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IDAHO PUBLIC
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MEMORANDUM

TO: Germane Subcommittees for Administrative Rules Review of the Senate and House of Representatives State Affairs Committees

FROM: Research and Legislation Staff, Nugent *mm*

DATE: August 4, 2005

SUBJECT: Temporary and Proposed Rules of the Public Utilities Commission Relating to Stray Voltage

In 2005, the Legislature enacted House Bill No. 214, as amended, which established, for public utilities regulated by the Public Utilities Commission, a preventative action level for stray current or voltage which may affect dairy cows and required the Public Utilities Commission to develop and adopt a standardized protocol which includes the preventative action level for use by all persons and entities to measure, investigate and, if necessary, remediate stray current or voltage on dairy farms. Under the bill, compliance with the standardized protocol regarding measurement, investigation and remediation adopted by the Public Utilities Commission would constitute the providing of adequate service by a public utility regulated by the Commission.

Under the bill, any party aggrieved by a determination of the Public Utilities Commission may pursue a civil action in which Commission findings will be admissible and presumed valid. Civil actions against regulated utilities for damages due to stray current or voltage are limited to negligence and negligence per se actions where the ordinary care under existing circumstances standard applies. HB 214aa, limits the time within which actions for damages must be filed, the time frame over which damages may accrue, and further requires timely notice of claims of damages to the regulated utility.

The temporary and proposed rules of the Public Utilities Commission are implementing the provisions of HB 214aa. The temporary and proposed rules standardize the measurement and testing procedures used to measure stray voltage and current. The rules provide for six (6) tests to detect and measure stray voltage and prescribe qualifications for those conducting and

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analyzing the tests. The proposed rules include forms for investigators to use when gathering voltage and current data at a dairy. The rules provide that only tests and measurements made in compliance with the Commission's rules on the subject would be admissible before the Commission or in any civil action.

There are several technical comments. In its "Notice of Rulemaking" there are a several typographical errors. In the fifth paragraph "Stray" is spelled "Stay" and in the sixth paragraph it states that "Pursuant to Section 61-308, Idaho Code, only tests and measurements made in compliance with these rules shall be admissible before the Commission or in any civil action." The Section 61-308 reference is incorrect. The stray voltage act is contained in Chapter 8, Title 61, Idaho Code. It appears the temporary and proposed rules have been promulgated within the scope of statutory authority granted to the Public Utilities Commission.

cc: Idaho Public Utilities Commission