Office of the Secretary
Service Date
August 3, 2007

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL OF AN AGREEMENT BETWEEN AVIMOR, LLC AND IDAHO POWER TO PROVIDE ELECTRIC TRANSMISSION AND SUBSTATION FACILITIES TO THE AVIMOR MULTI-USE DEVELOPMENT	)	**CASE NO. IPC-E-06-23**
	)	**ORDER NO. 30396**

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 to serve a large, multi-use residential subdivision developed by Avimor. As initially submitted to the Commission, the Agreement required Avimor to pay Idaho Power the construction cost of $4.3 million for the facilities but Avimor is eligible to receive a refund of its entire advance based upon the number of customers subsequently connected to the facilities, or the amount of electric demand at the development's delivery point.

On May 24, 2007, the Commission issued final Order No. 30322 and found that the Agreement as written "places too great a financial burden on Idaho Power's existing ratepayers." The Commission stated that it would approve the Special Facilities Agreement if it were revised to meet the concerns identified in the Commission's final Order. On June 14, 2007, Avimor submitted a timely Petition for Reconsideration. In its Petition, Avimor requested reconsideration by written brief and requested that it be given until June 29, 2007 to file its brief. IDAPA 31.01.01.331.03. In Order No. 30372 the Commission granted reconsideration so that it could consider Avimor's brief.

Having completed our review of Avimor's reconsideration brief and the record in this case, the Commission issues this reconsideration Order. As set out below, Avimor's Petition is granted in part and denied in part.

BACKGROUND

A. The Development and the Special Facilities Agreement

Avimor is developing a large, multi-use residential subdivision several miles north of the communities of Boise and Eagle. The Avimor property consists of approximately 23,000

acres located in Ada, Boise, and Gem Counties. Application, Exh. 2, Figure 1; Order No. 30345 at 1. In the initial phase, Avimor will develop about 685 residential units and 75,000 square feet of commercial space on 830 acres. Avimor Reply Comments at 4. Thus, the initial phase is about 4% of Avimor's property. Additional phases of development will follow as demand presents. *Id.*

Because Idaho Power has neither the existing facilities of adequate capacity nor the desired phase and voltage to serve the Avimor development, the parties entered into a "Special Facilities Agreement" (Agreement or SFA). Pursuant to the Agreement, Idaho Power will construct 3.5 miles of 138 kV transmission line (at a cost of $2.1 million) and an expandable substation with an initial capacity 10 MVA (at a cost of $2.2 million). The transmission line and substation are larger than necessary to serve just the first phase of the development. SFA, Exh. 1.[1] The parties' Agreement required Avimor to advance the $4.3 million for the transmission and substation facilities and provided a formula by which Avimor would receive refunds up to the $4.3 million amount. Section 4.2 of the Agreement stated that Avimor shall be eligible to receive periodic refunds as customers take service for:

> (a) a period of ten (10) years;
> (b) until 685 permanent residential customers have been connected by Idaho Power; or
> (c) until the metered demand at the [development's] Delivery Point meets or exceeds 6,850 kW, whichever occurs first.

SFA ¶ 4.2 (emphasis added). When the refunds are paid to Avimor, such refunds constitute "plant investment" and will be included in the utility's rate base, and subsequently recovered in customer rates.

Under the initial Agreement, the parties agreed that Idaho Power will refund Avimor $4,300 for each residential customer (Schedule 1) connected to the system during the 10-year period. For customers taking under Schedule 7 (Small Business), Schedule 9 (Large Business) and Schedule 24 (Irrigation), Idaho Power agreed to refund Avimor $430 times "the kva rating of the distribution transformer serving each such non-residential account." SFA at p. 7.[2] If prior to

[1] For example, the capacity of the substation may be expanded to meet the load from a fully developed Avimor. SFA at 12, Exh. 1; Staff Comments at 3.

