Office of the Secretary
Service Date
October 29, 1997

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

CAPITOL WATER CORPORATION,	)	
	)	**CASE NO. CAP-W-97-1**
Complainant,	)	
	)	
vs.	)	
	)	
COLE ROAD COMPANY, LLC DBA SIGNATURE POINT AND CONSTRUCTION PARTNERS, INC.,	)	**ORDER NO. 27179**
	)	
Respondent.	)	
	)	

On May 30, 1997, Capitol Water Corporation (Capitol Water; Company) filed a Complaint with the Idaho Public Utilities Commission (Commission) against Cole Road Company, LLC, dba Signature Point and Construction Partners, Inc. (Respondents). A Summons was mailed by the Commission to each Respondent on June 2, 1997. On June 20, 1997, Construction Partners, Inc. filed its answer with the Commission. On June 23, 1997, an answer was filed by Cole Road Company, LLC, dba Signature Point, followed by an amended answer on June 26, 1997.

Capitol Water contends that during 1994 at the Respondents' request, the Company agreed to and did extend its main service lines to a development known as Signature Point. The Company contends that the Respondents were advised that they would be required to contribute the costs of the main extension including an amount to cover the related federal income taxes Capitol Water would be obligated to pay on the value of the contributed facilities (CIAC). The Company contends that on July 12, 1996, the Respondents were notified by letter that the income tax portion of the main extension charge currently owing to Capitol Water was $32,470.88. Capitol Water contends that despite repeated attempts to collect said amount, the Respondents have refused to pay.

Capitol Water requests that the Commission issue an order

1. Finding that in accordance with the Commission's orders implementing the Uniform Main Extension Rule and the Commission's Order No. 21933, Respondents are jointly and severally

obligated to pay the costs relating to the income tax on the CIAC of the Signature Point development; and

2. Ordering Respondents to pay Capitol Water the outstanding balance in the amount of $32,470.88 attributable to the income tax on CIAC of the Signature Point development.

Respondent Construction Partners, Inc. denies that it was a developer for Signature Point and requests dismissal and an award of attorney fees and court costs.

Respondent Cole Road Company, LLC denies that there exists any privity between the parties, contends that there was no valid contractual agreement, and alleges that there was no consideration for any contract alleged to exist. Cole Road further denies the existence of any tariff requiring payment of income taxes by any party to this case, or obligation of Capitol Water to collect CIAC taxes pursuant to the Tax Reform Act of 1986. Cole Road denies that the income tax amounts requested were properly calculated and contends that Capitol Water should be estopped from collecting any income tax payment for failing to adequately and timely notify them of such a requirement. Cole Road requests that the Complaint be dismissed.

By this Order and for reasons described below, the Commission dismisses the Complaint of Capitol Water Corporation in Case No. CAP-W-97-1 and closes the case.

By Notice and Order issued August 15, 1997, the Commission scheduled a prehearing conference of the parties in Case No. CAP-W-97-1 for Thursday, September 11, 1997. In our Notice the Commission stated the following:

> The Commission after reviewing and considering the filings of record in Case No. CAP-W-97-1, finds it reasonable to schedule a prehearing conference of the parties to explore the nature of relief requested by Capitol Water, and as pertains to same the statutory jurisdiction of the Commission and related Commission powers of enforcement. The Commission further finds it reasonable to require the Company at the prehearing conference to demonstrate why alternative judicial forums for relief are not more appropriate in a contract action to recover alleged monies owed.

As per scheduling, a prehearing conference was held in Boise, Idaho on September 11, 1997. The following parties appeared by and through their respective counsel:

CAPITOL WATER	JED W. MANWARING
COLE ROAD COMPANY	MORGAN W. RICHARDS
CONSTRUCTION PARTNERS, INC.	LEE B. DILLION
COMMISSION STAFF	SCOTT D. WOODBURY

The arguments of counsel can be summarized as follows:

Capitol Water

Capitol Water is requesting interpretation of the Commission rules and orders relating to CIAC—whether the Commission's Orders required Capitol Water to collect this gross-up amount for CIAC as related to income taxes; whether such assessment was fair and reasonable; and whether the Company's calculation in this instance was correct. Tr. Vol. I, pp. 4, 8.

