

Mark Pecchenino  
Complainant

October 2, 2020

RECEIVED

2020 OCT -5 AM 9:44

IDAHO PUBLIC  
UTILITIES COMMISSION

VIA ELECTRONIC FILING

Jan Noriyuki, Secretary  
Idaho Public Utilities Commission  
11331 W. Chinden Boulevard  
Building 8, Suite 201-A  
Boise, Idaho 83714

Re: Case No. IPC-E-20-29  
Mark Pecchenino vs. Idaho Power Company

Dear Ms. Noriyuki

Attached for electronic filing, the Complainant's response to Idaho Power Company's Motion to Dismiss. If you have any questions about the attached document, please do not hesitate to contact me.

Dear Commissioners,

I would like respond to Idaho Power response and their lacks substantive evidence, misleading statements and conjecture. I apologise if some of my statements seem cynical but their response did nothing more than make statement after statement that the Complainant was a fabrication of conjecture and falsehoods. It would appear that Idaho Power considers themselves as the champion of truth and accuracy beyond approach. Perhaps their overpaid legal team thought their response would send me quietly into the night with my tail between my legs like a frightened dog. I'm not an attorney so the language used in my response will be in plain and easy to understand without.

1. Response to items 1 through 21. Idaho Power restated the same arbitrary and capricious policies stated in the Complaint and apparently fabricated some new policies. As evidenced in the Complaint their policies and procedures do not promote, " . . . the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable." Their policies are arbitrary, capricious and misleading. The Complaint evidences several policies and procedures that are not just or reasonable such as their \$50.00 reimbursement fee which is arbitrary and their response failed to mention



how this amount was determined. Secondly, the fact that Idaho Power makes the sole determination as to the death of a tree resulting from improper pruning by their staff or contractors is not fair or reasonable. Lastly, the fact that they impose specific tree species that can only be replanted when using the \$50.00 reimbursement voucher is also not fair or reasonable. Their policies clearly provide a one sided advantage and convenience to Idaho Power and their bottom line. They are not just or reasonable to their customers. The Complainant's trees were deemed a threat and hazard as evidenced in the Complaint. Also evidenced in the Complaint were images of trees of similar height and closer to the powerline south of the Subject Property. These trees were not topped. What made them less dangerous or hazardous? Idaho Power failed to answer this question in their response. In their response, they failed to define any of their policies with one exception. They did provide some definitions of Hazardous. Their definition of a hazardous is anything they consider that may interfere, or threatens a power line as an unwritten and arbitrary policy.

Again their response keeps citing the same policies as the Complainant but fail to address the arbitrary and cupreous nature of these policies such as "maintain appropriate clearance from powerlines until the next pruning cycle" "minimize impacts to tree health, and comply with the ANSI A300."

As evidenced in the Complaint they have not defined clearance standards and those standards are not addressed in ANSI A300. They don't want to define

the clearances because they would have to comply with those standards with their poorly trained crews. For Idaho Power its better to have arbitrary and capricious policies to help with their poor training efforts, complaints and possible litigation. What does Idaho Power consider appropriate clearance, the response failed to mention or address this issue. As evidenced in the Complaint, the clearance standard used are arbitrary and varies from maintenance crew to maintenance crew. If they follow ANSI A300 standards as claimed, why did they top the trees on the Subject Property. This is against ANSI A3000 standards. Do the subject trees look to have a "natural appearance", maybe they didn't look at the pictures before writing the response.

The response uses the phrase "appropriate clearance" often which is arbitrary and capricious. How is appropriate defined? The response failed to demonstrate or define appropriate. But in their so called factual statements they asserted the Subject Trees were properly pruned. So how is the Commission to make an justified assessment of their pruning without specific facts and dimensions. Their response suggests that Idaho Powers words are to be considered without question as factual and that the Commission doesn't need to be bothered with the details like dimensional clearance specifications. I guess they cannot provide what they don't have. After all, if their mechanical engineer, who manages the maintenance crews says they were pruned correctly to an "appropriate clearance" then it must be factual.

2. Motion To dismiss. Idaho Power stated that, "Complaint made general allegations in a narrative format. Consequently, Idaho Power generally denies Complainant's allegations and answers written in such narrative, including the numbered paragraphs and statements included in Idaho Power's Section I above. To the extent Mr. Pecchenino's allegations contain legal conclusions, a response is not required by Idaho Power." They also cite several legal submission numbering requirements. Prior to drafting the Complaint, the IPUC was contacted and asked if any specific formatting requirements are required. As evidenced below and as shown in Insert 1. the IPUC stated in an email on June 2, 2020 the following:

*The next step in the process allows you to file a formal complaint. A formal complaint can be filed when the outcome of an informal complaint is not satisfactory. The formal complaint must be in writing, state the facts and specify how you would like the problem to be resolved. Unlike an informal complaint, which is handled by the commission's staff, the commissioners must consider a formal complaint. The commissioners will decide whether it is appropriate to accept the formal complaint. If it is accepted, a formal legal proceeding will be started. If the Commission does not accept the formal complaint, then nothing further will be done. In summary, your formal complaint should state:*

*1. The name of the utility or person the complaint is against.*



2. *A full statement of the facts constituting the acts or omissions of the utility or person against whom the complaint is filed, and the dates when the acts or omissions occurred.*
3. *The specific provision of statute, rule, order, notice, tariff or other controlling law that the utility or person has violated.*
4. *What action or outcome should be taken to resolve the complaint.*

*The address to send the formal complaint to the Commission is:*

*Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074*

There was no stated requirement that requires specifically numbered allegations or complaint formatting. Secondly, the Complaint was accepted by the Commission.

3. Production Requests from Idaho Power. Idaho Power failed to provide requests made by the Complainant prior to the formal complaint process despite repeated requests from IPUC staff. Now they are maintaining that the Complainant has not provided videos of notice or recordings of conversations with Idaho Power staff so the Complaint and his statements contained in the Complaint are false. The Complainant stands behind his rationale in denying Idaho Power's production requests. The IPUC could have disagreed with the Complainant's rationale and ordered him to comply, they did not. The Complainant will clarify the requests since Idaho Power is

now claiming the Complainant fabricated everything. It is clear Idaho Power did not take the Complaint serious and failed to read the entire complaint which clearly states how the complaint was drafted.

As evidenced below and as shown in Insert 1.

In regards to the video surveillance tape. Our system doesn't store months worth of data. This is why the Complainant and the IPUC requested this information during the informal complaint stage. The Complainant was stone walled by Idaho Power as no date of notice was provided despite multiple requests by IPUC staff. Now, several months later they are forthcoming with dates and demand this evidence. How covenant for them, now that no video tape evidence is available. Did they expect the Complainant to sit through 100's of hours of video tape because they failed to provide a date? The complainant did not do this as there was other insurmountable evidence other than a video based on their original noticing statement. The only response from Idaho Power regarding notice, as evidenced below and as shown in Insert 2 was by the IPUC in an a May 6, 2020 email to the Complainant. The email stated, "Additionally, the Company claims a Company representative knocked on the door to provide notice and left a door hanger, though the door hanger did not provide specific dates."

