

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF PONDEROSA)
TERRACE ESTATES WATER SYSTEM,) **CASE NO. PTE-W-03-1**
INC.'S FAILURE TO COMPLY WITH)
COMMISSION ORDERS.) **ORDER NO. 29276**
_____)

Mr. Robaer Cobott owns Ponderosa Terrace Estates Water System, Inc. (Ponderosa, PTE or Company) and operates it as a for-profit water system. Located south of Sandpoint and east of the community of Sagle in Bonner County, Idaho, the Company serves approximately 20 full-time residences connected to the system and a total of approximately 90 lots within the area. This system has been in place since approximately 1969. In Order No. 29212, the Commission directed Ponderosa to appear at a hearing and show cause why it failed to comply with prior Commission Orders. The Show Cause hearing took place April 28, 2003 at the Bonner County Courthouse with Stephen Ayers presiding as the Commission-appointed Hearing Examiner. Based on the testimony presented at the hearing, the Hearing Examiner made findings of fact that incorporated a settlement reached between Staff and the Company. In this Order, the Commission adopts the Hearing Examiner's findings of fact and settlement proposed by the parties.

I. BACKGROUND

Idaho Code § 61-501 vests the Idaho Public Utilities Commission with the power and jurisdiction to supervise and regulate every public utility within the State of Idaho. The Commission is also empowered by law to investigate and fix rates and regulations of any public utility, including water corporations. *Idaho Code* §§ 61-502; -503; and -129. Idaho law generally defines a "water corporation" as a person or corporation that owns or operates property or infrastructure that facilitates the supply, distribution, or sale of water for compensation. *Idaho Code* §§ 61-124 and -125. In September 2001, the Commission determined that Ponderosa was operating as a public utility and water corporation such that it fell within this Commission's regulatory jurisdiction. Order No. 28845.¹

¹ The docket in which the Commission first asserted jurisdiction and set rates was Case No. GNR-W-01-1.

On November 28, 2001, the Commission issued Order No. 28903 establishing a \$20 per month interim rate (the first interim rate) based upon the statewide average rate for small, flat rate water systems. The Commission scheduled a Show Cause hearing for December 17, 2001 in Sandpoint. Order No. 28911. The purpose of the hearing was to permit Mr. Cobott to show cause (if any) why the \$20 per month flat month rate established by Order No. 28903 was not reasonable and to take public comment from customers regarding the water service. When it became known that Mr. Cobott would likely be unable to attend the hearing, the Commission vacated the Show Cause hearing. Order No. 28917. In its Order vacating the hearing the Commission assigned Certificate of Convenience and Necessity No. 393 to the Company and reiterated the findings and directives of its prior Orders.

On May 7, 2002, the Commission received a letter from Mr. Cobott stating that the Ponderosa Terrace Estates Water Company was going to have to go out of business because the rates set by the Commission were too low. He claimed that revenues were down 90 to 95 percent. He stated that he had not and would not mail bills to customers with the \$20 per month charge approved by the Commission. He did not agree with the interim rate and would not send a bill that made it appear as though he accepted the Commission's authorized rates. Because they did not receive bills, some customers did not pay for service from December 2001 through April 2002.

On May 14, 2002, the Commission issued a Notice of Proposed Increase in Rates, Modified Procedure and Comment/Protest Deadline proposing to increase the first interim rates so that they produce an annual revenue amount for Ponderosa of \$25,282.41. Order No. 29024 at 6. Prior to the May 23 comment deadline, the Commission received comments from the Commission Staff,² Ponderosa, and several Ponderosa customers regarding what rates should be implemented for water service. Those comments were discussed in greater detail in Order No. 29046.

Based upon these comments and further analysis, the Commission found it reasonable to adopt a second set of interim rates – \$56.50 for full- and part-time customers and \$6.50 for the remaining customer classes effective June 1, 2002. Order No. 29046 at 10. The Commission also scheduled a technical and public hearing in Sandpoint on June 20, 2002 to

² The Staff should not be confused with the Commission. The Commission's duty is to regulate every utility and set rates that are reasonable to both the utility and customers. *Idaho Code* §§ 61-501 and 61-502. The Commission Staff may participate as an independent party in any proceeding. IDAPA 31.01.01.037-038.

gather additional evidence on which to establish final rates. *Id.* at 13-14. The Commission did not receive any petitions requesting intervention. At the conclusion of the public hearing, the Commission orally extended the public comment deadline to June 27, 2002 to accommodate customers who wished to submit written statements. Tr. at 317.