The Company agrees that if this were purely a contractual interpretation claim or purely a collection claim, that it should be sent to the District Court. Tr. Vol. I, p. 5. The Company contends that Commission jurisdiction is appropriate because under Section A(7) of the Commission's Uniform Main Extension Rules for water utilities, disputed matters may be referred to the Commission for determination. Tr. Vol. I, pp. 5, 6.

Although recognizing that the Commission is not a collection agency (Tr. Vol. I, p. 7), Capitol Water contends that it is appropriate for the Commission to retain jurisdiction and grant the limited relief requested because the reasonableness and interpretation of the Commission's rules regarding CIAC overlap into contractual issues of fact, and may not easily be understood by the District Court. Tr. Vol. I, pp. 7, 8. It is the Company's understanding when you have a Commission Order that says you must charge something and you charge it, that there is no need to have some tariff on file. Tr. Vol. I, p. 22. Reference Commission Order No. 21933.

Cole Road Company

Cole Road contends that the Commission, despite its expertise, does not have primary jurisdiction in this matter, maintaining that pursuant to cited authority, contractual disputes are to be heard by the courts, not the Commission. Tr. Vol. I, pp. 13-15. Indeed, the Commission, Cole Road argues, has no jurisdiction to award damages. Tr. Vol. I, p. 17. Cole Road contends that the Commission's Orders did not require Capitol Water to collect CIAC from parties requesting main extensions, but merely provided small water companies the option. Cole Road contends that Capitol Water never exercised its option (Tr. Vol. I, p. 16), and that there is nothing in the Company's tariffs

that requires the payment of this tax. Tr. Vol. I, pp. 11, 16. Cole Road requests a dismissal of the complaint. Tr. Vol. I, p. 17.

Construction Partners

Construction Partners maintains that the central issues are whether a tariff or a contract exists that would allow imposition of this charge and whether Construction Partners has a substantive obligation to pay this tax. Tr. Vol. I, pp. 18, 19. Construction Partners believes the Commission to be without jurisdiction. Tr. Vol. I, p. 19.

Staff

The Commission Staff in response to Commission inquiry reports that it has looked at the numbers submitted by the Company in this case (reference Complaint, Exhibit C—Worksheet prepared by Capitol Water's accountants, Presnell-Gage) and believes that the underlying calculation of federal income tax due on CIAC for the Signature Point development, based on acceptance of the total contributed property amount, is correct. Tr. Vol. I, p. 23.

COMMISSION FINDINGS

The Commission has reviewed and considered the filings of record in Case No. CAP-W-97-1, the transcript of the September 11, 1997, prehearing conference, its prior Order No. 21933 in Case No. U-1500-176 (Attachment A) and the Uniform Main Extension Rule for Water Utilities approved by the Commission in Case No. U-1500-22, Order No. 7830 (Attachment B).

The Commission's Order No. 21933 in Case No. U-1500-176 was a generic Order in a generic case and was applicable to Capitol Water Company. In our Order we made the following findings of fact:

> Under the Tax Reform Act of 1986, contributions in aid of construction are treated as taxable income. . . .
>
> On December 16, 1987, the Commission issued Order No. 21660, which initiated an investigation into the treatment of contributions in aid of construction. . .
>
> We find that the individual aspects of each utility prohibit us from setting a standard policy of treatment for all utilities. Thus, we find it appropriate to order the adoption of different methods for different types of utilities.