The Complainant maintains this never happened and Idaho Power failed to substantiate their claim of notice in their response. Instead they cited two new methods. All their noticing claims and methods will be discussed later in this response document. They even admit in their response they still don't



know the exact date or time of Notice and chastised the Complainant for not providing them with this information. It would appear they don't have the proof.

## Insert 1, IPUC June 2, 2020 Email

**From:** Curtis Thaden [Curtis.Thaden@puc.idaho.gov]  
**Sent:** Tuesday, June 02, 2020 8:40 AM  
**To:** MARK PECCHENINO  
**Subject:** RE: Appeal

Hi Mark,

Thank you for your email.

In your last communication to me you stated that Idaho Power's latest offer was basically the same and that you needed more information before making a decision, and if you declined Idaho Power's offer, what is the next step.

I have been in contact with Idaho Power to gather more information. Idaho Power confirmed that in addition to agreeing to remove three dead trees from your property, the Company will include three vouchers for new trees. In addition, the debris from the last tree trimming will be removed. Within Idaho Power's Vegetation Management Department, there are two full time certified arborists. Idaho Power said that the Idaho Power employee that first met with you is a certified arborist that reports to Mr. Van Patten. The vegetation management notifier that planned the work and left the door hanger is also a certified arborist. I do realize that you claim no door hanger was left. Asplundh, is Idaho Power's tree pruning contractor, and the Company provides certification through their Line Clearing Qualification program.

I previously communicated to you that if the complaint could not be resolved informally, there is a formal complaint process and that if we got to that juncture I would send you information on how to file such a complaint. Based on your email below, it appears that you have made a decision not to agree to Idaho Power's Offer. Idaho Power is unwilling to agree to more than the Company's current offer. Since I have been unable to resolve your complaint informally, I will fully close the informal complaint.

The next step in the process allows you to file a formal complaint. A formal complaint can be filed when the outcome of an informal complaint is not satisfactory. The formal complaint must be in writing, state the facts and specify how you would like the problem to be resolved. Unlike an informal complaint, which is handled by the commission's staff, the commissioners must consider a formal complaint. The commissioners will decide whether it is appropriate to accept the formal complaint. If it is accepted, a formal legal proceeding will be started. If the Commission does not accept the formal complaint, then nothing further will be done.

You may file a formal complaint for review by the Commission under its Rules of Procedure, IDAPA 31.01.01.000 et seq" - Rule 054. Formal Complaints – Defined – Contents and Process, available online at:  
<https://adminrules.idaho.gov/rules/current/31/310101.pdf>

In summary, your formal complaint should state:

1. The name of the utility or person the complaint is against.
2. A full statement of the facts constituting the acts or omissions of the utility or person against whom the complaint is filed, and the dates when the acts or omissions occurred.
3. The specific provision of statute, rule, order, notice, tariff or other controlling law that the utility or person has violated.
4. What action or outcome should be taken to resolve the complaint.

The address to send the formal complaint to the Commission is:

Idaho Public Utilities Commission  
PO Box 83720  
Boise, ID 83720-0074

Please know that a formal complaint becomes part of the Commission's public records for anyone to view.

I will give you a call today to further discuss and answer any questions you might have. I am still working from home but will officially return to the office on Friday of this week. Commission Staff is reporting back to work in phases.

Sincerely,

Curtis Thaden  
Idaho Public Utilities Commission  
208-334-0322  
208-890-1959 – cell

## Insert 2, IPUC May 6, 2020 Email

**From:** Curtis Thaden <[Curtis.Thaden@puc.idaho.gov](mailto:Curtis.Thaden@puc.idaho.gov)>  
**Sent:** Wednesday, May 6, 2020 10:57:52 AM  
**To:** MARK PECCHENINO <[mpecchenino@msn.com](mailto:mpecchenino@msn.com)>  
**Subject:** RE: Idaho Power Company Tariff

Hi Mark,

I heard back from Idaho Power. Idaho Power has not changed its position from its previous compensation offer.

I presented your request to Idaho Power; 1) Idaho Power to remove all the dead trees caused by the tree topping and pruning; and 2) Equal compensation for replacing the mature trees that are dead. A voucher for a sampling would not be acceptable.

Idaho Power said it is willing to do the following

-Agree to remove the two dead trees that Mark Van Pattern observed and provide a voucher for each tree. The vouchers are redeemable for \$50 at local nurseries when purchasing Class I trees/shrubs.

2-haul away the dead debris that was left on April 27.

Additionally, the Company claims a Company representative knocked on the door to provide notice and left a door hanger, though the door hanger did not provide specific dates.

The Idaho Public Utilities Commission does not have statutory authority to rule on a damage claim, only a court of law can do that. Since you are requesting compensation for damages above what Idaho Power is willing to provide, you may peruse the matter in small claims court.

If you have any further questions, please let me know.

Sincerely,

Curtis Thaden  
Idaho Public Utilities Commission  
208-334-0322

**From:** MARK PECCHENINO <[mpecchenino@msn.com](mailto:mpecchenino@msn.com)>  
**Sent:** Wednesday, April 29, 2020 11:01 AM  
**To:** Curtis Thaden <[Curtis.Thaden@puc.idaho.gov](mailto:Curtis.Thaden@puc.idaho.gov)>  
**Subject:** Re: Idaho Power Company Tariff

Thank you

Sent from my Verizon, Samsung Galaxy smartphone  
Get [Outlook for Android](#)



In regards to recorded conversations. The Complaint never mentioned or alluded to recorded conversations in the Complaint. This is a fabrication of Idaho Power. They assumed the Complainant could only provide quote or conversations through audio recording. Well I have a shocking revelation for them, long before smart phones we used low tech items like a pencil and paper. I know it may be hard to believe, but for years journalists and others used hand written notes to provide accurate accounts of events and quotes as they still do today. The news today is full of hand written notes being submitted as evidence. I have been using hand written notes for years in my professional work. All spoken evidence was submitted and incorporated into the Complaint in whole and in its entirety. Had Idaho Power taken this Complaint seriously, and actually read the entire document they would have discovered this fact. On page 45 of the formal Complaint, it clearly states, "Lastly, through the Complainants years of experience in writing legal petitions, findings of fact, conclusions of law, and numerous appeals, the Complainant understands the importance of an accurate and precise record and the due diligence upon his part. The Complainant has a reputation of being accurate, precise and detailed oriented. The Complainant is methodical in his work and he documents everything including conversations as soon as possible after having them in order to create an accurate record of events and facts. This is the Complainant's everyday practice whenever calling a service provider with a question or concern. Unfortunately the notes form Incident 1, could not be located from storage and a general time frame was used."