On August 8, 2002, the Commission authorized Ponderosa Terrace Estates Water System to collect monthly rates in the amount of \$48 for full-time and part-time customers and \$25 for active service customers with aboveground access to water for service rendered on or after August 1, 2002. Order No. 29086. In its Order on Reconsideration, the Commission directed Ponderosa and Commission Staff to submit a report detailing customer class inventory (membership) changes once the grace period expired on October 15, 2002, and the impact these changes may have on Ponderosa's revenues. Order No. 29123.

The subsequent report filed by Staff indicated that even though Ponderosa was under-collecting its revenue requirement, neither Staff nor Ponderosa recommended a change in rates at that time. Report at 2. Based on a number of inquiries received by the Commission, it was apparent that some confusion existed regarding the implementation of the Commission's Orders and the Company's treatment of seasonal disconnections. Because Staff and the Company did not agree on the treatment of seasonally disconnected customers, Staff requested clarification of Order No. 29086 in that regard so that it could properly advise customers and the Company. *Id.*

In response to these concerns about seasonal disconnection, the Commission clarified Order No. 29086 in December 2002 and authorized Ponderosa to involuntarily move a customer to the inactive service customer class if the customer remained disconnected from the system for longer than eight full months. Order No. 29172. If the customer later sought to resume service after the eight months had passed, the Commission directed Ponderosa to retain the following information to justify imposition of a \$2,500 hook-up fee: 1) its customer payment and disconnection records and 2) proof that notice of Ponderosa's intent to move the customer to inactive service and require a \$2,500 hook-up fee upon reconnection was sent via certified mail. *Id.*

II. SHOW CAUSE PROCEEDINGS

In Order No. 29212, the Commission directed Ponderosa to appear at a hearing and show cause why it has failed to comply with prior Commission Orders. More specifically, it was alleged that Ponderosa:

1. Made material misrepresentations to customers regarding the Commission's involvement in regulating the Company;
2. Made material misrepresentations to customers regarding rates to be charged for seasonal disconnections;
3. Threatened to disconnect customers in a manner inconsistent with prior Commission Orders and administrative Rules; and
4. Billed customers for usage (or lack thereof) in a manner inconsistent with prior Commission Orders.

The Notice further informed the Company and customers that if Ponderosa was found to be in noncompliance with Commission Orders, the Commission could: 1) seek a civil penalty of \$2,000 per day for each day the utility has failed to comply with Commission Orders pursuant to *Idaho Code* § 61-706; 2) petition the First Judicial District for an injunction prohibiting Ponderosa from charging rates different than those ordered by the Commission; 3) request the court to place the Company in receivership; and/or 4) file criminal misdemeanor charges under *Idaho Code* § 61-709 for failure to comply with a Commission Order.

A Show Cause hearing took place before a hearing examiner on April 28, 2003 at the Bonner County Courthouse in Sandpoint, Idaho. Commission Staff and the Company's President, Mr. Robaer Cobott, appeared at the hearing and presented testimony. During his live testimony, Staff witness Fuss proposed a rate structure that was different from both the Commission's Orders setting rates for seasonal disconnections and the Company's proposed hook-up fee. Mr. Fuss recommended the Commission adopt a \$48 per month³ rate for resident landowners, a \$25 per month⁴ rate for non-resident landowners, and allow disconnected customers to pay all delinquent bills in lieu of a \$2,500 hook-up fee (whichever is less). Tr. at 22-23 and 27-28. This rate structure would generate approximately \$13,200 per year or a little over \$1,000 per month, which is considerably less than the \$26,600 revenue requirement set by

³ This figure was based on Ponderosa providing service to 12 resident landowners.

⁴ This figure was based on Ponderosa providing service to 21 non-resident landowners.

the Commission in Order No. 29086. If Ponderosa were amendable to this resolution, Staff further recommended that the Commission adopt this Proposed Settlement in lieu of seeking civil or criminal judicial remedies against Ponderosa. Tr. at 30.