[2] For example, if a Schedule 9 customer has a transformer rating of 30 kva, Idaho Power would refund $12,900 ($430/kW x 30) to Avimor.

the conclusion of the 10-year period, Idaho Power connects 685 permanent residential customers or the meter demand at the development delivery point meets or exceeds 6,850 kW, then Idaho Power will reimburse the full $4.3 million. *Id.*; Order No. 30322 at 1. Conversely, if Avimor fails to meet these two criteria within 10 years, then Idaho Power's obligation to make refunds is terminated and "Avimor shall forfeit any claims for further refunds." SFA at p. 8. Based upon estimated market conditions, Avimor calculated that it would recover the $4.3 million advance in less than five years. Avimor Reply at 15, n.12.

B. Comments

1. Staff. In its comments, the Staff agreed that a Special Facilities Agreement was appropriate because of the size, location and speculative nature of the development. Order No. 30322 at 2. Given the substantial cost ($4.3 million) of transmission and distribution substation facilities to serve only 685 residential customers (just the initial phase of the development), Staff agreed that the advance and refund provisions "are necessary to protect the Company and its ratepayers from speculative development." Staff Comments at 2. The advance and refund mechanism offered some protection "if fewer customers connect or there is less load growth [than expected] during the refund period." *Id.*

Despite the refund mechanism, the Staff was seriously concerned with the high cost per customer of constructing the facilities. "At $4.3 million to serve 685 [residential] customers, the per customer investment for Idaho Power . . . is $6,277." Staff Comments at 3; Order No. 30322. Staff noted that the difference between investment supported by current rates and the investment represented in this case "will require subsidy by existing ratepayers and will cause upward pressure on rates." *Id.* at 3. In other words, the expected revenues from 685 customers will not equal or compensate for the $4.3 million investment. Staff reasoned that "the magnitude of the Avimor investment per customer exacerbates the problem of growth related costs and needs to be mitigated." *Id.*

To address these concerns, Staff evaluated six different refund alternatives. To mitigate the subsidy by ratepayers, lessen the upward pressure on rates, and properly assign the risk of lower-than-expected development, Staff proposed that the refund per residential customer be set at $1,000. Staff Comments at 3; Order No. 30322 at 2. This amount represents the transmission and substation investment per residential customer based upon the Company's last two general rate cases in 2004 and 2006. *Id.*, Staff Atch. 1. Staff also recommended that

Avimor receive refunds from other developers or customers that connect to the transmission and substation facilities. *Id.* at 4; Order No. 30322.

2. Avimor. In its reply comments Avimor addressed several points raised by Staff and offered two refund alternatives. First, Avimor agreed with Staff's recommendation that the Agreement be modified to require other non-Avimor customers served by the transmission and substation facilities to be assessed a non-recurring connection charge identical to the Avimor refund amounts. Idaho Power would then pass this payment through to Avimor as a refund to offset the $4.3 million advance. Avimor Reply Comments at 2.

Second, rather than Staff's recommended $1,000 refund per residential customer, Avimor argued that Staff's refund amount should be increased to at least $2,300 or preferably $3,900 per customer connection. *Id.* at 15. Avimor's request for the two alternatives of $3,900 or $2,300 was based upon a "similar" agreement Idaho Power purportedly entered into with the Hidden Springs development. *Id.* at 9. Avimor claimed that in the Hidden Springs agreement, the developer agreed to pay $700,000 for construction of a 3 MVA substation to serve 300 homes. Avimor calculated that the Hidden Springs per customer investment was $2,333 and that it should at least be allowed a refund of $2,300 per customer. *Id.* at 10-11.

Avimor's second refund alternative was $3,900. This amount is the sum of the $2,300 Hidden Springs amount plus $1,600. As Avimor explained, the $1,600 "represents 1/2 of the investment in transmission equipment per [residential unit] that was originally requested for recovery." Reply Comments at 15. Avimor added the transmission component because the $2,300 amount related strictly to the distribution substation costs. Under this alternative, Avimor would be required to connect 1,103 residential customers or have a meter demand of 11,030 kW at Avimor's point of delivery. *Id.* at 17. Using the $3,900 refund amount, Avimor estimates that it will recover its $4.3 million in 8 to 12 years. *Id.* at 15. Avimor concluded that if the Commission adopted Staff's $1,000 refund, "such a decision would be discriminatory towards Avimor. . . ." *Id.* at 10 *citing Idaho State Homebuilders v. Washington Water Power Co.*, 107 Idaho 415, 690 P.2d 500 (1984); *Building Contractors Ass'n of Southwest Idaho v. Idaho PUC*, 128 Idaho 534, 916 P.2d 1259 (1996).

