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IDAHO PUBLIC
UTILITIES COMMISSION

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SUP-E-10-01

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION
OF IDAHO POWER COMPANY TO
MODIFY ITS RULE H LINE EXTENSION
TARIFF RELATED TO NEW SERVICE
ATTACHMENTS AND DISTRIBUTION
LINE INSTALLATIONS.

OPPOSITION TO RESPONDENTS'
JOINT MOTION TO STRIKE
APPELLANT'S AUGMENTATION OF
BRIEFS

THE BUILDING CONTRACTORS
ASSOCIATION OF SOUTHWESTERN
IDAHO,

Supreme Court Docket No. 37293-2010

Petitioner-Appellant,

vs.

IDAHO PUBLIC UTILITIES COMMISSION,
and IDAHO POWER COMPANY,

Respondents on Appeal.

Pursuant to Idaho Appellate Rule 32(d), Petitioner-Appellant The Building Contractors Association of Southwestern Idaho, Inc. ("BCA"), by and through its counsel of record, Givens Pursley LLP, hereby files this opposition to *Respondents' Joint Motion to Strike Appellants' Augmentation of Briefs* ("Motion") dated April 25, 2011.

OPPOSITION TO RESPONDENTS' JOINT MOTION TO STRIKE APPELLANT'S
AUGMENTATION OF BRIEFS - 1

Contrary to Respondents' assertions, BCA did not present additional argument or written comment in its April 12, 2011 filing with this Court. Similar to the Idaho Public Utilities Commission's ("IPUC") March 30, 2011 filing augmenting their brief in this matter, BCA's filing simply pointed out where in its briefing the additional authorities should be included. In fact, BCA's counsel modeled their basic approach in their April 12th augmentation filing on the IPUC's March 30th example.

Respondents suggest that BCA's inclusion of "[u]ncertified copies of the decisions . . . 'for the Court's convenience,'" either was impermissible or somehow crossed the line into presenting argument. BCA's counsel obtained the copies of the proffered orders directly from the office of the IPUC when it was learned that only unofficial copies could be obtained through the IPUC's online database. Inasmuch as apparently only one of the orders provided by BCA can be found on Westlaw, *see* Motion at 2 n.1, BCA presumes that providing the Court (and Respondents) with copies of the IPUC orders has been of convenience to the Court and Respondents.

Because BCA's augmentation filing did not contain any additional argument, there is no merit to Respondents' assertion that under I.A.R. 34(f)(2) BCA must show "good cause why the material had not been included in the prior brief." Nevertheless, BCA believes it can show good cause. As Respondents pointed out in their Motion, two of the orders could not be found by searching a published reporter system, and only recently did BCA's counsel discover that the proffered orders could be found in the IPUC's online database. When BCA's counsel became aware of these past IPUC orders, which are directly relevant to arguments presented by BCA

(and the IPUC) in this appeal, they believed they were obligated to bring them to the attention of the Court.

BCA respectfully requests this Court deny Respondents' Joint Motion to Strike.

DATED THIS 9th day of May, 2011.

GIVENS PURSLEY, LLP

By 

Michael C. Creamer
Attorneys for The Building Contractors
Association Of Southwestern Idaho

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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