The Complaint was drafted from notes as stated. In essence, the Complaint is a compilation of conservation notes carefully drafted during or immediately after a conservation. A practice used by the Complainant is his career as a professional land use planner. His work and notes have been evidenced in various land use legal cases of which none were ever overturned based on the accuracy and detailed nature of his work and notes. These notes were and are included as evidence in the body of the Complaint in a typed format. To validate this claim, I have included my handwritten notes to date with Idaho Power in Insert3. I apologise for my penmanship as I write fast in order to capture accurate conservations as happening or fresh on my mind as I can write faster than I can type. My notes may be difficult for some to read.



Insert 3, Idaho Power Conservation Notes

Apr 27, 2020  
12:58 pm

Notes from Conversation with Tim Asplund

Heard knock on door, two men on porch. Identified themselves as I.P. One man said that while trimming my trees they "Had an accident and broke an irrigation pipe and they were sorry." I asked them why they didn't notify me prior to coming on my property. The second man said he was "The flagger and notice person". He said "I don't know why I didn't notice you I was supposed to do that but I didn't". He then said a car stopped and an individual in a passing car even stopped and asked me if I had noticed the property owner. "I told him I didn't and he replied you should have." He then rambled apologetically and said "I don't know who the man in the car was or why I didn't give you notice". He then said while topping a tree a topped piece fell on the irrigation pipe and that's how it got broken. I told them I would meet them in the field. Drove out there on my quad. When I got there the two men were there and another person. I asked the person who seemed to be in charge what his name was, he replied Tim. They didn't look like I.P. employees so I asked them who they were, and if they were I.P. employees. They replied "We are contractors working for I.P. not employees." I asked if they had any documentation indicating they were contractors or agents showing they were authorized to work for I.P. They all said "no". I asked if they had any I.P. documentation or policies on tree trimming from I.P. They said "no". I asked who their contact person was at I.P. They didn't know anyone at I.P. I asked if they had a phone number for any supervisor or contact number for any manager at I.P. They said "they don't have any numbers but they could look up I.P. phone number for me on their cell phones."

1 of 6

I asked Tim who his employer was and he said Asplundh. I asked if they had any identification, or work order giving them permission to trim trees on my property. They had none not even a bus card. I asked Tim what his title was he said "I'm just a tree pruner." Before I could ask the other man in the field what his title was he said "Hey don't look at me, I'm new and I don't know anything I'm just a helper." I guess I may could sense my frustration as I had already contractors claiming to work for IP and a WISO Broken Iron Pipe I then asked Tim again if he had any documents, new orders, plans or policies or instructions from IP or his company on how he was or instructed to trim my trees. He said "I have nothing I have no documentation of any kind." So I asked Tim how he determined the manner and best methods to trim my trees and why they were topped. I was more frustrated about the newly topped trees than I was about the pipe. The pipe could be replaced but the tree could not as they take so long to grow. His answer frustrated me more. He said "I prune whatever I think needs to be pruned. If I feel a tree might fall on a power line I cut it down to the height of the phone lines." So I said you don't care about the phone lines, Tim and the flagger both said "I don't give a shit about the phone lines". He then repeated what he said at the door that he stopped topping my trees when the pipe broke as he could not control the fall of the cut pieces of wood. He then went on to say trees over 40 ft tall were a hazard and this is why he topped them. I asked Tim if he was an arborist or had any special training he said no he was not an arborist and did not mention any special training.

2 of 6



I changed subject to the pipe. I asked Tim if you don't know anyone at I.P. how are we going to deal with the pipe. He said "It was not my fault I didn't have the right equipment I'm sorry for damaging your pipe and I'm going to pay for the damage out of my pocket I'm really sorry." I didn't know what to say and was confused. Tim went on to say "It would not have happened if I had the right equipment from my company." He went on to say how the trees were well off the road and his truck only had a 10 ft boom and he could not get close to my fence to reach in properly. He said he needed a bigger truck with a longer boom and that he called his boss and requested a bigger truck with a longer boom. But his boss said "Just get the job done." He said his boss would not send him the bigger truck and that "the trees were so far off the road that in order to top them he had to bring off the boom and that this is not the way to do this and this is very dangerous and I could ~~make~~ control the falls because of the distance and this is how the pipe got broken." He went on to say how he was lucky the other sections missed the pipe. He said "I'm glad more pipe was not damaged because I looked up the cost of a replacement pipe online before coming to your door."

I told him the reason the trees were so far off the road is that they are well outside of the 10 ft utility easement and that they were trespassing and destroyed private property in the process. I told him and the others the property was posted with no trespassing signs. I told them I would have appreciated being notified prior to their working as I would likely denied access if they mentioned they were going to top more trees on my property.

3 of 6

Tim went on to state how sorry he was and that he would pay for the pipe out of his pocket. I told him the pipe was expensive and that T.P. should pay for the Irrigation pipe. He said "If I call my boss and tell him what happened I will get suspended for 3 days without pay and I cannot afford that as I would lose money and its cheaper for me to pay for the pipe." I didn't like this as who was going to pay to have it installed and the broken pipe handled off. It didn't sound right to me and I was suspicious. I told Tim I was not comfortable with this. I told him I heard water coming and it was getting hot and I did not want to lose my hay field. He continued to pressure me and said "Knowing my company could take considerable time a lot of time 3 or more weeks to get a replacement pipe. Due to Covid-19 I didn't know if pipe was available, I told this to Tim and he said he found some online but could not say for sure if they had any or when it could be delivered. I started to call local companies to get availability & pricing. The first 3 called were out of stock, but the 4th had a few gated pipes still in stock. Pico said they had no 8" transfer pipe in stock, but they had gated pipe. The next company on the list was in Oregon. Since they had a few 8" gated pipe in stock and indicated that due to the Covid-19 shutdown they were out of stock and did not know if any more transfer pipe would be available this year or even in the future. Because of this the man said they have been having a run on the pipe and they only had 6 8" gated pipes left and they were moving fast. I handed my phone to Tim, he ordered the pipe and paid for it with a C.E. It was scheduled to be delivered later that day.

4 of 6



At this point I was frustrated and exhausted. I was going to have to hire someone to install the pipe, the hay field and area was covered with branches and broken pipe parts. It was a big mess and more trees were topped. I asked Tim to clean up their mess they made while trespassing and to remove the branches from the field. I also asked him to remove and haul off the other branches scattered around the area. Tim said removing and hauling off the branches was not his responsibility but my responsibility. I told Tim my wife and I were disabled and that I was asking for a reasonable accommodations request as provided by the ADA. I asked him to reconsider. I told him this would be a great hardship as my wife was paraplegic and I could not even walk out to the field as this is why I drove my quad runner out and had been sitting on it the entire time. I told him I would have to hire someone not to be removed right away before it was covered by growing grass. I then told him I was going to already have to hire someone to remove or replace the broken pipe. I also noticed that some of the larger wood pieces were very large and long. I told Tim some of the wood pieces in any event way to large and long for me or someone else to handle. He apologized and restated that it was not part of his work but he would remove the wood from the hay field and throw it behind the irrigation pipe. He did not offer to cut any of the large pieces down to short lengths. Tim was very apologetic the whole time, in fact they all were. But I was confused about his comment

5 of 6



about "not part of their work", when questioned he never mentioned any policies, had no documents so where was this not part of their work coming from. I didn't challenge him on this as I wanted to go to my office so I could write my notes as we covered alot, and I thought he is not the person to keep challenging, I asked him to stop trimming and topping my trees. I told him I was going to call F.P. so this should be ok with his boss to move on. I told him to clean the field as promised and to pack up his equipment.

