

September 28, 2006

VIA EMAIL AND US MAIL

Filing Center
Oregon Public Utility Commission
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308-2148

Re: AR 506 and AR 510 – Idaho Power Company’s Initial Comments

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket is Idaho Power’s Initial Comments.
Please contact me with any questions.

Very truly yours,



Wendy L. Martin

Enclosures

cc: AR 506 and AR 510 Service List

**CERTIFICATE OF SERVICE
AR 506 and AR 510**

I hereby certify that a true and correct copy of INITIAL COMMENTS OF IDAHO POWER was served via U.S. Mail on the following parties on September 28, 2006.

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Wendy L. Martin
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1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**
3 **AR 506 and AR 510**

4 In the Matter of

5 Rulemaking to Amend and Adopt Permanent
6 Rules in OAR 860, Divisions 024 and 028,
7 Regarding Pole Attachment Use and Safety.

INITIAL COMMENTS OF IDAHO POWER

8
9 **INTRODUCTION**

10 In the second phase of AR 506 and concurrently in AR 510 the Public Utility
11 Commission of Oregon (“the Commission”) will adopt comprehensive regulations governing
12 pole attachment contracts. The rules adopted will address rates, terms and conditions for owner-
13 occupier contracts; dispute resolution processes; and attachment installation practices.¹ Idaho
14 Power Company (“Idaho Power” or “the Company”) is willing to participate in this rulemaking
15 and hopefully make a positive contribution to the process. However, for the following reasons
16 Idaho Power respectfully requests that the Commission allow it to comply with the
17 Commissions’ regulation governing attachments, ORS 757.270 et seq. by applying the rules and
18 dispute resolution process provided under Idaho law and thereby exempt it from any regulations
19 adopted in this phase of the docket(s).

20 **DISCUSSION**

21 Idaho Power is an Idaho corporation headquartered in Boise. While primarily an Idaho
22 utility, the Company’s service territory includes portions of the eastern edge of the State of
23 Oregon. Idaho Power’s Oregon territory is largely rural with no major metropolitan areas.
24 Approximately four percent of Idaho Power’s customers reside in Oregon, and less than five
25 percent of the Company’s revenues are derived from these Oregon customers. Thus, not
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¹ Notice of Proposed Rulemaking filed for publication in Secretary of State Bulletin July 1, 2006.

1 surprisingly, Idaho Power has a very small number of pole attachments in Oregon, and this small
2 number makes up a small percent of its total number of pole attachments. Specifically, Idaho
3 Power has only 5,494 pole attachments in Oregon -- out of a total of 133,556 in its total service
4 territory. And the vast majority of those pole attachments in Oregon -- more precisely, 3,687 --
5 belong to the predominant cable operator in western Idaho and eastern Oregon, Cable One.
6 Cable One's attachments are governed by an agreement between Cable One and Idaho Power
7 that was negotiated by the parties in 2003.

8 The history of Idaho Power's negotiations with Cable One is instructive. Initially Cable
9 One and the Company could not agree on a rate to be included in its agreement, which would
10 cover Cable One's attachments in both Idaho and Oregon, and Cable One requested that the
11 Idaho Public Utilities Commission ("IPUC") set a rate.² However, after just one workshop was
12 held, the parties were able to agree upon a rate and execute a pole attachment agreement
13 covering both Idaho and Oregon. At Cable One's request, its petition was dismissed.³ The
14 remainder of Idaho Power's pole attachment contracts have all been arrived at through
15 cooperative negotiations with no need for the intervention of either the Idaho or Oregon
16 commissions.

17 Under all of these circumstances, Idaho Power believes that allowing Idaho Power to
18 apply the Idaho rules and dispute resolution process to Oregon attachments is appropriate.

19 *First*, the absolute number of Idaho Power's pole attachments in Oregon is extremely
20 small. Idaho Power believes that the 5,432 attachments the Company maintains in Oregon
21 represent just a tiny fraction of the total number of Idaho Power's pole attachments.

22 *Second*, currently all of the pole attachments maintained by Idaho Power are governed by
23 voluntary agreements between Idaho Power and the occupying companies that cover pole
24 attachments in Oregon and Idaho -- with the number in Idaho far exceeding the number in
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26 ² Idaho statutes authorize the IPUC to establish rates for providing space on a utility company's poles "whenever a public utility and cable television company are unable to agree upon the rates." Idaho Code § 61-538.

³ See, Order No. 29192, Idaho Public Utilities Commission, Case No. GNR-E-01-2.

1 Oregon. It certainly makes sense for just one set of requirements to govern the negotiations and
2 ultimately the terms and conditions for these contracts, and that Idaho law should apply given the
3 relatively greater impact on Idaho businesses and customers.

4 *And third*, application of Idaho law will adequately protect Oregon customers. Idaho law
5 allows occupying companies to petition the IPUC in the event that they cannot successfully
6 negotiate acceptable terms with the utility.⁴ This provides a check on any utility’s ability to
7 exercise superior bargaining power or to impose unfair terms or conditions. Moreover, the fact
8 that Idaho Power has entered into voluntary contracts for all pole attachments in its region
9 suggests that the occupying companies in fact have been able to receive fair and equitable terms
10 from the utility. The determination Idaho Power is seeking here is similar to the approach
11 accepted by the Oregon legislature when it passed the Oregon net metering statute. ORS
12 757.300(9). In that statute the Oregon legislature recognized the disparate effect having two sets
13 of requests for net metering would have on utilities with small presences in the State of Oregon.

14 Significantly, Idaho Power is not asking to be exempted from the safety standards to be
15 adopted in phase one of this docket. Indeed, Idaho Power is confident that its own safety
16 standards meet or exceed any standards that have been or will be adopted by this Commission.
17 However, given that the Company has only a small number of its total pole attachments in the
18 State, and given that Idaho Power has a history of engaging in productive commercial
19 negotiation regarding pole attachments, it does not make sense to require the Company to apply
20 two sets of possibly conflicting standards in its negotiations with, in most instances, a single
21 licensee that has identical operations in both states.

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⁴ Idaho Code §§ 61-514 and 538.

1 **CONCLUSION**

2 For all of these reasons, Idaho Power requests that this Commission issue an order
3 exempting it from the standards to be set in this phase two of AR 506 and in AR 510.

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5 Respectfully submitted this ____ day of September, 2006.

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