> 1. Every utility's option. To begin, we find each utility has the option of charging to its shareholders any additional expense for the tax on the contribution in aid of construction. . . .
>
> 2. Small water . . . utilities. For small water companies, the Commission finds that the full gross-up method **must be used**, whereby the person making the contribution pays the full tax obligation of the utility on the contribution. This method requires a full gross-up to $1646.90 on a contribution of $1000 toward plant. . . . The income tax collected from the contributor will be used to pay the income tax on the contribution.. . .
>
> The Commission knows from experience that these small companies simply do not have the capital or operating resources to absorb additional tax liabilities. In addition, the risk associated with the development will be on the developer and not the ratepayers. . . .
>
> The Commission finds that this method will apply. . . to those water companies with fewer customers than Boise Water Corporation. . . .
>
> In our ordering paragraphs we required the following:
>
> IT IS HEREBY ORDERED that water companies with fewer customers than Boise Water Corporation. . .**shall use** a full gross-up method whereby the person making the contribution in aid of construction pays the federal tax obligation of the utility on the contribution, unless they exercise the option in the following paragraph.
>
> IT IS FURTHER ORDERED that any utility may adopt the method used by Pacific Power & Light Company whereby the additional expense for the tax on the contributions in aid of construction is charged to the stockholders. . . .

Order No. 21933. Emphasis added.

Based on our Order, Capitol Water Company was required to collect a gross-up amount for CIAC as related to income taxes on all contributed facilities or to charge such amount to its stockholders. The Commission was empowered to enter its Order pursuant to *Idaho Code* 61-503—Power to Investigate and Fix Rates and Regulations, and 61-507 Determination of Rules and Regulations. A uniform practice regarding CIAC is required of the Company, as discrimination and preference is generally prohibited. Reference *Idaho Code* § 61-315.

Having reviewed the Commission's Order and requirements related to CIAC, we now look to the Company's requirements under the Uniform Main Extension Rule for Water Utilities. Specifically, we look to the following language:

Uniform Main Extension Rule for Water Utilities

> A. General provisions and definitions
>
> 1. Applicability
>
> a. All extensions of distribution mains from the utility's existing distribution system, to serve new customers, except for those specifically excluded below, shall be made under the provisions of this rule unless specific authority is first obtained from the Commission to deviate therefrom. **A main extension contract shall be executed by the utility and the applicant or applicants for the main extension before the utility commences construction work on said extensions or, if constructed by applicant or applicants, before the facilities comprising the main extension are transferred to the utility.**

Order No. 7830. Emphasis added.

We continue to find the Uniform Main Extension Rules to be just and reasonable. Reference *Idaho Code* 61-303. We make no finding regarding whether or not a main extension contract exists. We note only that such a contract is required by our rules and would be the logical place for a regulated utility to address payment responsibility for project-related CIAC federal taxes. The calculation of the tax amount is formulaic (see Order No. 21933) and requires no Commission expertise. Billing and collection of the CIAC tax-related expense is authorized by Commission Order and requires no separate tariff. Correctly calculated, the charges are just and reasonable. Reference *Idaho Code* 61-301.

The Commission has considered the Application of Capitol Water in Case No. CAP-W-97-1 wherein the Company seeks recovery of $32,470.88, the federal income tax related to a main extension contribution. The Commission has also considered two additional complaints filed with the Commission in which the Company is requesting similar relief. Reference Case No. CAP-W-97-2, Capitol Water Corporation v. John S. Esposito, dba Whispering Pines Apartments ($20,173.61), and CAP-W-97-3, Capitol Water Corporation v. Greg Unruh, dba Certified Dental ($3,427.58). The existence or non-existence of a contract in this case or verification of underlying

costs or expenses is a matter that more appropriately rests with the courts. The Commission cannot provide the full relief requested. As recognized by Capitol Water, the Commission is not a collection agency. Accordingly, the Commission finds it reasonable to dismiss the complaint of Capitol Water Corporation in Case No. CAP-W-97-1 and to close this case.