I thanked him and drove back to my house.

4 of 6

4/27/20

Call to I.P.

2:32 PM

Called main number. Asked to speak to line main or tree trimming dept. Transferred to 4 depts before getting the correct dept.

Woman answered phone of 5th try. I asked if this was the tree trimming dept. She said, yes. I asked to speak to a supervisor. She said "None were there and none were available due to covid-19 vir." She said she would have a supervisor call me back as they were working from home.

She did not give time frame for call back. Didn't have time to ask as she was very short with me. Her tone and attitude was as if I just woke her from a nap to ask a stupid question.

She didn't give me time to tell her why I wanted to speak to a supervisor.

She hung up abruptly.



April 27, 2020

Return Call from IP.

5:47 PM

Received a call from a man who said he was "Idaho Power returning your call". I asked if he was a supervisor from the tree dept. He said yes. I asked for his name and he would not give it. He said "why do you need it." I told him for my records he still refused.

Went over the issues from 1st & 2nd incidents. Told him what I was told by IP 3 yrs ago. Did not mention pipe being broken. He was short, seemed pressed for time and told me dead trees not their fault. I asked him to come by and look at my trees. He said he didn't want to. We went back and forth a few times then he agreed to stop by only if he could do it early the next morning on his way to work. I agreed and asked it would be best if he looked at the trees prior to coming to house. He agreed and said he would be here around 8 AM.

I don't know how he said not their fault without seeing the trees. I didn't press him on his comments about stopping on his way to work, as the lady said he was working from home. He was short & rude and acted like it was a hassle to call me. He called after 5.  
~~He called after 5.~~

April 28, 2020 2nd call to IP

9:24 Am.

Called main number again.

Bounced around same as before. Finally reached a man who said line maint dept. I asked if this was the dept that did tree trimming. He said yes. I asked to speak to a manager. He said he was a manager.

I told him all my issues and went into detail. He asked questions. He said he should come out and look at the property & trees. He said he wanted to review the in person and then discuss any options. He could come right away and asked for my address.

I gave him my address and he replied "I'm sorry you have the wrong office. I'm located in the Payette office and that's not my area but I will immediately call Boise and have a manager call you right away."



4/28/20

Call from IP Van Patten

11:03 AM

Received call from Brent Van Patten, manager with IP.

Wanted to stop by to talk 12:00 pm

Told him OK asked him to wait at trees before coming to house as I was not feeling good and did not want to walk out to trees. He agreed.

Did not go over issues or Broken Pipe.



April 28, 2020  
8:03 AM

Notes From Meeting With I.P. Supervisor  
No Name Given

Man parked on Ten Mile Rd at 8:03 AM. I assumed him to be my apt and timed his review of the site took 1.59 min. He got back in his car and pulled down the drive way. I told him we would meet here due to Covid-19 as we approached. He stayed about 15 ft away.

Restated my issues, but did not mention the broken pipe. Pipe was still in field. He immediately denied any culpability on IP, including the dead trees from 3 yrs ago.

I asked him why I was not noticed. He said "The trimmers left a brochure on your door prior to starting work." He asked "contractors would have left a brochure on my door and he has proof." I told him no brochure was left on my door and the trimmer did not leave a brochure on the door. I asked for his proof. He then said "Well then maybe, then they would have knocked on your door and noticed you that way." I told him they did not and that the trimmers told me they were supposed to but did not. I told him that in fact they failed to notice me and when asked for brochures they had none. He then "you were noticed I have proof and if not then you would have been noticed a week ago by our staff." He was getting frustrated and confused.

I again said I was not noticed and that the trimmers had trespassed. He said the door hanger gives him permission.

I told him we were both disabled and went into some of our health issues and situation. I told him we very rarely leave this house and we are both high risk for Covid-19. Also my wife broke her tibia & knee and has not left the house for over 5 months and I cannot leave her home alone. I also told him that due to Covid-19 I have not left the house for 60 days. I also told him we have a guard dog, and that no one could get out of their car unless one of us called the dog off.

p-1 of 3



He didn't know what to say and still did not show me the proof he claimed to have. With a long pause he said "Well then we would have sent you an email regarding the matter."

He's not making any sense. He said he had proof but keeps coming up with new excuses. I told him no one came to our door, and I received no emails from I.P. except ack. of online payments for the last 6 mo. as I checked prior to this arrival. I then showed him a brochure that I printed from I.P.'s web. I printed it in color. I held it up and said your policy states notice is required, and not has you have mentioned.

He then said "So you lied, you did receive the notice." I told him I printed it from his website and waited for an apology. He gave none.

I then asked about the debris. I stated their policy from the brochure. He simply said "In my opinion the debris left was cut to manageable sizes."

I asked for a reasonable accommodation stating that my wife and I are disabled and that removing the debris would be a hardship for us. He declined, said it was our responsibility.

I asked him if he was an arborist, he said he was. I asked him if he thought the trees were pruned properly. He said they were. I told him you cannot top a column tree as it will die. I asked him if he used ANSI A300 standards? I told him well documented topping kills trees.

He shot back very fast stating "Are you an arborist, you are wrong" He then said "You don't know what you talking about topping trees is a standard practice." He then said, "I was wrong that topping trees is an acceptable practice of pruning and tree management used by Idaho Power and it doesn't harm trees in any manner", when I pressed him on the ANSI A300 stds

P-2053

I then told him I wanted I.P. to remove 4-Trees Snags  
from 3 yrs ago and the debris at the same time.

He then said we did not kill your trees said good by and  
turned and walked away.

He was arrogant and just kept denying everything. He didn't  
know his own policies.

P. 3 of 3



April 28, 2020  
12:02 PM

## Notes From Van Patten Meeting

Car pulled up by trees on Ten Mile. Timed Man, he arrived at 12:02 spent 2:38 min reviewing site. Came to porch. He introduced him self as Brent Van Patten with IP. He sat down about 6 feet away.

I started with the noticing. He immediately started "I know you were noticed, I have proof our contractors noticed you your a liar." He said dam hagen grants permission to ~~tear~~ onto property. I told him it did not and stated reasons why. Then discussed trespass issue. I told him they trespassed and the trees topped were outside of the easement. He went on about how they don't need my permission. I argued back telling him I knew a little bit about property rights and explained the laws to him. He then said "You have no property rights and Idaho Power can enter your property, any part of your property any time they want without your permission or notice." I argued back citing laws & ordinance.

