

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)
POWER TO PROVIDE ELECTRIC)
TRANSMISSION AND SUBSTATION) **ORDER NO. 30322**
FACILITIES TO THE AVIMOR MULTI-USE)
DEVELOPMENT)

On September 27, 2006, Idaho Power Company filed an Application requesting approval of a Special Facilities Agreement the Company signed with Avimor, LLC. The Agreement is for the construction of transmission and substation facilities for a multi-use planned residential subdivision to be developed by Avimor. The Avimor project is located north of Boise, Idaho within Idaho Power's certificated service area. Pursuant to the Agreement, Idaho Power will construct 3.4 miles of a 138 kV transmission line and a substation with an initial capacity of 10 MVA. The Agreement requires Avimor to pay Idaho Power the construction cost of \$4.3 million, and provides a formula by which Avimor is eligible to receive refunds from Idaho Power based on the number of customers connected to the facilities. Avimor would receive a refund of its entire \$4.3 million investment if, within 10 years, 685 permanent residential services have been connected or the meter demand at the development's delivery point meets or exceeds 6,850 kW. By this formula, Avimor expects to receive a refund of its \$4.3 million investment in approximately five years.

On November 1, 2006, the Commission issued a Notice of Application and Notice of Modified Procedure establishing a time period for the filing of written comments. The comment period was lengthened, however, after Staff filed a Motion to extend the time for filing comments, and Avimor filed a Petition to Intervene and a Motion requesting leave to file reply comments. Finally, Idaho Power requested an opportunity to file comments in response to Avimor's comments. Staff comments were filed on December 15, 2006, Avimor filed its reply comments on April 2, 2007, and Idaho Power filed its comments on April 16, 2007.

Based on the record presented, the Commission has determined the Special Facilities Agreement as written places too great a financial burden on Idaho Power's existing ratepayers, and the Commission accordingly denies approval of the Special Facilities Agreement as filed.

STAFF COMMENTS

Staff in its comments noted that Idaho Power historically has not required an advance from residential developers to extend transmission and distribution substation facilities to new developments. The Company apparently determined that a special agreement is appropriate in this case because of the size, location and speculative nature of the development, and Staff agreed that a special agreement is appropriate. Staff noted that all refunds provided by Idaho Power will be considered investment and ultimately will be included in the calculation of customer rates. Staff recognized that the Agreement does reduce some risk to Idaho Power's ratepayers for the cost of the facilities. If the first phase of the development does not build out within 10 years, Avimor will receive only a partial refund based on the number of customer connections, and neither Idaho Power nor its customers will be required to repay the balance of the facilities' costs.

Staff nonetheless expressed concern with the high cost per customer of extending facilities to serve 685 customers in the Avimor project. The \$4.3 million cost equates to approximately \$6,277 per customer. Staff calculated that approximately \$350 per customer is currently included in residential rates for similar facilities. The current investment per customer is reduced by depreciation and the passage of time, so Staff also reviewed the investment per new residential customer Idaho Power made between its last two general rate cases. Staff determined that amount to be approximately \$1,000 per new customer. Staff is concerned that the difference between the investment included in current rates and the estimated investment for the Avimor facilities will require a subsidy by existing ratepayers, causing upward pressure on rates.

To lessen the potential rate impact on Idaho Power customers, Staff recommended the developer advance the construction costs and receive refunds from all future developers or users of the facilities at the recent average incremental cost of providing the facilities, or \$1,000 per customer. Staff also recommended that the refund period be doubled, to 20 years, or until the developer receives a complete refund of the \$4.3 million that was advanced. Under Staff's proposal, Avimor would recover the full advance when 4,300 customers are connected to the facilities. If only Phase 1 of the Avimor development builds out and just 685 customers are added, Avimor would receive \$685,000 in refunds and contribute \$3,615,000 to cover the costs of the unused facilities under Staff's proposal.

Staff stated its proposal appropriately requires the investment cost to be advanced to protect against the speculative risk that should be assigned to the developer. Staff believes its

recommendation limits, but does not eliminate, upward pressure on rates that would otherwise be caused by including in Idaho Power's rate base the extremely high cost of adding these facilities requested by Avimor.

AVIMOR'S REPLY COMMENTS

In reply comments filed April 2, 2007, Avimor proposed changes to the Special Facilities Agreement. Avimor proposed to increase the number of customer connections or metered demand required before it receives a full refund of the payments advanced to Idaho Power. Avimor also proposed to eliminate the lump-sum payment provision contained in the Agreement in Section 4.2(b) that requires Idaho Power to refund the full balance of the investment to Avimor when 685 customers are connected to the facilities. Avimor agreed to Staff's proposal to extend the refund period to 20 years. Avimor also proposed to authorize Idaho Power to require non-Avimor connections to the facilities to pay a lump sum to Idaho Power based on the estimated amount of customer hookups or meter demand, which payment would be passed to Avimor. Finally, Avimor proposed to allow interest to accrue on the \$4.3 million in refundable payments that the Company is providing to construct the necessary facilities.