CONCLUSIONS OF LAW

The Idaho Public Utilities Commission has jurisdiction over Capitol Water Corporation, a water corporation and public utility, pursuant to Title 61 of the *Idaho Code*, and the Commission's Rules of Procedure, IDAPA 31.01.01.000 *et seq*. The authority of the Commission is restricted to that expressly and by necessary implication conferred upon it by the Legislature. *Idaho Code* 61-501. Generally, construction and enforcement of contract rights are matters within the jurisdiction of the courts and not the Commission. If the matter is a contractual dispute, it should be heard by the courts. *Lemhi Telephone Company v. Mountain States Tel & Tel Co*, 98 Idaho 692, 571 P.2d 753 (1977). The Commission is not a court of justice as defined in Idaho Constitution Article 1 Section 18, and has no authority to issue or enforce an Order for recovery and collection of any monies owing Capitol Water Company by Cole Road Company, LLC DBA Signature Point and/or Construction Partners, Inc., the ultimate relief requested by Capitol Water in Case No. CAP-W-97-1

ORDER

In consideration of the foregoing and as more particularly described above, IT IS HEREBY ORDERED that the complaint of Capitol Water Corporation in Case No. CAP-W-97-1 be dismissed and the case docket closed.

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 29th day of October 1997.

DENNIS S. HANSEN, PRESIDENT

RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters
Commission Secretary

vld/O:CAP-W-97-1 .sw2

BEFORE THIS IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE ADOPTION OF THE UNIFORM EXTENSION RULE FOR WATER UTILITIES UNDER THE JURISDICTION OF THE IDAHO PUBLIC UTILITIES COMMISSION	)	CASE NO. U-1500-22 ORDER NO. 7830

On March 30, 1965, this Commission mailed copies of a proposed uniform extension rule to all water utilities coming under its jurisdiction. The transmittal letter stated that the Commission, on its own motion, would set a hearing to consider the adoption of the uniform extension rule and notified each of the companies that they had until May 1, 1965, to file comments, suggestions, or objections to the rule and would be given an opportunity to appear at the hearing to present testimony and examine witnesses.

On May 3, 1965, the Commission set this matter for hearing on June 8, 1965, in Room 301, at 317 Main Street, Boise, Idaho, at which time and place the hearing was held before the entire Commission, with President Ralph H. Wickberg presiding and the following appearances were entered:

Carey H. Nixon, Attorney at Law, 112 North 6 Street, Boise, Idaho, appearing on behalf of Boise Water Corporation and Idaho Water Company.

Walter H. Smith, 500 Idaho Street, Boise, Idaho, appearing on behalf of Boise Water Corporation and Idaho Water Company.

Nash Bideganeta, Boise, Idaho, appearing on behalf of Capital Securities Water Corporation.

Grant Stowell, Pocatello, Idaho, appearing on behalf of Cherokee Water Company.

Commissioners Rulon Swensen and Leon Fairbanks, appearing on behalf of the Ada County Commissioners.

Rulon E. Larsen, Director, Utilities Division, and K. D. Smith, Auditor, appearing on behalf of the Commission.

The Commission staff explained in detail the proposed uniform extension rule, how it is different from the present uniform extension rule, and the need for changing the rule now in effect. From the discussion that followed the staff presentation, there were some changes suggested to the

proposed rule and these changes were taken under consideration by the Commission. At the conclusion of the hearing, the Commission determined to hold the record open for a period of two weeks for the submission of any further comments or proposals from any interested parties. The two week period now having passed, and the Commission has not received further comments or suggestions, the records should be closed.

FINDINGS

THE COMMISSION HEREBY FINDS:

I.

THAT the Commission has on its own motion held a hearing on the adoption of the proposed uniform extension rule for water utilities under the jurisdiction of the Commission.

II.

THAT as a result of this hearing certain changes and amendments were suggested to the proposed uniform extension rule and these changes and amendments have been incorporated in the revised uniform extension rule attached hereto as Exhibit A and by reference made a part hereof.

III.

THAT the revised uniform extension rule attached hereto as Exhibit A should be adopted to become effective on and after August 1, 1965.

ORDER

IT IS THEREFORE ORDERED that the revised uniform extension rule attached hereto and marked as Exhibit A and by reference made a part hereof should be and the same is hereby adopted to become effective on and after August 1, 1965.

IT IS FURTHER ORDERED that the record in this matter be closed.

DATED at Boise, Idaho, this 19th day of July, 1965.