Changed subject to topping of my trees. Told him he killed my trees, when he said "IP has every right to top your trees and that willow trees do very well when topped, so topping your willows would have no impact on them." I almost laughed as the trees topped were columnar Populus trees. I then stated some of IP policies regarding no topping and the ANSI A300 spec prohibiting topping. I don't think he knew what I was talking about. He just replied "IP has every right to top your trees and that topping trees was a common practice, and acceptable pruning practices in the industry and one used by IP."

P 1 of 3

He went on to say "Trees with trunks close to the power lines require much heavier pruning than trees located further from the line."

Brought up debris issues being too big and handship. Told him we were disabled and asked for a reasonable accommodation for them to remove the debris. I also said the killed the trees and I wanted the dead trees removed.

He said some of the debris left was not left in manageable pieces and offered to have tv. men come back and cut them down. He then said "In my opinion the crew didn't do a good job they did not prune aggressively enough they need to trim more and needed to do more aggressive pruning!!"

I told him this would be unacceptable. He said I.P. would not remove the dead trees. I told him looks like I would have to go to PUL and that I already have cashed them. He offered a 50<sup>00</sup> voucher in compensation. I told him the initial cost of a tree was 80<sup>00</sup> many years ago and that the were imputed from Wash. State. I told him the 80<sup>00</sup> didn't even cover the cost of shipping or installation. He just said "That's our policy 50<sup>00</sup>". I asked him if he thought that was a fair price for my large ground trees. He said "Paying for the true value of a tree would be too costly for I.P. and its rate payers."

He left restating no responsibility on I.P.

P 2 of 3



I don't know how he could make this claim when I mentioned their policy of no topping and the ANSI A300 specs. He went on to say I.P. topping of my trees had no impact on their health or survivability. Reaffirming previous statements by other men, I.P. topping did not cause my trees to die.

I then went into training issues with their contractor. I told him Tim the pruner indicated he was not an arborist or received any special training when asked. Told him I might I.P. only used highly trained professionals, arborists or qualified contractors. I mentioned their policies again in more detail such as only approved methods like dir pruning, side clearing, cuts and approved ANSI A300 methods and restated topping was not an approved practice but prohibited as it harms trees. He said "He had better have been trained or there will be trouble" I had the feeling he didn't understand any of the terms I just mentioned. I asked him if he was an arborist he said he was. He told me the trees died because they were in poor health and from lack of water, poor management on my part. I told he this was not the case and that I had a photo showing healthy trees prior to their topping and over pruning from 3 yrs ago. He did not want to see the photo went on to say that topping killed my trees. He said again "You have no rights and you should be grateful I.P. provides you with electric power." He said trees were topped because they were a hazard and that "The topping of the trees was for the benefit of all power users."

P 3 of 3

4/9/20

Call to I.P.

Called I.P. and asked to speak to eng. Transferred a few times. Lady said "why do you want to talk to an engineer". I thought this was funny as I have called several times before and never had this happen. I told her I wanted to know the spacing on the power lines, I told her I thought it was 24" but wanted confirmation. I also told her I wanted to know the height of the power lines.

She asked for my name and told me to hold on. After a few minutes a man answered the phone, he refused to answer my questions. He said "you have a complaint pending and need to go through the P.U.C with your questions". I told he that the informal complaint was closed. He simply restated that I need to go through the P.U.C.



June 9, 2020  
4:27 PM

Call to Supervisor IP  
(AKA Tyler H)

I called the I.P. person claiming to be a supervisor to ask for his name one more time. I accidentally hung up on him and called him back immediately. He said "hello" I told him I was Mark Peaburn and asked if he worked for IP. He said "yes". I asked him for his name and he asked why. I told him we had met ~~before~~ while back about my trees. He then said "Tyler." I asked for his last name and he said "why do you need my last name". I told him it was for my report. He declined. I told him he already gave me his first name how would his last name hurt him. He declined. I then said then how about your last name initial he then said "H". I thanked him and said good by.

9/11/2000 Text & Return Call to  
10:24 am Call 11:32 am Casie Sansoncio.

Received text from Casie Sansoncio today  
at 11:24 asking me to call her at (208)264-7971.

I called her back at 11:32 AM. She said  
she wanted to get together to discuss  
replacing the irrigation pipe. I told her a  
complaint was pending and she said that  
she was instructed to go ahead and replace the  
pipe.

She also said she would be out on Monday  
between 8:00 & 8:30 AM with a surveyor but  
would not be on my property. She said  
he would do it from the road. I told her  
where the property corner pin was located  
to save them time.

I told her we didn't need to meet about the  
pipe. I told her the name of the pipe &  
dimensions. She said ok and she or the  
contractor would get back to me when they  
have one located.

Later that day at 3:17 PM I sent her a  
text to clarify the pipe description as I did not  
want her to get underground transfer pipe. She  
responded at 5:09 PM indicating she would get  
info to their contractor.



Text Message received from Casie Sansoucie on Wife's phone 09/11/2020 at 9:15AM

Hi Mark, Casie Sansoucie here with Idaho Power. Can you please give me a call when your available? Thank you, Casie.

*(Note Wife's phone is contact number of record. Call returned as seen in handwritten notes then followed up with a clarification text shown below.)*

Text To Casie at Idaho Power.

From: MARK PECCHENINO [MPecchenino@msn.com]

Sent: Friday, October 02, 2020 2:38 PM

To: MARK PECCHENINO

Subject: Copy of text to Casie at Idaho Power

Casie, this is Mark Pecchenino. I forget to mention the pipe is above ground irrigation transfer pipe as they have underground transfer pipe. To be clear what your looking for is an Above ground 8-inch by 40-foot white poly transfer irrigation pipe with rubber gasket. I beleive they only come in 40-foot lengths where as the underground transfer pipe may come in 20-foot lengths. Its different pipe, but looks the same but it will not connect to above ground pipe.

Sent from my Verizon, Samsung Galaxy smartphone  
Get Outlook for Android

Her Text response received at 3:17PM

Thank You so much Mark! I'll get this information over to our contractor.

4. Regarding Notice. The Complainant still maintains no notice was given for Incident 1 or Incident 2 and that Idaho Power has provided no documented or verifiable proof that notice was given. Whereas the Complaint has provided extensive proof and insurmountable evidence that notice did not occur as claimed by Idaho Power.

Regarding Incident 1. Idaho Power maintains notice was provided and makes the claim that the Complaint's dates are invalid in an effort to discredit and invalidate the Complaint's claim. It was documented in the Complaint on page 45 that, " Unfortunately the notes form Incident 1, could not be located from storage and a general time frame was used." The Complainant did not try and mislead the Commission or misrepresent the facts, as the facts were stated. The Complainant did not know the exact date of incident 1, only that notice was not given.