Avimor pointed out in its comments that its project is designed to conserve energy and water, providing a benefit to its residents, to Idaho Power and to the general body of ratepayers. Avimor plans to construct 585 residential units that exceed Northwest Energy Star standards, making them potentially 30% more energy efficient than residential construction built to state code standards. The project will also have a wastewater treatment plant to daily convert 300,000 gallons of wastewater into water clean enough to irrigate common areas. Avimor contends because its project is designed to be energy efficient, it is consistent with Commission policy to encourage conservation efforts by Idaho Power.

Avimor notes that if it meets its obligations under the Agreement it will receive refunds only after residential, commercial and retail buildings and the wastewater treatment plant and other improvements are connected to the new electrical facilities. The rate impact of adding the facilities to Idaho Power's rate base will be extended over a period of years as refunds are paid and Idaho Power files rate cases. Avimor thus argues that the project's overall impact on Idaho Power's body of ratepayers is small, even if the Commission were to accept the original Agreement.

Avimor stated it no longer advocates approval of the Special Facilities Agreement as filed, and proposed an alternative recovery methodology. First, Avimor proposes an amendment to

the refund provisions to allow it to receive refunds of \$3,900 per customer. This change would require 1,103 customers or 11,030 kW of metered demand to connect to the facilities before Avimor receives a full refund of its payments to Idaho Power. Avimor estimates that at a refund rate of \$3,900 per customer it will recover all payments in 8 to 12 years, rather than the 5 years or less projected under the present Agreement. Avimor also proposes to remove the lump-sum payment provision that would require Idaho Power to refund the full remainder of the balance to Avimor after connecting 685 customers to the facilities, and to require other developers who connect to the facilities to make a payment based on the expected usage.

IDAHO POWER'S REPLY COMMENTS TO AVIMOR'S COMMENTS

Idaho Power filed comments responding to Avimor's proposed changes to the Agreement. Idaho Power states it has no objection to Avimor's proposal that Idaho Power be authorized to require non-Avimor developers who connect to the transmission and substation facilities to pay a lump-sum to Idaho Power before connecting. Idaho Power does object to Avimor's proposal that interest accrue on the unrefunded balance of the payments Avimor makes to construct the facilities. The money paid by Avimor to Idaho Power will be used to pay for the transmission and substation facilities required by Avimor's development and will not be a windfall to Idaho Power. The Company notes that allowing interest to accrue is inconsistent with the treatment of Rule H Attachments and Installations. Idaho Power also objects to a refund period of 20 years, noting that the 10-year repayment period in the Agreement is twice as long as the 5-year repayment period under Rule H. Idaho Power argues that a repayment obligation beyond 10 years is administratively burdensome, because the Company is not staffed to manage long-term loan and reimbursement provisions with multiple customers.

Finally, Idaho Power discussed two Supreme Court decisions mentioned by Avimor, and argued that the cases are not applicable to the matter before the Commission. Avimor had argued that Staff's recommendations for refunds at \$1,000 per customer connection "would be discriminatory towards Avimor, a customer of Idaho Power, and further, possibly amount to a violation of the Equal Protection Clause of the United States Constitution." Avimor Reply Comments p. 10, citing *Idaho State Homebuilders v. Washington Water Power Co.*, 107 Idaho 415, 690 P.2d 350 (1984) and *Building Contractors Ass'n. of Southwestern Idaho, Inc., v. Idaho Public Utilities Commission*, 128 Idaho 534, 916 P.2d 1259 (1996). Avimor's argument is based on its belief that refunds greater than \$1,000 were allowed in another development. Idaho Power noted in

this case the Special Facilities Agreement imposes a non-recurring charge on Avimor to offset the costs of the Company's capital investment required to deliver electricity to the Avimor development. The Supreme Court in the *Homebuilders* case specifically stated that its holding there did not involve a situation where "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.*" Idaho Power Reply Comments p. 5 quoting *Idaho State Homebuilders v. Washington Water Power Co.*, 107 Idaho at 421, 690 P.2d at 356 (emphasis added).

