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IDAHO PUBLIC  
UTILITIES COMMISSION

**Monica B. Moen**  
Attorney II

April 16, 2007

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
P. O. Box 83720  
Boise, Idaho 83720-0074

Re: Case No. IPC-E-06-23  
IN THE MATTER OF THE APPLICATION OF IDAHO POWER  
COMPANY FOR APPROVAL OF AN AGREEMENT BETWEEN  
AVIMOR, LLC IDAHO POWER TO PROVIDE ELECTRIC  
TRANSMISSION AND SUBSTATION FACILITIES TO THE  
AVIMOR MULTI-USE DEVELOPMENT

Dear Ms. Jewell:

Please find enclosed for filing an original and seven (7) copies of Idaho Power Company's Reply Comments to the Reply Comments of Avimor for the above-referenced matter.

I would appreciate it if you would return a stamped copy of this transmittal letter in the enclosed self-addressed, stamped envelope.

Very truly yours,



Monica B. Moen

MBM:sh  
Enclosures

MONICA MOEN, ISB # 5734  
BARTON KLINE, ISB # 1526  
Idaho Power Company  
1221 West Idaho Street  
P. O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-2692  
FAX Telephone: (208) 388-6936

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )  
OF IDAHO POWER COMPANY FOR ) CASE NO. IPC-E-06-23  
APPROVAL OF AN AGREEMENT )  
BETWEEN AVIMOR, LLC AND IDAHO ) IDAHO POWER COMPANY'S  
POWER TO PROVIDE ELECTRIC ) REPLY COMMENTS TO THE  
TRANSMISSION AND SUBSTATION ) REPLY COMMENTS OF AVIMOR,  
FACILITIES TO THE AVIMOR MULTI-USE ) LLC  
DEVELOPMENT )

COMES NOW, Idaho Power Company ("Idaho Power" or "the Company") and herewith submits the following comments to the Idaho Public Utilities Commission ("IPUC" or the "Commission") in response to the April 2, 2007 Reply Comments of Avimor, LLC ("Avimor") in response to the IPUC Staff's written comments.

I.

**INTRODUCTION**

On April 2, 2007, pursuant to Commission Order No. 30270, Avimor filed its Reply Comments in response to the IPUC Staff's written comments which were filed on December 15, 2006. Idaho Power's comments address matters raised by Avimor concerning (1) reimbursing Avimor's costs of the transmission and substation facilities from charges

made to non-Avimor developments; (2) the accrual of interest on unrefunded amounts paid by Avimor; (3) the proposed 20-year refund period; and (4) equal protection claims.

## II.

### REPLY COMMENTS

#### **(1) Reimbursement of Avimor's Development Costs by non-Avimor**

**Developments:** Idaho Power has previously advised Avimor that it has no objections to Avimor's proposal that the Company be authorized by the Commission to require non-Avimor developments that connect to the proposed transmission and substation facilities to pay a lump sum to Idaho Power prior to the connection. The non-Avimor connection charges would be based on the estimated number of customer hook-ups and the metered demand as represented by the developments to Idaho Power. Contributions from non-Avimor developments would be collected from those developments by Idaho Power for a time period not to exceed Avimor's eligible refund period (ten years as requested by Idaho Power below). Upon Idaho Power's receipt of the contributions from non-Avimor developments, the Company would pass those sums to Avimor up to the amount of Avimor's original investment.

#### **(2) Accrual of Interest on the Unrefunded Amounts Paid by Avimor:**

Idaho Power objects to Avimor's proposal that interest accrue on the unrefunded balance of the payments Avimor makes to fund the facilities required to provide service to Avimor. The amounts paid by Avimor to Idaho Power will be immediately expended by the Company to pay for the transmission and substation facilities requested and required by the Avimor development. As a result, Idaho Power will receive no financial windfall from the advance paid by Avimor; instead, its Return on Equity (ROE), in the short run, will be negatively

impacted since the capital to construct the proposed facilities will not generate any additional revenue until the Company's next rate case when the new investment is included in the Company's rate base. Each time Idaho Power invests in additional infrastructure, the Company's ROE is negatively impacted since rates charged Company customers are not immediately affected.

Idaho Power's position on this issue is consistent with the treatment of Rule H attachments and installations. With the exception of interest paid on a Rule H line extension due to a delay in the start of construction by Idaho Power, no interest accrues on the sums paid by an applicant for a Rule H facility. The applicant, in that circumstance, is only entitled to receive a maximum of 100 percent of the refundable portion of the cash payment made to the Company.

There is no cogent reason to treat the refund of advance payments made by Avimor for required electrical facilities any differently than the refund obligations of the Company pursuant to the Commission-approved Rule H tariff. Therefore, Idaho Power respectfully requests that the Commission deny Avimor's proposal that the amounts paid by Avimor for the required electrical facilities accrue interest on the unrefunded balances.

**(3) 20-year Repayment Period:** Idaho Power also objects to Avimor's proposal that the period in which Idaho Power would be obligated to refund payments made by Avimor be extended from ten years, as set out in the agreement between Idaho Power and Avimor, to 20 years. The ten-year repayment period originally agreed to by the parties is already a concession on the part of the Company. With the exception of subdivisions platted prior to January 1, 1997, subdivision developments are only entitled to a five-year repayment period under Rule H.