3. Idaho Power. In its reply comments, Idaho Power took issue with Avimor's discrimination argument. In particular, Idaho Power argued that the two Supreme Court cases relied upon by Avimor are "not applicable to the matter presently before the Commission."

Idaho Power Reply Comments at 5. More specifically, Idaho Power observed that the *Homebuilders* opinion explicitly states that the *Homebuilders* 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.*" *Id. citing Homebuilders*, 107 Idaho at 421, 690 P.2d at 356 (emphasis added). In other words, the Avimor SFA meets the non-recurring charge exception in *Homebuilders.* Contrary to the facts in *Homebuilders*, Idaho Power asserted that the SFA imposes "*a non-recurring charge* on Avimor to *offset the cost of the utility's capital investment* required to respond to unique circumstances of the Avimor development." *Id.* at 6. Consequently, the Commission is not violating the holdings of either *Homebuilders* or *Building Contractors.*

THE PRIOR ORDER

In Order No. 30322, the Commission observed that the Special Facilities Agreement (SFA) is necessitated solely by the Avimor project. The Commission found that the SFA "as written does not properly allocate project risk." In particular, the Commission found that the investment amount of $6,277 per connection exceeds by 18 times the amount currently included in customer rates to pay for similar facilities. The $6,277 investment is still six times the $1,000 investment included in the last two rate cases. Order No. 30322 at 6. In essence, the revenue generated by new Avimor connections/customers will not offset the refund to be included in rate base. The Commission concluded that 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." *Id.*

The Commission found that the appropriate refund amount for the extension of transmission and substation facilities should be $1,000 per customer connection. The Commission went on to explain that under the $1,000 refund

> 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.

Order No. 30322 at 6.

THE PETITION FOR RECONSIDERATION

Avimor asserts that the Commission's final Order No. 30322 is unreasonable, discriminatory, and not in conformance with the facts in the record and applicable law. More specifically, Avimor first argues that the Commission's reasons for denying Avimor refunds in the SFA amount of $4,300, or its two refund alternatives of $2,300 or $3,900, are not supported by substantial and competent evidence. Second, Avimor asserts that Order No. 30322 discriminates against Avimor in violation of *Idaho Code* § 61-315. Third, Avimor maintains that there is new evidence to support a refund at least in the amount of $1,100. Finally, Avimor requests that the Commission clarify its prior Order to clearly permit refunds for non-residential connections.[3] Reconsideration Memorandum at 2.

DISCUSSION AND FINDINGS

Reconsideration provides an opportunity for a party to bring to the Commission's attention any issue previously determined and provides the Commission with an opportunity to rectify any mistake or omission. *Washington Water Power Company v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). In its Petition for Reconsideration, Avimor requested that the Commission "process reconsideration based upon written pleadings," and proposed to file its Memorandum in Support of Reconsideration by June 29, 2007. Petition for Reconsideration at 1, 3. Based upon Avimor's Petition, the Commission granted reconsideration by written brief. Order No. 30372. Avimor filed its Reconsideration Memorandum on June 29, 2007 and no party filed a responsive pleading in seven days. IDAPA 31.01.01.331.05. In this instance, Avimor seeks reconsideration based upon the existing record and seeks to introduce new evidence in the form of an affidavit proposing a $1,100 refund. Avimor did not request an evidentiary hearing. We turn first to Avimor's request for a clarification of our prior Order.

A. Clarification

Avimor requests that the Commission clarify Order No. 30322 to allow refunds based not only on the number of residential connections, but also upon the kva ratings of non-

[3] In neither its Petition for Reconsideration nor its Supporting Memorandum does Avimor raise the issues of a 20-year refund period or the accrual of interest on the unrefunded balance of the $4.3 million advance. Consequently, this Order does not address these two issues.

residential connections. Memorandum at 2. Avimor maintains that the Commission's Order does not expressly address the issue of non-residential connections. *Id.*