Regarding Incident 2. Idaho Power has made several statements claiming proof of notice. Their first proof of notice claim was in a statement to the IPUC. The IPUC in an email dated May 6, 2020 to the Complainant stated the following: "Additionally, the Company claims a Company representative knocked on the door to provide notice and left a door hanger, though the door hanger did not provide specific dates." (See Insert 2)

In their Complaint response they state, "Notification. Idaho Power denies Complainant's allegations that Idaho Power did not provide advance notice of the tree-trimming. According to Idaho Power's records dated March 30,



2020, Complainant was provided advance notice, via door-hanger on Complainant's door at the subject property, of the upcoming work. Idaho Power confirmed its contractor visited the property shortly after the COVID-19 social distancing practices had begun. On either Friday, March 27 or Monday, March 30, 2020, Idaho Power's contractor confirmed they walked from the road up the lane to the front door of the residence and placed the hanger on the door without knocking to avoid making contact with the homeowner pursuant to social distancing guidelines. The contractor subsequently entered the day's notified locations into an electronic database. If the Complainant were to produce the recordings referenced on page 11 of the Complaint, as requested in discovery by the Company, Idaho Power believes the records would validate the exact date and time contractor arrived at the residence on either March 27 or March 30." If the alleged notice was entered by their employee into an alleged "electronic database" why don't they know the exact day and time? Why didn't the produce this alleged data base entry as evidence? Now the Complainant is supposed to provide Idaho Power with proof of notice. Their response chastises the Complainant by stating, if the Complainant were to produce the recordings referenced on page 11 of the Complaint, it would magically validate the exact date and time contractor arrived at the residence on either March 27 or March 30. What kind of recording system do they have. Again this validates the Complaint in that their notice policy is arbitrary and cupreous. If they had proof they would not be relying on the Complainant to provide them with their evidence. This is but

one of many misleading and fabricated statements of proof and fact they cannot backup with hard evidence.

The response claims they have or had some type of Covid Policy regarding door knocking, I find this ironic. If they have a policy it is not being followed as clearly indicated in their first statement of notice proof from May 6th or is the Covid policy conjecture. Where is their proof, pictures, logs, depositions, none were offered as no notice was given and they cannot prove otherwise. Their response also mentions an non published informal email notification process which is not stated in their notice policy or on their brochure. However, their response comment validates my notes and statement made by Tyler as factual. If this is not a published policy then how could I make up that part of the conservation. The Complaint states that Tyler said I was noticed by email. It seems Idaho Power making this stuff to justify their poor training and policies.

Here are some additional facts to show Idaho Power presented a false statement or non compliance with the Covid policy. The maintenance crews had completed their work in my area but they came back a few weeks later to work on my neighbours trees. Only my direct neighbours, the ones to my immediate north and south. I found this suspicious and personally observed both maintenance crews on different days. I asked my neighbours if they received notice. Both stated that Idaho Power come to their door, knocked and ask them for permission to enter their property for pending maintenance.



They also stated that the day of pruning, the maintenance crew also knocked on their door and asked permission to prune trees. When work was completed they knocked on their door again and asked them to complete a customer survey, one crew waited for the completed card as stated by one of my neighbours. I did not ask the other neighbour if the crew waited for them to complete the card. Well into the Covid lock down Idaho Power employees and crews failing to comply with the alleged Covid no-knock policy.

The Complainant also maintains the following statement as factual, which Idaho Power denies. This is the statement from page 6 of the Complaint, "The Complainant asked the person whom appeared to be in charge, who later identified himself as Tim, why they didn't notify the Complainant before entering the Property and trimming the Trees. Tim looked at the second individual, who later identified himself as "the flagger and notice person" who said, "I don't know why I didn't notice you, I was supposed to do that ..." He then said " ... an individual in a passing car even stopped and asked me if I had noticed the property owner. I told him I didn't, and he replied you should." He then went on to say, "I don't know who the man in the car was or why I didn't give you notice." Idaho Power brushed this statement off as conjecture from the Complainant. If it's conjecture way was notice given by the maintenance crews to my neighbours, if this is not a standard policy or practice. These facts further validate the evidence and statements contained in the Complaint as being valid and not conjecture. It is curious they came back and worked on my neighbours trees that did not need work after an informal complaint was filed. It looks and smells like a red

hearing. So why was the special Covid door knocking policy disregarded in during these incidents?

Idaho Power has change their story line regarding notice as needed to justify compliance on their part and as statement of fact. I guess they did not count on the Complainant keeping track of their many unsubstantiated claims. The Complaint clearly evidenced the many notice lines used by Tyler when asked about notice. I'm sure if they knew about their May 6th statement they would have cleverly concocted some other statement of fact. They even seem to have added polices like the pre-email notification. Email notification was claimed by Tyler and immediately debunked by the Complainant. When asked about notice, "Tyler replied, "Well then, (long pause) we would have sent you an email regarding the matter." The Complainant told him, he received no emails from Idaho Power in the last 6 months except those acknowledging their online payments as the Complainant checked his emails prior to this meeting." Idaho Power now claims they send a, "pre-notification, informational e-mail to customers who have an email address associated with their Idaho Power accounts, and that are served by the distribution feeder around which the trimming was completed." The response goes on make another false claim, "However, Complainant has not associated an email address with his account and thus did not receive the email notice sent out prior to the door-hanger left at his residence."



Their Email policy cited in the response validates the testimony contained in the Complaint, testimony that Idaho Power denied as fact and calls conjecture. This statement, "However, Complainant has not associated an email address with his account" is false and an outright mistruth. The Complaint clearly stated an email was associated with the account and it was stated in the Complaint that the Complainant ". . . checked his emails prior to this meeting from Idaho Power for the last 6 months." The fact is there is an email associated with the account and was established 6 months prior to Incident 2. This fact further validates the accuracy of the Complaint and the deception and conjecture upon Idaho Power to deceive the Commission.

In summary, here is a numbered list and review of the many statements of facts from Idaho Power regarding notice. There are 7 different statements of fact in total and they are different. So who is taking this Complaint seriously and providing the Commission with honest and factual information, you will obviously be the judge:

Notice Statements 1 through 4, April 27, 2020

<sup>1</sup> Tyler said, "The trimmers left a brochure on your door prior to starting work".

<sup>2</sup> Tyler then stated, ". . . then they would have knocked on your door and noticed you that way."

<sup>3</sup> Tyler then stated "... then you would have been noticed a week ago, by our staff. "

<sup>4</sup> Tyler replied, "Well then, (long pause) we would have sent you an email regarding the matter."

Notice Statement 5, May 6, 2020. A Company representative knocked on the door to provide notice and left a door hanger.

Notice Statement 6, September 25, 2020. Idaho Power confirmed its contractor visited the property shortly after the COVID-19 social distancing practices had begun. On either Friday, March 27 or Monday, March 30, 2020, Idaho Power's contractor confirmed they walked from the road up the lane to the front door of the residence and placed the hanger on the door without knocking to avoid making contact with the homeowner pursuant to social distancing guidelines.

Notice Statement 7, September 25, 2020 "However, Complainant has not associated an email address with his account and thus did not receive the email notice sent out prior to the door-hanger left at his residence."