PRESIDENT

COMMISSIONER

COMMISSIONER

ATTEST:

SECRETARY

jr

UNIFORM MAIN EXTENSION RULE FOR WATER UTILITIES

EXHIBIT "A"

A. General Provisions and Definitions

1. Applicability

a. All extensions of distribution mains from the utility's existing distribution system, to serve new customers, except for those specifically excluded below, shall be made under the provisions of this rule unless specific authority is first obtained from the Commission to deviate therefrom. A main extension contract shall be executed by the utility and the applicant or applicants for the main extension before the utility commences construction work on said extensions or, if constructed by applicant or applicants, before the facilities comprising the main extension are transferred to the utility.

b. Extensions solely for fire hydrant, private fire protection, resale, temporary, standby, or supplemental service shall not be made under this rule.

c. The utility may, but will not be required to, make extensions under this rule in easements or rights of way where final grades have not been established, or where street grades have not been brought to those established by public authority. If extensions are made when grades have not been established and there is a reasonable probability that the existing grade will be changed, the utility shall require that the applicant or applicants for the main extension deposit, at the time of execution of the main extension agreement, the estimated net cost of relocating raising

or lowering facilities upon establishment of final grades. Adjustment of any difference between the amount so deposited and the actual cost of relocating, raising or lowering facilities shall be made within ten days after the utility has ascertained such actual cost. The net deposit representing actual cost is not subject to refund. The entire deposit related to the proposed relocation, raising or lowering shall be refunded when such displacements are determined by proper authority to be not required.

2. Definitions

a. A "bona fide customer", for the purposes of this rule, shall be a customer (excluding any customer formerly served at the same location) who has given satisfactory evidence that service will be reasonably permanent to the property which has been improved with a building of a permanent nature, and to which service has commenced. The provision of service to a real estate developer or builder, during the construction or development period, shall not establish him as a bona fide customer.

b. A "real estate developer" or "builder", for purposes of this rule, shall include any individual, association of individuals, partnership, or corporation that divides a parcel of land into two or more portions.

c. The "adjusted construction cost", for the purposes of this rule, shall be reasonable and shall not exceed the costs recorded in conformity with generally accepted water utility accounting and

sound engineering practices, and as specifically defined in the Uniform System of Accounts for Water Utilities prescribed by the Commission, of installing facilities of adequate capacity for the service requested. If the utility, at its option, should install facilities with a larger capacity or resulting in a greater footage of extension than required for the service requested, the "adjusted construction cost", for the purposes of this rule, shall be determined by the application of an adjustment factor to actual construction cost of facilities installed. This factor shall be the ratio of estimated cost of required facilities to estimated cost of actual facilities installed.

d. "Commission" shall mean Idaho Public Utilities Commission.

3. Ownership, Design and Construction of Facilities

a. Any facilities installed hereunder shall be the sole property of the utility. In those instances in which title to certain portions of the installation, such as fire hydrants, will be held by a political subdivision, such facilities shall not be included as a part of the main extension under this rule.

b. The size, type, quality of materials, and their location shall be specified by the utility; and the actual construction shall be done by the utility or by a constructing agency acceptable to it.

c. Where the property of an applicant is located adjacent to a right-of-way, exceeding 70 feet in width, for a street, highway, or other public purpose, regardless of the width of the traveled way

or pavement; or a freeway, waterway or railroad right-of-way the utility may elect to install a main extension on the same side thereof as the property of the applicant, and the estimated and adjusted construction costs in such case shall be based upon such an extension.

d. When an extension must comply with an ordinance, regulation, or specification of public authority, the estimated and adjusted construction costs of said extension shall be based upon the facilities required to comply therewith.