Commission Findings: We grant Avimor's request to clarify our Order No. 30322. *Idaho Code* § 61-626(3). Avimor should also be eligible to receive refunds for non-residential connections (i.e., Schedules 7, 9, 24) within the Avimor development, and from other non-Avimor customers taking service from the transmission and distribution substation facilities that are the subject of this case. SFA at p. 7. Allowing Avimor to receive refunds for these non-residential customers will speed recovery of Avimor's advance because connection refunds for non-residential customers (both inside and outside the development) will usually be larger than residential refunds.[4] In particular, this clarification will allow Avimor to receive larger proportional refunds on the 75,000 square feet of Phase 1 commercial space, its own wastewater treatment plant, and the elementary school. As Avimor noted in its reply comments, the school is equivalent to 43 homes and is expected to be built in the 7- to 8-year time period. Avimor Reply at 4, n.4. In summary, Avimor should be eligible to receive refunds from residential and non-residential customers within the development, as well as residential and non-residential customers outside the development but taking service from the subject transmission and distribution facilities during the 10-year refund period.

B. Substantial and Competent Evidence

Avimor next contends that the Commission's rationale for denying the proposed $4,300 refund for residential connections in the Special Facilities Agreement and the two refund alternatives ($2,300 or $3,900) is not supported by substantial and competent evidence in the record. Memorandum at 2. The developer insists that the "sole reason" for declining to adopt any of the three refund amounts was the financial burden the SFA places on ratepayers. *Id.* In support of its contention, Avimor argues that no other party disputed its calculation of the potential rate impact of the SFA's refund amount on customers; thus, its evidence is undisputed and must be accepted by the Commission.

Commission Findings: Contrary to Avimor's assertion, the Commission's Order No. 30322 contained several reasons why the refund amounts were unjust and unreasonable. First, the Commission found that the refund provision "will place upward pressure on rates" to

[4] *See supra* footnote 2.

pay for the investment in "the transmission line and substation requested by Avimor." Order No. 30322 at 5-6. In particular, the Commission noted that the Avimor "investment amount of $6,277 per connection exceeds by 18 times the amount (i.e., $350) included in customer rates to pay for similar facilities." *Id.* at 5-6.

Avimor argued in its Memorandum that it was "patently unfair" for the Commission to compare the SFA refund amount to the average-per-customer amount embedded in rates. Memorandum at 4. The Commission recognized this point and also found that the $6,277 investment per connection still exceeded "by six times [the] investment made in similar facilities since Idaho Power's most recent rate cases" in 2004 and 2006.[5] Order No. 30322 at 6. The Commission recognized that the $350 investment currently embedded in rates was not the reasonable benchmark. Instead, the Commission found that the refund amount should be $1,000 per residential connection because this amount represents the transmission and substation per-customer-investment based upon the Company's two most recent rate cases. *Id.* Moreover, Avimor does not dispute the Staff's calculations regarding the per-customer investment. Memorandum at 4.

Second, the Commission also found that it was unreasonable that Avimor should collect the $4.3 million investment when only 685 residences connect to the system. The Commission noted that the SFA shifts the risk of unrecovered investment from the developer to Idaho Power. Order No. 30322 at 5. The transmission line and expandable substation were designed to serve the entire Avimor development. The Commission noted that at the SFA "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." Order No. 30322 at 6. The revenue produced by 685 customers will not offset the $4.3 million investment especially when nearly 600 residences are to be 30% more energy efficient than the average residence. Reply at 4. This risk is accelerated in the SFA by the much larger than average refund per customer investment. Consequently, the Commission found that the risk of not fully developing the Avimor property "needs to remain with the developer." *Id.* at 5. As the Commission has previously stated, the "risk of speculative development should be on the customer requesting service, not on Idaho Power and its other customers." Order No. 29529 at 6.

[5] The final Reconsideration Order No. 29601 in rate Case No. IPC-E-03-13 was issued in September 2004, and the final Order No. 30035 in rate Case No. IPC-E-05-28 was issued in May 2006.

Third, to balance the risk properly, the Commission found that the period of time for refunds should be 10 years. Order No. 30322 at 6. The Commission noted that "10 years is twice the normal refund period [five years] in Rule H." *Id.* The 10-year period allows the developer additional time to develop its property and allows more time to recover refunds. "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." *Id.* at 6.