It would appear there is conjecture upon Idaho Power and not the Complainant. Their subjective nature and bold statements as being factual further demonstrates and validates their arrogance and concerns for their customers.



Here is one last fact to validate our evidence that notice was no given during incident 1 or 2. There have been two attempted home envisions upon our home . This first one was about three years after we moved the this property and evolved 3 armed men at around 8 pm one evening. We had our guard dog then and she adverted and alerted us to the intrusion. They were defeated and left the property. As a result of my accurate notes and description of events and the perpetrators they were apprehended. The sheriffs department had been looking for them for several months resulting from this type of activity in the Kuna area. I was told by the investigating sheriff that there apprehension was a direct result of my notes. This is a matter of public record. After this event, the Sheriffs department suggested several security measures including the driveway alarm that was mentioned in the Complaint. This and other security measures were immediately installed as suggested. A few years later, and well before Incident 1, a second home invasion was attempted at around 4 am one winter morning. The driveway alarm sounded and I was alerted to the intruder. The alarm is set to maximum volume so we are awakened if sleeping. When the alarm is tripped the dog immediately runs to the front window and starts barking. A perpetrator was observed trying to break in through the garage and 911 was called. Again this is a fact of record. So to be clear we take the driveway alarm very seriously and investigate it every time it sounds off no matter the time day or night. For Idaho Power to claim that a contractor walked from the road up the lane to the front door of the residence and placed the

hanger on the door without knocking and we did not notice the intrusion or hear<sup>4</sup> the driveway alarm is false. First there is no safe place to park on Ten Mile Road due to the barrow ditch and limited shoulder width. This is also a fact as the Sheriffs department has pulled speeders and drunks over on Ten Mile Road and have had them pull down our driveway for safety reasons mentioned above. This is also a matter of record as a complaint was filled with the Sheriffs department regarding this practice of TRESPASSING and they stopped using our driveway as a safety zone. So if Idaho Power states their contractor parked in an unsafe manner and walked down our 300 foot driveway and failed to trigger our alarm or dog is poppycock. I can state as fact, not conjecture, that no notice was given or attempted.

5. Matter of Easements and ROW. Idaho Powers response states that, "It is the property agent's responsibility to avoid planting trees or other vegetation that will encroach on the platted Utility Easement and interfere with utility uses of the designated 10-foot Utility Easement." Being a professional land use planner in Idaho for many years, with a masters degree in Urban planning and a good grasp of Idaho land use planning laws having drafted many of them I would like to know what statutes or Ada County ordinances Idaho Power is referencing that prohibits the property agent from utilizing their property to the full extent including the planting of trees in a utility easement. I know of no such law. An easement is an easement not a



ROW. They stated, "In the present case, the Complainant allowed the subject trees to grow into the Utility Easement and interfere with Idaho Power's adjacent Distribution Line, requiring the Company to trim the trees under its standard three-year growth trimming policy." Well shame on me, it is my property to do with as I see fit. I don't see Idaho Power paying any portion of my property taxes, when they do they can have a say in what I do on my property. The Complainant, being a considerate person and land use planner planted his trees well outside of the easement as a good will gesture when considering Idaho Power and its power line, not because it was a requirement. The trees that have grown within the easement are a direct result of overrunning by Idaho Power. This stress of over pruning is evidenced as it caused an inordinate amount of epicormic sprouting from some of the popular trees into the easement area as stated in the Complaint. This is a direct cause and effect of Idaho Power diminishing the Trees growth by over pruning and topping. This also debunks their theory that the Subject Trees poor health is a result from lack of proper watering as the majority of sprouting occurred in the easement and not the hay field. The Complainant cut down and removed as many sprouts as possible, but not all. The Idaho Power survey highlights three such sprouts, trees 2, 3 and 4. There statements are more conjecture by Idaho Power to confuse and suggest to the Commission that they have some inherent right to private property and how I should be used. The response also states, "Idaho Power and its contractors can legally access property to trim vegetation that is touching or close to

power lines using public rights-of-way, private rights-of-way, or easements to protect public safety. This statement acknowledges they do not have unrestricted access or a right to trespass as the later claim in their response and as claimed by Van Patten. The Complaint has never argued the statement above regarding ROW and easements, only that notice to enter property was not made or granted by the owner and they encroached outside of the easement to top and prune trees. Apparently they do not understand the vertical line concept, 10-feet across and straight up.

6. Idaho Power Survey. Idaho Power had a survey performed using a Trimble S7 Robotic station and reflectorless method. This survey failed to list the specific distances the trees were located outside of the 10-foot easement. However it clearly shows the trees topped during incident 2 are in fact outside of the easement. However, Idaho Powers colourful rendition and exhibit of their understanding of the survey attempts to blur the lines and create confusion.

The Idaho Power survey is the same as the Complaint EXHIBIT 2, SUBJECT TREE IDENTIFICATION AND SPACING. I apologise for not including my mythology and methods in drawing this document and how the dimensions were derived. I will now clarify this for the Commission so the have all the facts. During a survey of the property by a professional and licensed surveyor, the northeast corner pin of the property was located. This pin fronts



Ten Mile Road, near the subject trees. The Complainant used that pin and a professional landscaping firm to set the tree planting line. The Contractor used the property line pin and GPS survey equipment to locate a tree planting line 5-feet outside of the 10-foot easement as requested by the property owner. They also dug the holes and planted the trees. From there a flood water ditch was established for the trees and the hay field was reduced in size. In developing Exhibit 2, the Complainant used the same property corner pin located in the survey and a tape measure to develop and derive the dimensions shown on Exhibit 2. The Survey performed by Idaho Power when compared to Exhibit 2 demonstrates the accuracy and factual evidence submitted by the Complainant.

I would like the Commission to consider all facts as Idaho Power makes claim as to the accuracy of Exhibit 2. The Idaho Power surveyor, Mr. Farias did not tie in the property corner pin in the survey, even though its location was told to Casie Sansource and suggested to do so by the Complainant when she called to notify him of the proposed survey. Secondly, Mr. Farias used a Trimble S7 Robotic station and reflectorless method. An EDM is an electronic distance measurement, which also has limitations. One is they have a limited range of measurement. The range between his two points are not noted on the survey. This type of survey is generally limited to 15 to 150m with an accuracy of 1 in 1000 to 1 in 10000. They also generally have an accuracy of 1 in 10<sup>5</sup>, having a distance range of 100kma disadvantage of limited range of measurement. Not being familiar with the

specifics of this particular model I looked it up. The manufacture states the Trimble S7 is EDM Technology and has DR Plus technology with an EDM Accuracy of 1.0 mm + 2ppm Prism / 2.0 mm + 2 ppm DR. These facts are for clarification purposes of the two methods used.

When looking at the professional Idaho Power survey it would appear trees 1, 13 and 14 strayed off the line. This is likely due to the shallow lava rock and caliche that likely moved their 2-foot diameter auger when drilling the holes. However as evidenced in Exhibit 2 and the Idaho Power Survey trees 5, 6, 7 8, 9, 10, 11, 12 and 15 are well outside of the easement as established on their survey and the Complainant.