A repayment obligation beyond ten years is administratively burdensome, particularly as the number of non-standard developments like Avimor who require service extensions continues to increase. Furthermore, the contracts negotiated between Idaho Power and developments such as Avimor are generally not uniform. As a result, the individual management and attention required to correctly enforce the nuances of each agreement over a 20-year period generates administrative efforts that can be onerous since the Company is simply not staffed to manage long-term loan and reimbursement provisions with its multiple customers. Therefore, Idaho Power respectfully requests that Avimor's proposal to extend the reimbursement period from ten to 20 years be denied and that the Commission endorse a refund period not exceeding ten years.

(4) **Avimor's Equal Protection Claims:** Avimor's assertion that "[i]f the Commission . . . chooses to follow Staff's recommendation [and only permit recovery of \$1,000 per connected customer], such a decision would be discriminatory towards Avimor" is unsubstantiated. Avimor argues that refunds for the cost of electrical infrastructure required of its development should be calculated identically to the refunds established for the Hidden Springs development in 1998 and to do otherwise would "possibly amount to a violation of the Equal Protection Clause of the United States Constitution." Avimor Reply Comments at 10.

Idaho Power is not herein commenting on the amount of refund per connected customer that Avimor should be entitled to recover. However, the Company argues, contrary to Avimor, that a Commission decision determining a refund amount different than the amount recovered by the Hidden Springs development would not result in discriminatory action in violation of either Idaho Law or the Equal Protection Clause of the United States

Constitution.

Section 61-315 of the Idaho Code (2002) prohibits either preferential or discriminatory treatment of ratepayers by public utilities. Avimor relies upon that statute and two Idaho Supreme Court cases that addressed the issue of disparate treatment of similarly-situated utility customers for the proposition that the Commission is prohibited from authorizing a customer connection refund for Avimor less than that permitted under the 1998 Hidden Springs agreement. Avimor's arguments are flawed for the following reasons.

In *Idaho State Homebuilders v. Washington Water Power*, 107 Idaho 415, 690 P.2d 350 (1984), the Idaho Supreme Court determined that "[a] utility is forbidden to treat a customer preferentially through its rates and charges, or to maintain unreasonable differences in its rates and charges as between classes of service." *Homebuilders*, 107 Idaho at 419, 690 P.2d at 354. In *Building Contractors Ass'n of Southwestern Idaho v. Idaho Pub. Util. Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996), the Idaho Supreme Court opined that there was no difference in the cost of service between customers based upon the timing of their connections to the municipal water system and that to charge different rates on the basis of the timing of the connections, "the fees unlawfully discriminate between old and new customers in violation of section 61-315 of the Idaho Code." *Building Contractors*, 128 Idaho at 539, 690 P.2d at 1264.

These two cases are not applicable to the matter presently before the Commission. The *Homebuilder's* Court specifically stated that the case presented "no factors such as when a *non-recurring charge* is imposed upon new customers because the service they require demands an extension of existing distribution or communication lines and a charge is imposed to *offset the cost of the utility's capital investment*." *Homebuilders*, 107

Idaho at 421, 690 P.2d at 356 (emphasis added). Contrary to the facts in *Homebuilders*, Idaho Power is imposing a *non-recurring charge* on Avimor to *offset the cost of the utility's capital investment* required to respond to the unique circumstances of the Avimor development. Hence, the matter presently before the Commission is not in violation of the holdings in either *Homebuilders* or *Building Contractors*.

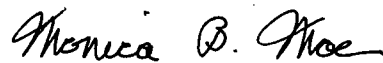
III.

**CONCLUSION**

Based on the foregoing, Idaho Power respectfully requests that

- (1) Idaho Power be permitted to charge non-Avimor developers who use the transmission and substation facilities paid for my Avimor and to use those charges to reimburse Avimor for a period not to exceed Avimor's refund period and up to the amount contributed by Avimor for the cost of the transmission and substation facilities;
- (2) No interest accrue on the unrefunded balances due Avimor; and
- (3) The refund period be limited to not more than ten years.

Respectfully submitted this 16<sup>th</sup> day of April 2007.



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MONICA B. MOEN  
Attorney for Idaho Power Company

## CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 16<sup>th</sup> day of April 2007, I served a true and correct copy of the within and foregoing document upon the following named parties by the method indicated below, and addressed to the following:

Duane Black  
Executive Senior VP & C.O.O.  
SunCor Development Company  
80 E. Rio Salado Parkway, Suite 410  
Tempe, AZ 85281

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email

William J. Batt  
John R. Hammond  
Batt & Fisher  
U.S. Bank Plaza, 5<sup>th</sup> Floor  
101 S. Capitol Blvd.  
P. O. Box 1308  
Boise, Idaho 83701

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email [wjb@battfisher.com](mailto:wjb@battfisher.com)  
[jrh@battfisher.com](mailto:jrh@battfisher.com)

Weldon Stutzman  
Idaho Public Utilities Commission  
472 W. Washington Street  
P.O. Box 83720  
Boise, Idaho 83702

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Email  
[Weldon.stutzman@puc.idaho.gov](mailto:Weldon.stutzman@puc.idaho.gov)



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MONICA B. MOEN