Coupled with the clarification set out above, Avimor will be eligible to obtain refunds for residences, the commercial development, its wastewater treatment facility, the school, and other non-Avimor customers utilizing these facilities over a 10-year period. Thus, Avimor will require less than 4,300 connections (at $1,000 per residential connection). The Commission concluded that the Staff's proposed refund of $1,000 – based upon actual investment data – was more appropriate. As the finder of fact, the Commission "need not weight and balance the evidence presented to it, but is free to accept certain evidence and disregard other evidence. The Commission is at liberty to believe or disbelieve pro-offered contradicted evidence." *Hulet v. Idaho PUC*, 138 Idaho 476, 479, 65 P.3d 498, 501 (2003). Here the Commission's findings are supported by substantial and competent evidence. *Industrial Customers of Idaho Power v. Idaho PUC*, 134 Idaho 285, 288, 1 P.3d 786, 789 (2000).

C. Discrimination

Avimor next maintains that the $1,000 refund discriminates against Avimor in violation of *Idaho Code* § 61-315. Memorandum at 5. Avimor makes two primary arguments. First, Avimor maintains that the Commission's Order is contrary to two Idaho Supreme Court cases: *Homebuilders*, 107 Idaho 415, 690 P.2d 500 (1984) and *Building Contractors*, 128 Idaho 534, 916 P.2d 1259 (1996). Second, Avimor should receive the same or similar refund treatment as the developer of Hidden Springs. *Id.* at 12. Avimor argues that the Commission's decision to set the refund amount at $1,000 is radically different than the $2,300 refund that Hidden Springs was allegedly allowed to recover. *Id.*

1. The Supreme Court Cases. Avimor presumes that the Commission does not discuss the cases because they are not applicable. *Id.* at 10. On this point Avimor is correct – these cases are not applicable for the reasons set out below.

First, a brief review of the *Homebuilders* case is warranted. In *Homebuilders*, the Supreme Court overturned a Commission decision requiring Washington Water Power[6] to collect a one-time, "nonrecurring charge of $50 per installed kilowatt of capacity on all customers who installed electric space heating" . . . "where natural gas was not available." *Homebuilders*, 107 Idaho at 418, 690 P.2d at 353 (emphasis added). The Commission sought to dissuade customers from installing inefficient electric space heating when more efficient natural gas heating was available. The Court overturned the Commission's decision holding that the connection charge unlawfully discriminated between "new" and "old" customers. *Id.* Requiring new customers to pay the non-recurring charge created an unjustified distinction between new and existing customers.[7]

The Court observed that not all differences in a utility's rates as between different customers constitute unlawful discrimination or preference under *Idaho Code* § 61-315. The Court declared that the setting of different rates may be justified by factors such as "cost of service, quantity of electricity used, differences and conditions of service, or the time, nature and pattern of use." *Id.* at 420, 690 P2.d at 335. The Court stated the Commission may consider other criteria for establishing different rates including energy conservation, optimum use and resource allocation. *Id.*

The Court also observed that the *Homebuilders* case "presents 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 . . . lines and a charge is imposed to offset the cost of the utility's capital investment." *Id.* at 421, 790 P.2d at 353 (emphasis added). Idaho Power relied on this quoted language and argued in its reply comments that the two Supreme Court cases are "not applicable to the matter presently before the Commission." Idaho Power asserted that the SFA does in fact impose a one-time, non-recurring charge for the extension of facilities to serve Avimor. Idaho Power Reply at 5-6. The Company argued that the SFA imposes

> 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.

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[6] Washington Water Power now operates as Avista Utilities.

[7] In *Building Contractors*, the Court overturned the Commission when it increased the hookup fees for "new" customers. 128 Idaho at 534, 916 P.2d at 1259. In *Building Contractors* the Court relied extensively on the previous *Homebuilders* opinion.

Id. at 6 (emphasis added). Consequently, Idaho Power insisted that the present case does not violate the holdings of the two Supreme Court cases. *Id.* Moreover, those cases dealt with differences in recurring retail rates between retail customers, which is not the case here.