Mr. Cobott testified that the Commission violated Order No. 29086 by amending its provisions in December 2002 to allow seasonal disconnections after Staff had represented to him that the Order was final and would not be changed. Tr. at 68-69. Mr. Cobott believes he was deceived and had to take matters into his own hands to save the Company and his investment. He also noted that Ponderosa saved six customers from leaving the system by lowering the rates to “non-resident landowners” who were considered by the Commission to be “part-time customers.” Tr. at 59-60. Mr. Cobott testified that he had left the Commission’s rates in place but was using different customer class definitions: “residents” who live on their property 12 months per year and “non-residents” who do not. Although Ponderosa would like to receive the full \$26,600 revenue requirement, he stated that it is unrealistic to have rates necessary to generate that kind of income. Instead, Mr. Cobott testified that he can realistically collect \$12,000 to \$13,000 annually and that he can and would operate the Company for \$13,000 per year. Tr. at 60-61.

During a recess at the hearing, Staff and the Company discussed a resolution to some issues related to Ponderosa’s rate structure. The parties reached a Settlement, which was read orally into the record and later filed with the Commission. This Settlement is discussed in greater detail below.

III. THE PROPOSED SETTLEMENT

To establish principles by which the Company should be operated going forward, Staff and PTE signed a Proposed Settlement (Settlement) for the Commission’s consideration. The most pertinent parts are as follows:

- Customers would be required to pay a monthly rate according to the two customer classes defined as:
 - Resident Customers: Resident customers are full-time water system users who live year-round on property serviced by PTE. Resident customers shall be charged \$48.00 per month, 12 months a year.
 - Non-Resident Customers: Non-Resident customers are all other property owners who do not live year-round on property serviced by PTE, residing onsite part or none of the year. The non-resident

customer class shall include customers who could be served by the system, even if they are not physically connected to the PTE system. Non-resident customers shall be charged \$25.00 per month, 12 months a year.

- Prior to resuming water service, delinquent amounts due the Company after the Commission took jurisdiction over the PTE water system on September 13, 2001 shall be paid at the Commission-approved rate applicable for each month of service rendered. Furthermore, PTE customers with delinquent bills who wish to take service after this Settlement is approved must either pay all unpaid bills for service rendered since the date the Commission approves this Proposed Settlement or \$2,500.00, whichever amount is less.
- PTE will abide by Idaho Public Utilities Commission Rules generally applicable to customer relations and water utilities.
- Although PTE believes that it should be entitled to collect late fees and interest on delinquent bills to encourage prompt payment, Staff and the Company have not reached a settlement on this particular issue and will leave it open for the Commission's consideration.

Commission Findings: It is not an exaggeration to say that Ponderosa faces more obstacles than do most of the private water utilities we regulate. The Ponderosa system has a small customer base from which it can recover its costs. Moreover, Ponderosa requires substantial amounts for ongoing maintenance and repair due to the age of the system. The Ponderosa system also has a relatively limited and costly water supply that necessitates greater investment in well drilling, chlorination equipment and pumping costs.

The rates set in Order Nos. 29086 and 29172 were based on service to a larger number of customers. Since August 2002, a number of customers have drilled their own wells and others have chosen to be disconnected. Consequently, the Company's rates generated considerably less revenue than the Commission anticipated. The Settlement proposed by Staff and the Company attempts to address this situation. In discussing the Settlement, we divide our findings into four issues: year-round payment for service, customer class definitions, hook-up fees, and interest/penalties for late payment.

1. Year-Round Payment for Service

In Order No. 29172, the Commission clarified Order No. 29086 to explain that Ponderosa's full-time, part-time and active service customers could pay for service a minimum

of four months of each calendar year beginning January 1, 2003. In other words, each customer could disconnect from the system for up to eight months of a calendar year but remain obligated to pay for water service at least four months out of the calendar year to maintain active customer status. A customer who had been voluntarily or involuntarily disconnected from the Ponderosa system for more than eight full months could be moved to an "inactive service" class. Once in the inactive service customer class, this customer will be required to apply as a "new applicant" and thus pay a \$2,500 hook-up fee.

Ponderosa Terrace Estates is predominately a part-time summer home development, of which only 25% of the lots have been improved with permanent structures. Many of these unimproved lots were purchased for future development or are used only sporadically by recreational vehicles. Similar developments are normally owned and operated by a homeowner's association that assesses fees to all property owners to maintain the water system, roads, sewers and all other common property in the subdivision. Although privately-owned, the Ponderosa system is similar in that all property owners benefit from the water system, whether or not they are connected and taking service for the entire year. The water system infrastructure is in place for the benefit of all properties and adds to the current and resale value of the properties.