In summary, Idaho Power agreed to Avimor's proposal to charge non-Avimor developers who connect to the facilities, with the payments to be passed on to Avimor. Idaho Power disagreed with Avimor's proposal to allow interest to accrue on the unrefunded balances and to extend the refund period to more than 10 years. The Company did not discuss the proposals to reduce the refund amount from \$6,277 per customer connection to \$3,900 per connection (Avimor's proposal) or \$1,000 per connection (Staff's proposal).

DISCUSSION

The Commission commends Avimor for incorporating energy efficiency measures into its community development. We find the water capture and treatment for re-use a forward-thinking innovation. Avimor plans to construct 585 homes in the first phase of the project that meet efficiency standards of the Northwest Energy Star program, making them as much as 30% more energy efficient than traditional construction. The wastewater treatment plant capable of recapturing 300,000 gallons of water for irrigation represents a commitment to conservation that is essential in our desert climate. Avimor correctly notes the Commission has for a number of years encouraged Idaho Power to implement energy conservation programs, and the Avimor project as planned is consistent with the Commission's objectives.

The Commission nonetheless finds the refund provisions of the Special Facilities Agreement place an undue risk on Idaho Power's existing customers that their rates will be increased to pay for the transmission line and substation requested by Avimor. This risk needs to remain with the developer. Construction of the facilities identified in the Special Facilities Agreement (SFA) is necessitated solely by the Avimor project.

The Commission finds that the SFA as written does not properly allocate project risk. The investment amount of \$6,277 per connection exceeds by 18 times the amount currently

included in customer rates to pay for similar facilities. It exceeds by six times investment made in similar facilities since Idaho Power's most recent rate cases. Avimor proposed a per-customer refund of \$3,900, instead of \$6,277, but did not dispute Staff's calculations.

If the SFA per-customer refund amount were the same as the amount currently in Idaho Power rates to pay for similar facilities, the Avimor project would not have the potential to increase customer rates as refunds are made. Even a per-connection refund amount of \$1,000, as recommended by Staff, will place upward pressure on rates because it is more than the \$350 per customer currently in rates. The impact of adding these facilities to rate base will be mitigated by time and revenue from new customers. The longer the time period over which the costs are added to rate base, and the more customers who are added to help pay the costs, the less upward pressure there will be on rates. At the contract refund rate, Avimor expects to recover its entire \$4.3 million investment in approximately five years, with only 685 new customers added to help pay for the facilities through their rates.

The Commission finds that the refund amount for the Avimor facilities should be \$1,000 per customer connection. At that rate, 4,300 connections will be required for Idaho Power to fully refund the facilities' costs to Avimor, spreading the investment over a longer period of time and among a greater number of customers. Requiring 4,300 customer connections places a greater risk on the developer, where it properly belongs, for the success of its project. Although the refund amount of \$1,000 is greater than is currently in rates for similar facilities, the greater number of customers connected and paying rates to help pay for the facilities, and the longer time period over which the investment will be added, reduces potential rate impacts to an acceptable level.

We find the period of time for refunds to be available to Avimor should be 10 years and not 20 years as advocated by Staff. Although 10 years is twice the normal refund period in Rule H, the size of the investment makes this time period reasonable without placing onerous administrative demands on the Company. Limiting the refund period to 10 years also keeps the investment risk with the developer. If 4,300 customers are not connected within 10 years, Avimor will not receive a full refund of the transmission line and substation costs. We find a 10-year refund period to be part of the proper balance for allocating the investment risk between the developer and Idaho Power's customers.

The Agreement should also authorize Idaho Power to collect contributions from other developers who connect to the facilities, with those contributions added to the amount refunded to Avimor. All parties agree that this is an appropriate change to the Special Facilities Agreement.

Finally, we find that interest should not accrue on unrefunded amounts paid by Avimor for construction of the facilities. The advanced funds are necessary for the facilities construction needed for the Avimor development and will be used for that purpose. Idaho Power will not receive a windfall as the result of Avimor's upfront investment in the facilities. In addition, because it is not possible to know the amounts ultimately to be refunded or when refunds will be made, accruing interest on an unpaid balance presents practical accounting problems, further complicating Idaho Power's administrative responsibilities for the refund program.

ORDER

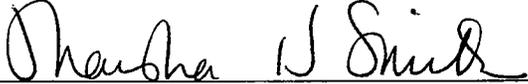
IT IS HEREBY ORDERED that Idaho Power's request for approval of the Special Facilities Agreement with Avimor is denied. The Commission will approve an Agreement if it is revised as set forth in this Order.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

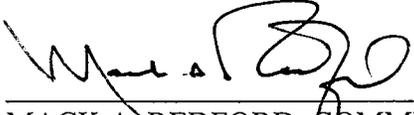
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 24th
day of May 2007.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



MACK A. REDFORD, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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