In its Memorandum, Avimor presents two additional arguments why the *Homebuilders* non-recurring "exception" is not applicable to Avimor. First, Avimor maintains that the exception language from the *Homebuilders* opinion was dicta and should not be relied upon by the Commission. Second, Avimor insists that the SFA does not involve a "non-recurring charge." Avimor maintains that it is "not being charged or being required to contribute funds as a charge for the construction of infrastructure under the SFA." *Id.* at 10-11. These arguments are unconvincing.

Although the Court overturned the Commission's decision in *Homebuilders*, a cursory review of the opinion reveals that the Court went to great lengths outlining the various criteria or factors the Commission may use to lawfully set different rates for different customers. The non-recurring language was one of the factors that justifies different rates. In other words, the Court was illustrating examples that justify a difference in rates.

In discussing the criteria which would permit reasonable differences in rates, the *Homebuilders* Court specifically recognized that a utility can impose one-time, non-recurring charges upon new customers because the service they require demands an extension of existing facilities. In such instances, a charge is imposed to offset the cost of the utility's capital investment. The Commission finds that this situation is applicable to the case at hand. Here the SFA provides for a 3.4-mile extension of transmission facilities and the construction of a substation. The $4.3 million advance is to offset Idaho Power's capital investment. Thus, we reject Avimor's argument that the quoted exception is dicta.

Avimor's other argument is that the SFA does not involve a non-recurring (i.e., "one-time") charge. However, Avimor undercut its argument by describing the charge that the Commission ordered Water Power to impose as a "one-time, non-recurring charge contribution of $50.00 per installed kilowatt. . . ." Memorandum at 8 (emphasis added). In the utility industry a non-recurring charge is typically a one-time charge.

Avimor claims that it is not being charged or required to make a contribution for the construction of infrastructure under the SFA. We reject this characterization. According to the terms of the SFA with Idaho Power, Avimor is requesting that the utility extend facilities to

serve Avimor and its subsequent customers by constructing 3.4 miles of transmission line and a distribution substation. Construction of "Requested Facilities" is contingent upon "the receipt of the payments from Avimor as described herein. . . ." SFA at § 1.3 at p. 3. The Agreement requires Avimor to pay Idaho Power a charge of $4.3 million in three installments. *Id.* at § 4.

Section 4.1(d) provides that if Avimor fails to make its second payment, then that portion of the initial $2.15 million encumbered by Idaho Power for "work orders, for design, labor, materials and supplies, permitting costs and other expenditures for the requested facilities, as determined by Idaho Power in its reasonable discretion" shall be retained by Idaho Power. The unencumbered balance will be refunded to Avimor. SFA at 4.1(d). Finally, Section 4.1(e) of the Agreement states that if Avimor fails to make the final payment, the parties agree that Idaho Power's obligation to refund any payments shall be terminated. If Avimor is unable to recoup its advancement through connections during the 10-year period, then the initial contribution will offset the utility's capital investment. *Homebuilders*, 107 Idaho at 421, 690 P.2d at 356.

As the finder of fact under *Idaho Code* § 61-315, the Commission finds that the SFA requires Avimor to pay a one-time, non-recurring $4.3 million charge for constructing the facilities to serve Avimor. The SFA contract – signed by both parties – requires Avimor to pay a charge before the facilities are constructed.

Although the SFA contains provisions for refunds, this does not diminish the fact the $4.3 million payment is a one-time, non-recurring charge and thus applicable to the *Homebuilders* exception for justifying different rates. As previously mentioned, the Commission's $1,000 refund was based upon the costs of transmission and substation facilities in recent final cases. Order No. 30322 at 6. There is substantial and competent evidence supporting the Commission's decision that the two Court cases are not applicable.

2. Hidden Springs. Avimor next argues that it is being treated unfairly because the Commission purportedly authorized the Hidden Springs development a larger refund of $2,300 per residence for its development in 1998. Avimor insinuates that as a "new" customer, it ought to be treated the same as Hidden Springs, the "old" customer. Avimor maintains that the higher refund rate in Hidden Springs is "clearly demonstrated by the Hidden Springs Special Facilities Agreement." Memorandum at 12. Moreover, Avimor maintains that the Commission authorized

the Avimor refund in the utility's 2004 rate case and specifically cites Order No. 29505. Avimor's arguments are unconvincing for several reasons.