Based upon the record presented in this case and the need to recover Ponderosa's reasonably incurred costs while keeping customer rates affordable, the Commission finds it appropriate to modify Order No. 29172 by authorizing the Company to collect its service monthly rate for 12 months of the year rather than a minimum of four months. These rates shall become effective for service rendered on and after July 1, 2003. For simplicity, customers may wish to pay this quarterly or in a lump-sum annual amount. We expect the Company to accommodate reasonable payment arrangements.

The Commission further finds this rate structure to be appropriate for the Ponderosa system because it acknowledges that all customers benefit from the system's existence, even if absent customers do not take advantage of this service. Full-time customers will continue to pay the larger fee that reflects the variable expenses that they contribute to. Given that the usage of Ponderosa's customers is similar to the speculative and seasonal usage associated with "resort systems," we believe that year-round payment is the only way to provide the Company with the steady cash flow it needs to keep the system operating smoothly under the present circumstances. According to Mr. Cobott's testimony, Ponderosa anticipates generating \$1,011 per month or

\$13,212 per year from these rates, assuming that all current customers promptly pay their bills. Tr. at 60. The only other alternative to generate enough money to pay Ponderosa's operating expenses is to raise rates. While we do not wish to cause undue worry, we strongly encourage customers to keep Ponderosa financially solvent by timely paying their bills.

The Commission is making these changes to rates and customer classes (discussed below) in large part because several customers have drilled their own wells and disconnected from the system. This exacerbated upward pressure on the rates of customers who remain on the system. Unfortunately, the proliferation of individual wells on relatively small lots may also prohibit some property owners from improving their properties because septic systems cannot be built in close proximity to a neighbor's well. However, we note that the wells drilled thus far have been the result of uneconomic decisions made by landowners who are not likely to fully recoup their investment. The Company's current rates are less than those⁵ that were in place when the Commission asserted its regulatory authority in September 2001. If rates get much higher, individual wells will become an economic alternative and the Commission is concerned that more customers may leave the system. The Commission hopes that the rate and customer class changes authorized in this Order will discourage other customers from drilling their own wells.

The Commission further finds that Ponderosa shall file tariffs or schedules of these rates and charges no later than 28 days from the service date of this Order. We direct the Staff to assist the Company in preparing the necessary tariffs and we encourage Ponderosa to make use of Staff's expertise in making such filings.

2. Customer Class Definitions

Order No. 29086 previously established four customer classes, to wit: full-time, part-time, active service, and inactive service. Although it sounded good in theory, this class structure has proven difficult to understand and unwieldy to work with in practice. Moreover, it became ineffective as customers left the system and revenues decreased. Consequently, we find it is reasonable to adopt the customer classes and definitions proposed in the parties' Settlement, which are as follows:

⁵ \$60 for resident landowners and \$30 for non-resident landowners.

CUSTOMER GROUP	DEFINED AS	MONTHLY RATE
Resident Customer	Full-time water system users who live year-round on the property serviced by PTE.	\$48.00 (12 months a year)
Non-Resident Customer	All other property owners who do not live year-round on property serviced by PTE, residing onsite part or none of the year. The Non-Resident customer class includes customers who could be served by the system, even if they are not physically connected to the PTE system.	\$25.00 (12 months a year)

While full-time (now known as “Resident”) and active service (now known as “Non-Resident”) customers remain unaffected by this change, part-time and inactive service customers will now formally be treated as “Non-Resident” customers. This change will reduce the monthly rate of part-time customers but increase the amount owed by inactive service customers. This compromise allows non-resident customers to contribute less to the system than resident customers but also recognizes that unimproved lots have a responsibility to financially maintain the system so that it will be operational for the future development of their lots. The Commission finds it reasonable to approve these customer class definitions in an effort to stabilize the Company’s revenues, maintain Company operations, and encourage customer growth.

3. Hook-Up Fees

As we explained above, the Commission finds it reasonable for all landowners that benefit from the availability of Ponderosa’s water service to contribute to funding new water supplies and system maintenance. In Order No. 29086, the Commission required new or former customers wishing to take service to pay a \$2,500 hook-up fee. This \$2,500 hook-up fee was based on Staff engineer Fuss’s analysis of the cost for a new source and the approximate number of customers that could be served by the new source. Order No. 29086 at 11.

