

DECISION MEMORANDUM

**TO: COMMISSIONER ANDERSON
COMMISSIONER CHATBURN
COMMISSIONER HAMMOND
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: DAYN HARDIE
DEPUTY ATTORNEY GENERAL**

DATE: APRIL 12, 2022

SUBJECT: REGARDING COVID-19 RESPONSE – CASE NO. GNR-U-20-01.

In early 2020, the Governor declared the COVID-19 pandemic to be an emergency. The Idaho Department of Health and Welfare (“IDHW”), Central District Health (“CDH”), and other public health authorities then adopted standards to help prevent COVID-19 from spreading. The Commission, in turn, initiated this docket and issued orders to foster safe practices and procedures at the Commission.

On March 13, 2020, in response to the Governor’s declaration, the Commission directed that (1) its offices would remain open during regular business hours; (2) open meetings and hearings would be conducted telephonically or virtually; (3) Rules 61 and 62 specifying the number of copies of different pleadings that must be filed were suspended; and (4) the Commission Secretary would serve all orders and notices—except Summons or Complaint—electronically. Order No. 34602.

On September 17, 2020, to remain compliant and consistent with the Governor’s objectives, the Commission issued a replacement order to update its practices in Order No. 34062. The Commission (1) encouraged persons to remotely attend the Commission’s public proceedings; (2) required persons who physically attend public proceedings to wear masks and/or keep six-feet away from others while adhering to CDH’s public health directives; (3) suspended Rules 61 and 62 of the Commission’s Rules of Procedure to the extent those rules required persons to physically file copies of pleadings; and (4) provided most pleadings, orders, and notices would be filed and served electronically. Order No. 34781 at 1-3.

On June 3, 2021, in response to public health authorities relaxing COVID-19 guidelines, and vaccines becoming available, the Commission superseded Order No. 34781 by (1) continuing to encourage parties to utilize virtual platforms for meetings, hearings, and other proceedings; (2) altering the safety precautions for physical attendance based on current IDHW and CDH guidelines in effect; and (3) continuing to suspend the requirements of Rules 61 and 62 and permitting electronic service of orders and notices by the Commission Secretary. Order No. 35058 at 1-2.

GOVERNOR’S EMERGENCY DECLARATION TO END

On March 8, 2022, the Office of the Governor issued a press release declaring the “*public health disaster emergency declaration to end April 15 [2022].*” The Governor stated:

We’re hopeful the recent decrease in COVID-19 cases, hospitalizations, and deaths means we are on a downward trend with the pandemic. For weeks, we have been closely examining the needs within Idaho’s healthcare system with an eye toward ending the public health emergency declaration as soon as possible. The April 15 timeframe provides an important bridge . . . to plan for the transition.


The Governor is the only person in the State who can legally end an emergency declaration. The press release notes that the Governor’s Office has been working with stakeholders to ensure Idaho is prepared for the expiration of the emergency declaration on April 15, 2022.

COMMISSION DECISION

Does the Commission wish to supersede Order No. 35058 with an order that accounts for the Governor declaring the end of the emergency declaration? If so, I recommend the Commission:

- (1) Issue an order indicating it will end COVID-19 related protocols established in Order No. 35058 effective April 15, 2022;
- (2) Direct Staff to close Case No. GNR-U-20-01;
- (3) Continue to utilize virtual platforms for meetings, hearings, and other proceedings where reasonable and as directed by the Commission;
- (4) Continue the suspension of Rules 61 and 62 indefinitely and direct parties to electronically file applications and other pleadings—except rate case applications—with the Commission Secretary;

- (5) Direct that service between parties should continue to be accomplished electronically (with exceptions for voluminous discovery related documents that may be filed and served on CD-ROM or USB flash drive); and
- (6) Direct that the Commission Secretary may continue to send notices and orders electronically (except for Summons or Complaints).



Dayn Hardie
Deputy Attorney General

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