First, Avimor argues that the Hidden Springs Special Facilities Agreement provides a higher refund rate than the Commission set in this case. However, Avimor has not entered the agreement into the record. Thus, the difference in refund amounts is not clearly demonstrated because the alleged agreement was not placed in the record.

Second, Avimor maintains that the Commission authorized the larger Hidden Springs refund in Idaho Power's 03-13 rate case and cites to Order No. 29505. Avimor does not direct us to any page reference in the lengthy Order. In fact, our review of Order No. 29505 does not reveal any mention of Hidden Springs at all. Likewise, our review of more than 3,000 pages of transcript does not reveal any mention of Hidden Springs in the 03-13 rate case. Avimor has not directed us to any Order or document where the Commission has expressly authorized a larger refund to Hidden Springs. This lack of evidence undercuts the foundation for both the alternative refunds. Thus, the Commission has not discriminated against Avimor vis-à-vis Hidden Springs and we find that there is an insufficient foundation to support Avimor's alternative refunds of $3,900 and $2,300.

Finally, we mention our concern about Avimor's calculation of the Hidden Springs refund contained in two footnotes. Reply Comments at nn.5-6; Memorandum at nn.3-4. In particular, Idaho Power purportedly supplied information to Avimor that the Hidden Springs substation "would serve about 300 homes (provided there was no non-residential load served). Under these assumptions, the cost per home for that project was $2,333." Reply Comments at n.5; Memorandum at n.3 (emphasis added). As indicated in the text to the footnote, the $2,333 calculation was conditioned upon there being no non-residential load. However, we cannot accept this assumption. In other cases involving the Hidden Springs development, parties advised the Commission that there were approximately 900 residential units planned for the development, including approximately 100,000 square feet of commercial space and other public facilities including a school, community center, and a fire station. Order No. 27762 at 1 (Oct. 1, 1998). In other words, there is non-residential load at Hidden Springs.

In summary, Avimor has not placed the alleged Hidden Springs agreement in the record and has not identified any Order or document where the Commission has specifically

approved a refund for Hidden Springs. On this record, Avimor has failed to adequately demonstrate that Hidden Springs was authorized a refund in the amount of $2,300.

D. New Evidence

Avimor's last argument is that there is new evidence available to it from data contained in Idaho Power's general rate case (No. IPC-E-07-08) filing of June 8, 2007. Based upon information provided by Idaho Power, Avimor calculated an "updated" average cost refund amount for transmission and substation facilities using the same methodology used by Staff to calculate its $1,000 refund proposal. Based upon this new information, Avimor calculated that Idaho Power's updated average per customer cost is nearly $1,100. Reconsideration Memorandum at 14. Consequently, Avimor maintains that the refund amount should be at least $1,100. *Id.*

Commission Findings: We deny reconsideration on this point. Unlike the Staff's calculations, which are based on data from completed and final rate cases, Avimor's calculation is based on untested data contained in the Company's recently filed pleadings. This data has not been subject to examination by the parties much less been the subject of a final Commission Order. As such, this new amount is speculative and has not been subject to the requisite scrutiny necessary for competent evidence. *Weeks v. Eastern Idaho Health Services*, 143 Idaho 834, 153 P.3d 1180, 1184 (2007). Without such scrutiny, we find that this calculation is premature and far less reliable than the Staff's calculation based upon actual and final rate case data. We conclude that there is insufficient foundation to increase the allowable refund to $1,100 because the Idaho Power information is untested at this point in time.

ORDER

IT IS HEREBY ORDERED that Avimor's Petition for Reconsideration is granted in part and denied in part. Order No. 30322 is clarified that the Commission shall approve a Special Facilities Agreement that also allows Avimor to receive refunds for non-residential customers (Schedules 7, 9, 24) within the Avimor development, including Avimor's wastewater treatment plant. *Idaho Code* § 61-626(3).

IT IS FURTHER ORDERED that Avimor's request to increase the authorized $1,000 refund amount is denied.

THIS IS A FINAL ORDER ON RECONSIDERATION. Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. IPC-E-06-23

may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See *Idaho Code* § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 3rd day of August 2007.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

MACK A. REDFORD, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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