Although nearly a year has passed, the rationale for the hook-up fee remains the same. Based upon Staff witness Fuss’s analysis and the agreement of the Company, the Commission finds it reasonable for Ponderosa to continue to assess a \$2,500 hook-up fee for new customers and delinquent customers that wish to begin taking water service. We find that the hook-up fee will provide incentive for customers to pay their bills. Furthermore, the

Commission finds that it promotes equity by assessing customers that do not currently pay for service a share of the cost of a new source when or if they choose to begin taking water service.

The Commission also accepts the Settlement provision that would allow customers to pay the sum of their delinquent bills in lieu of the \$2,500 hook-up fee if the outstanding balance is less. We find this approach a useful option to promote Company cash flow and retain customers, particularly those who cannot pay their bills regularly and would otherwise forego water service if faced with a \$2,500 hook-up fee. Moreover, allowing customers to pay back bills in lieu of a hook-up fee will ensure that no customer has a chance to game the system and everyone pays their fair share. It will encourage customers to pay their bills and allow PTE to more easily recover the money it is owed for services already rendered. We also anticipate that this will reduce customer incentive to drill individual wells because customers can merely pay back bills and resume water service without an additional penalty.

4. Interest/Penalties for Late Payment

Mr. Cobott testified that he would like the Commission to reconsider its position on late fees and interest on delinquent accounts. Prior to the Commission's regulation of the system, Ponderosa charged late fees and interest to encourage customers to pay promptly. Although he would sometimes waive them for customers that were only a month or two late, he stated that late fees and interest were an effective tool that allowed him to collect monies owed more evenly. Tr. at 76. Mr. Cobott further argued that these delinquent amounts are needed on a monthly basis, especially given the financial strain the Company is under. Tr. at 77. Although the parties discussed this issue as part of its settlement negotiations, Staff and the Company left it unresolved and open for the Commission's consideration.

The Commission has historically rejected implementing late payment charges and interest on past due bills for non-energy services. Energy utilities are sometimes allowed to collect interest because Commission Rules restrict energy utilities' ability to terminate service to customers in the winter months. Because no such restrictions are in effect for water utilities, the Commission has not yet authorized water utilities to use late payment charges or charge interest. Because Ponderosa is not subject to a winter disconnection moratorium, the Company's request to charge interest and/or late penalties is denied. However, Ponderosa may wish to explore payment plans that make it more convenient for customers to pay their bills (i.e., pre-payment or lump sum payment for non-resident customers). Likewise, the Company should disconnect

customers who are delinquent in paying their bills not only to protect other customers on this unmetered system, but also to encourage them to become current on their account.

IV. PROPOSED FINDINGS AND ORDER

Stephen Ayers, the Commission's Hearing Examiner, filed his proposed findings and order (Proposed Order) with the Commission on June 4, 2003. Mr. Ayers' Proposed Order set out the background, summarized the evidence, described the settlement proposal, proposed findings and made recommendations regarding the Commission's Order in this case. The proposed findings noted that Mr. Cobott was aware of the Commission's Orders, Rules and rates when he imposed, or attempted to impose, differing rates and rules upon Ponderosa customers. Mr. Ayers also found that Ponderosa, by and through Mr. Cobott, made material misrepresentations to customers regarding the Commission's involvement in regulating the Company and the rates to be charged for seasonal disconnections. Finally, Mr. Ayers found that Ponderosa threatened to disconnect customers in a manner inconsistent with Commission Orders and administrative rules and has billed customers in a manner inconsistent with prior Commission Orders. Proposed Order at 15-16.

The Hearing Examiner recommended that the Commission enter an Order adopting the provisions of the Settlement. Mr. Ayers notes that although "Mr. Cobott has been defiant, unresponsive and uncooperative in the past, he seems sincere in his statements made at the hearing that Ponderosa will comply with the provisions of the settlement rate and connect fees should they be adopted by the Commission." *Id.* at 16. Moreover, Mr. Cobott seems sincere in seeking to resolve differences with the Commission through negotiations and cooperation in the future. Although the Commission could seek penalties and sanctions against Ponderosa as set forth in *Idaho Code* § 61-701 *et seq.*, the Hearing Examiner believes that Ponderosa's customers and the public interest would be best served by ordering amendment to the rates and connect provisions for Ponderosa in line with the settlement. *Id.* at 16-17.