4. Estimates, Plans and Specifications

a. Upon request by a potential applicant for a main extension, the utility shall prepare, without charge, a preliminary sketch and rough estimates of the cost of installation to be advanced by said applicant.

b. Any applicant for a main extension requesting the utility to prepare detailed plans, specifications and cost estimates shall be required to deposit with the utility an amount equal to the estimated cost of preparation of such material. The utility shall, upon request, make available within 45 days after receipt of the deposit referred to above, such plans, specifications and cost estimates of the proposed main extension. If the extension is to include oversizing of facilities to be done at the utility's expense, appropriate details shall be set forth in the plans, specifications and cost estimates.

c. In the event a main extension contract with the utility is executed within 180 days after the utility furnishes the detailed plans and specifications, the deposit shall become a part of the advance, and shall be refunded in accordance with the terms of the main extension contract. If such contract is not so executed, the deposit to cover the cost of preparing plans, specifications and cost estimates shall be forfeited by the applicant for the main extension and the amount of the forfeited deposit shall be credited to the account or accounts to which the expense of preparing said material was charged.

d. When detailed plans, specifications and cost estimates are requested, the applicant for a main extension shall furnish a map to a suitable scale showing the street and lot layouts and, when requested by the utility, contours or other indication of the relative elevation of the various parts of the area to be developed. If changes are made subsequent to the presentation of this map by the applicant, and these changes require additional expense in revising plans, specifications and cost estimates, this additional expense shall be borne by the applicant, not subject to refund, and the additional expense thus recovered shall be credited to the account or accounts to which the additional expense was charged.

5. Timing and Adjustment of Advances

a. Unless the applicant for the main extension elects to arrange for the installation of the extension himself, as permitted by Section

C.l.c., the full amount of the required advance or an acceptable surety bond must be provided to the utility at the time of execution of the main extension agreement.

b. If the applicant for a main extension posts a surety bond in lieu of cash, such surety bond must be replaced with cash not less than ten calendar days before construction is to commence; provided, however, that if special facilities are required primarily for the service requested, the applicant for the extension may be required to deposit sufficient cash to cover the cost of such special facilities before they are ordered by the utility.

c. An applicant for a main extension who advances funds shall be provided with a statement of actual construction cost and adjusted construction cost showing in reasonable detail the cost incurred for material, labor, any other direct and indirect costs, overheads, and total costs; or unit costs; or contract costs, whichever are appropriate.

d. Said statement shall be submitted within sixty days after the actual construction costs of the installation have been ascertained by the utility. In the event that the actual construction costs for the entire installation shall not have been determined within 120 days after completion of construction work, a preliminary determination of actual and adjusted construction costs shall be submitted, based upon the best available information at that time.

e. Any differences between the adjusted construction costs and the amount advanced shall be shown as a revision of the amount of advance and shall be payable within thirty days of submission of statement.

6. Assignment of Main Extension Contracts

Any contract entered into under Sections B and C of this rule, or under similar provisions of former rules, may be assigned, after settlement of adjusted construction costs, after written notice to the utility by the holder of said contract as shown by the utility's records. Such assignment shall apply only to those refunds which become due more than thirty days after the date of receipt by the utility of the notice of assignment. The utility shall not be required to make any one refund payment under such contract to more than a single assignee.

7. Interpretations and Deviations

In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears unreasonable to either party, the utility, applicant or applicants may refer the matter to the Commission for determination.

B. Extensions to Serve Individuals

1. Free-Footage Allowance

The utility shall extend its water distribution mains to serve new bona fide customers at its own expense, other than to serve

subdivisions, tracts, housing projects, industrial developments or organized commercial districts, when the required total length of main extensions from the nearest existing utility facility is not in excess of fifty feet per service connection.

2. Advances

If the total length of main extension is in excess of 50 feet per service connection applied for, the applicant or applicants for such service shall be required to advance to the utility, before construction is commenced, that portion of the estimated reasonable cost of such extension which exceeds the estimated reasonable cost of 50 feet of the main extension per service connection, exclusive of the cost of service pipes, meter boxes and meters. Such estimated reasonable cost shall be based upon the cost of a main not in excess of 6 inches in diameter except where a larger main is required by the special needs of the applicant or applicants. The amount of the advance is subject to adjustment in accordance with the provisions of Section A.5.e. of this rule.

