuttal testimony.

In Order No. 26780, to address the very concerns raised by American Heritage at hearing and again in its Petition, the Commission directed Idaho Power to evaluate the feasibility of allowing developers to hire independent contractors and report back its findings within six months of the date of the Order.  Order No. 26780 at 13-14.  No party to this case or public witnesses, including American Heritage, offered a sufficiently detailed proposal to permit us to assess the feasibility of such a system.(footnote: 1)  Absent such details, we will not allow developers to hire independent contractors to build and install new line extensions.  We encourage Mr. Bird on behalf of American Heritage to participate in any proceeding that may result from the Company’s report on the feasibility of hiring independent contractors.

After reviewing the issues raised by American Heritage we find that the issues have already been adequately addressed in the evidence, testimony and briefing submitted during the evidentiary hearing in Case No. IPC-E-95-18.  We, therefore, deny American Heritage’s Petition for Reconsideration and Stay of Order No. 26780.

ORDER

IT IS HEREBY ORDERED that Jerry Betchan’s Petition for Reconsideration is denied.  IT IS FURTHER ORDERED that Idaho Power’s Cross-Petition for Reconsideration is denied.

IT IS FURTHER ORDERED that American Heritage’s Petition for Reconsideration and Stay of Commission Order No. 26780 is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. IPC-E-95-18 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code  § 61-627

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of March 1997.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

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1 Mr. Bird testified at the Pocatello public hearing on July 11, 1996.  During that hearing Commissioner Nelson asked Mr. Bird if he had any alternative proposals to make concerning allowing developers to hire indepen­dent contractors or requiring utilities to solicit bids.  Mr. Bird at that time said he did not intend to present a pro­posal to the Commission because he did not want the Commission making any decision on such a proposal.  Tr. at 125-126.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

March 18, 1997