Commission Findings: Having reviewed the record before us, we agree with the recommended findings of the Hearing Examiner and adopt them as our own. In particular, the Commission finds that Ponderosa by and through its President, Robaer Cobott, admitted under oath to violating Commission Orders as alleged in the Order to Show Cause, Order No. 29212. Moreover, we find that Ponderosa did not present evidence that materially contradicted that submitted by Staff on the counts of alleged misconduct.

While the Commission is empowered by *Idaho Code* § 61-701 *et seq.* to seek penalties and sanctions, we find that it is not in the public interest to do so at this time. Staff and the Company have endeavored to create a workable solution to alleviate the dire circumstances confronting Ponderosa and its customers. In contrast to the ill feelings and financial burdens that would be created by imposing a penalty, the Commission believes that the proposed adjustments to the Company's customer classes, rates and fees we adopt in this Order today will provide the best incentive for the Company to comply with Commission Orders in the future.

Should the Company's finances or customer inventory change in ways that make the Commission's rates and rules unworkable in the future, we encourage Mr. Cobott to contact the Commission immediately so that we may address the situation proactively rather than have the Company act unilaterally. Although the Company may have concluded otherwise, we share the same goal: to ensure that customers continue to receive water service at reasonable rates while the Company earns a reasonable return on its investment according to Idaho law.

ORDER

IT IS HEREBY ORDERED that Ponderosa Terrace Estates Water System, Inc. adopt the customer class definitions and corresponding rates agreed to in its Settlement with Staff and as set forth above. These rates are effective for service rendered on and after July 1, 2003.

IT IS FURTHER ORDERED that prior to restoring water service, the Company shall bill delinquent amounts incurred after the Commission took jurisdiction over the PTE water system on September 13, 2001 at the Commission-approved rate applicable for each month of service rendered. Furthermore, the Company shall restore service to PTE customers with delinquent bills who wish to take service after July 1, 2003 and pay either all their unpaid bills for service rendered after July 1, 2003 or \$2,500, whichever amount is less.

IT IS FURTHER ORDERED that the Company disconnect water service in accordance with the Commission's General Rules and Regulations for Small Water Utilities and the Utility Customer Relations Rules. The Company shall also charge customers who seek to initiate or resume service due to disconnection for nonpayment or requested seasonal disconnection a \$35 reconnection fee.

IT IS FURTHER ORDERED that the Company seek collection of unpaid bills incurred during or prior to the Commission asserting jurisdiction over the Company in

September 2001 in Order No. 28845 through judicial means (i.e., small claims court) rather than use the Commission's disconnect procedures for non-payment of amounts owed.

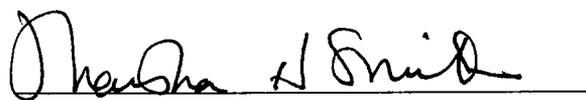
IT IS FURTHER ORDERED that Ponderosa abide by Idaho Public Utilities Commission Rules generally applicable to customer relations and water utilities.

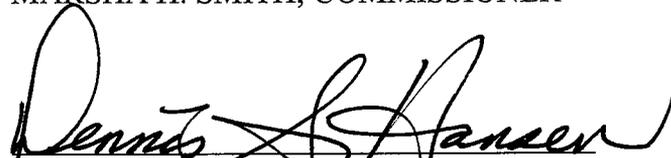
IT IS FURTHER ORDERED that the Company shall file tariffs in conformance with the rates and charges set forth in this Order no later than 28 days from the service date of this Order.

THIS IS A FINAL ORDER. Any person interested in issues finally decided by this Order or in interlocutory Orders previously issued in Case No. PTE-W-03-1 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter finally decided in this Order or in interlocutory Orders previously issued in Case No. PTE-W-03-1. For purposes of filing a petition for reconsideration, this order shall become effective as of the service date. *Idaho Code* § 61-626. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

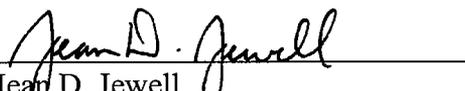
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 30th day of June 2003.


PAUL KJELLANDER, PRESIDENT


MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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