3. Refunds

The money so advanced shall be refunded by the utility, in cash, without interest, in payments equal to the adjusted construction cost of 50 feet of the main extension for which advance was made, for each additional service connection made to said main extension exclusive of that of any customer formerly served in a reasonable manner at the same location. At the request of applicant, refunds

shall be made within 180 days after the date of first service to a bona fide customer. If no request is received from applicant, the utility shall initiate refunds on an annual basis. No refunds shall be made after a period of ten years from the date of completion of the main extension and the total refund shall not exceed the amount advanced.

4. Exceptions

Where a group of five or more individual applicants requests service from the same extension, or in unusual cases after obtaining Commission authorization, the utility, at its option, may require that the individual or individuals advance the entire cost of the main extension as herein provided and the utility shall refund this advance as provided in Section C.2. of this rule.

C. Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments or Organized Commercial Districts

1. Advances

a. Unless the procedure outlined in Section C.1.c. is followed, an applicant for a main extension to serve a new subdivision, tract, housing project or industrial development or organized commercial district shall be required to advance to the utility, before construction is commenced, the estimated reasonable cost of the extension to be actually installed, from the nearest utility facility at least equal in size or capacity to the main required to serve both the new customers and a reasonable estimate of the potential customers who

might be served directly from the main extension without additional extension. The costs of the extension shall include necessary service stubs or service pipes, fittings, gates and housing therefor, and meter boxes, but shall not include meters. To this shall be added the cost of fire hydrants when requested by the applicant for the main extension or required by public authority, whenever such hydrants are to become the property of the utility.

b. If, for any purpose, special facilities are required primarily for the service requested, the cost of such special facilities may be included in the advance, subject to refund, as hereinafter provided, along with refunds of the advance of the cost of the extension facilities described in Section C.1.a. above.

c. In lieu of providing the advances in accordance with Sections C.1.a. and C.1.b., the applicant for a main extension shall be permitted, if qualified in the judgment of the utility to construct and install the facilities himself, or arrange for their installation pursuant to competitive bidding procedures initiated by him and limited to qualified bidders. The cost, including the cost of inspection and supervision by the utility, shall be paid directly by applicant. The applicant shall provide the utility with a statement of actual construction cost in reasonable detail. The amount to be treated as an advance subject to refund shall be the lesser of (1) the actual cost or (2) the price quoted in the utility's

detailed cost estimate. The installation shall be in accordance with the plans and specifications submitted by the utility pursuant to Section A.4.b.

2. Refunds

a. The amount advanced under Sections C.1.a., C.1.b. and C.1.c. shall be subject to refund by the utility in cash, without interest, to the party or parties entitled thereto as set forth in the following two paragraphs. The total amount so refunded shall not exceed the total of the amount advanced. Except as hereinafter provided, the refunds shall be made in annual, semi-annual or quarterly payments, at the election of the utility, and for a period not to exceed 20 years after the date of the contract.

b. Whenever costs of main extensions have been advanced pursuant to Sections C.1.a. or C.1.c., the utility shall determine the revenue received from customers other than residential, including fire protection agencies, supplied by service pipes connected directly to the extension for which the cost was advanced. The refund shall be 22% of the revenue so received. For residential customers connected directly to the extension for which the cost was advanced, the utility shall refund 22% of the average revenue per residential customer of the entire system for the immediately preceding 12 month period. (See section C.2.d. & B-3.)

c. Whenever costs of special facilities have been advanced pur-

suant to Sections C.1.b. or C.1.c., the amount so advanced shall be divided by the number of lots to be served by the special facilities. This advance per lot shall be refunded for each lot on which one or more bona fide customers are served by those facilities.

d. With respect to a contract entered into on and after the effective date of this rule, if, at any time during the 20 year refund period specified above, 80% of the bona fide customers for which the extension or special facilities were designed are being served therefrom, the utility shall immediately notify the contract holder of that fact, and at that time shall become obligated to pay, in cash, any balance which may remain unrefunded at the end of said 20 year period. Such balance shall be refunded in five equal annual installments, payable beginning 21 years after the date of the contract.

e. Where a contract has been entered into under a former main extension rule, and where 80% of the bona fide customers for which the extension or special facilities were designed are being served therefrom the utility may negotiate and enter into a new and substitute contract, identical in all respects with the original contract, including the original termination date, except that said substitute contract shall include the following provisions: "Notwithstanding any other provisions hereof, any unrefunded balance remaining at the termination date of this contract shall be paid in five equal annual install-

ments beginning one year after said termination date."

3. Termination of Main Extension Contracts

a. Any contract entered into under Section C of this rule, or under similar provisions of former rules, may be purchased by the utility and terminated, after first obtaining the authorization of the Commission, at any time after the number of bona fide customers then receiving service from the extension for which the advance was made equals at least 60% of the total number of bona fide customers for which such extension was designed by the utility and the terms are otherwise mutually agreed to be the parties or their assignees and that Section C.3.b. and Section C.3.c. hereof are complied with.

b. The utility, in requesting authorization for such termination, shall furnish to the Commission the following information in writing by an advice letter in the event the termination is to be accomplished by payment in cash, or by a formal application.

(1) A copy of the main extension contract, together with data adequately describing the development for which the advance was made and the total adjusted construction cost of the extension.

(2) The balance unpaid on the contract, as above defined, as of the date of termination and the terms under which the obligation is requested to be terminated.

(3) The name of the holder of the contract when terminated.

(4) The total number of bona fide customers for which the extension was designed and the number of bona fide customers actually receiving service on said extension as of the proposed termination date of the contract.

c. Discounts obtained by the utility from contracts terminated under the provisions of this section shall be accounted for by credits to Ac. 265, Contributions in Aid of Construction.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION OF THE EFFECTS OF REVISIONS OF THE FEDERAL INCOME TAX CODE UPON THE COMMISSION'S POLICIES CONCERNING CONTRIBUTIONS IN AID OF CONSTRUCTION.	CASE NO. U-1500-176 ORDER NO. 21933

On April 18, 1988, the Idaho Public Utilities Commission (Commission) issued a Proposed Order in this case pursuant to Rule 31.2 of the Commission's Rules of Practice and Procedure. Comments regarding the Proposed Order were received from the Mountain States Telephone and Telegraph Company (Mountain Bell), Idaho Power Company, Boise Water Corporation, Washington Water Power Company (WWP), and the Idaho Citizens Coalition. Having fully considered the comments filed in this matter, the Commission hereby issues its Final Order in this case.

FINDINGS OF FACT

Under the Tax Reform Act of 1986, contributions in aid of construction are treated as taxable income. Utilities are now required to pay income tax on contributions in aid of construction and in return are allowed to depreciate these contributions for income tax purposes. Such treatment of contributions in aid of construction significantly affects our policies concerning the amount of contributions that should be required.

On December 16, 1987, the Commission issued Order No. 21660 which initiated an investigation into the treatment of contributions in aid of construction. We requested all regulated utilities subject to our jurisdiction to recommend methods of treating taxes on contributions for ratemaking purposes. We received comments from Mountain Bell, Idaho Telephone Association, Contel of the West, Inc., GTE Northwest, WWP, Boise Water Corporation, Intermountain Gas Company, Pacific Power & Light Company, Utah Power & Light Company, Idaho Power Company, and the Commission Staff.

The Commission has considered all comments submitted in this case. The Commission has taken various factors into account and we find that the individual aspects of each utility prohibit us from setting a standard policy of treatment for all utilities. Thus, we find it appropriate to order the adoption of different methods for different types of utilities.

1. Every utility's option. To begin, we find each utility has the option of charging to its shareholders any additional expense for the tax on the contributions in aid of construction. This method does not have any impact on the utility customers. Pacific Power & Light Company (PP&L) proposed that it continue charging the taxes on the contributions to its stockholders as it historically has in Idaho. The Commission commends PP&L on its treatment of contributions in aid of construction and urges other utilities to follow Pacific's lead.