In their response, Idaho Power stated, **"Complainant alleges Idaho Power was not authorized to trim or remove trees outside the 10-foot Utility Easement."** This is not correct. The Complaint states Idaho Power had no right to trespass without notice and permission and that the trees were a great distance from the [power line and that their policies are arbitrary and cupreous. Idaho Power statements in the response state they have a right to work in the ROW and easement, but not outside of those constraints without permission. They went onto to state, "Idaho Power did not trim Complainant's trees beyond the 10-foot Utility Easement." This is obviously a false statement as their own survey clearly shows the trees outside of the easement. Pruning the branches next to the trees truck and topping the tree was clearly done outside of the easement on trees 5, 6, 7 8, 9, 10, 11, 12 and 15 as mentioned above. They even stated that the branched were trimmed next



to the tree trunk as required by ANSI A3000 standards. The Complainant fails to understand their reasoning that they did not encroach outside of the easement as the survey clearly shows the majority of trees are outside of the easement.

They go on to state, "The 10-foot Utility Easement is reserved for public utility use and any use of the Utility Easement by the lot owner must not interfere with superior right of use by public utilities." Where is that statute, its private property and not a ROW. Easements only grant access by a utility and in rare cases for the installation of a utility such as a gas line, cable TV and other communications. However, these are generally located in the ROW and not the easement unless servicing the property such as the gas line or sewer line. They also claim, "In the present case, "Complainant allowed his trees to grow into and across the 10-foot Utility Easement, extending into Idaho Power's Distribution Line located in the adjacent Road ROW, as shown in Figure 2 and Attachment 2 to this Answer and Motion to Dismiss. Idaho Power had the right to trim the interfering trees back as it did, following its 3-year growth trimming standard." This is also false statement, the branches did not extend into the ROW as claimed.

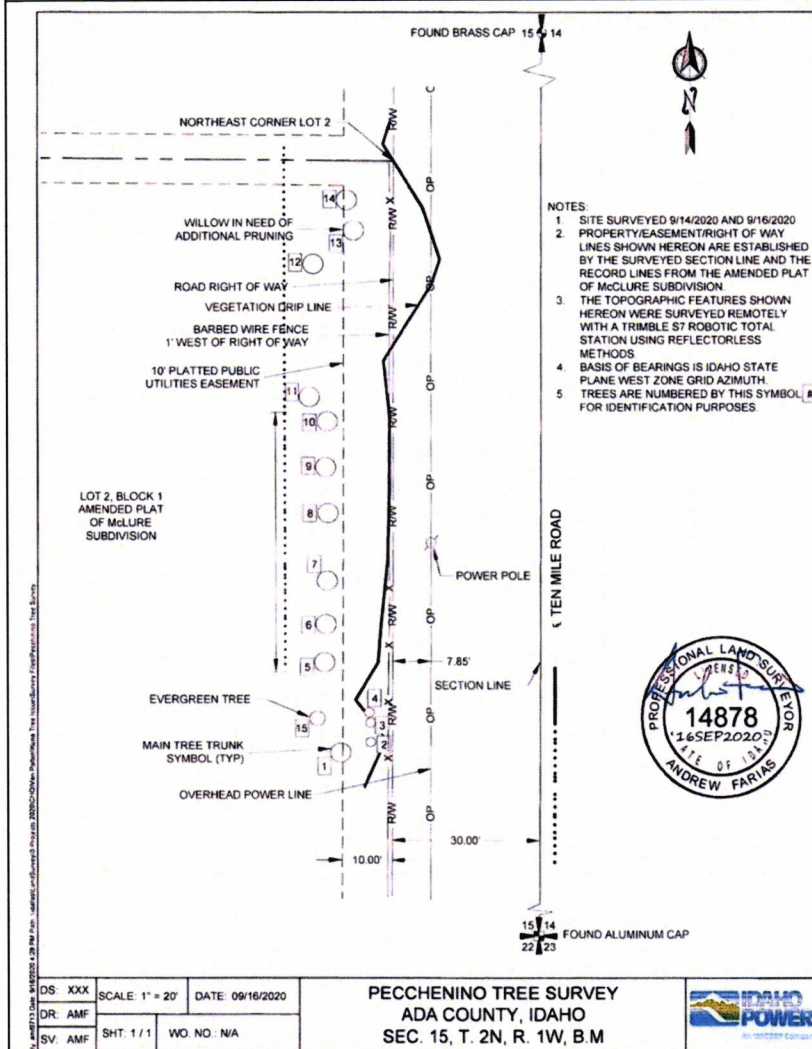
The Complainant still maintains, Idaho Power encroached on private property without permission and outside of the easement. Secondly, Idaho Power continues to maintain that they, "had the right to trim the interfering trees back", I agree in principal, but to what standards and dimensions non have been stated. This is the crust of the Complaint their arbitrary and cupreous tree trimming policies which were not addressed in their response, but avoided. EXHIBIT 8,

DISTANCE FROM POWER LINES in the Complainant clearly shows topped trees up to 21 feet from the power line. How does a 21-foot distance create an eminent danger or hazard?

Idaho Power also stated, "Although Complainant's Exhibit 2 is not drawn to scale, it appears to suggest the trees and the corresponding branches do not extend into the Utility Easement. However, Idaho Power's Figure 2 correctly reflects that all trees in question extend into the Utility Easement at present, even after being trimmed by Idaho Power's vegetation." The Complainants EXHIBIT 2A, TREE IDENTIFICATION is a photograph of the Subject Trees. How is this not drawn to scale. Their misleading and colourful rendition of easement lines showing the Subject Trees within the easement is not to scale and more poppycock. Idaho Power did not like the results of their survey, so they created their own Figure 2. The best evidence is the survey and not their version of it. The Commission should disregard Figure 2, which in my opinion appears to be drawn to confuse and mislead the Commission. So the facts are, the topped trees identified as 5, 6 and 7 on the Idaho Power survey were outside of the easement and could only be topped through encroachment on private property.



# Idaho Power Survey



7. Matter of Trespass. In regards to trespass specifically the response states that, "The above utility easements 3 and 5 grant Idaho Power a ten (10) foot utility easement inside the east boundary of Lot 2, which lies adjacent to Ten Mile Road, as shown on the Plat (the "Utility Easement"). This is true, but it does not grant access outside of that easement without permission. The response referees to *Idaho Trespass Statutory Exemptions* in which the respondent stated, "In 2018, the Idaho Legislature exempted certain activities from civil and criminal trespass claims where individuals have lawful or public safety authority to access the private property." Consider the underlined wording lawful or public safety, not for routine maintenance. They also state, "For tree-trimming purposes, *Idaho Code* §§ 6-202(7) (civil trespass) and 18-7008 (6) (criminal trespass) use identical language to exclude application to individuals who enter or remain on the property pursuant to the following rights or authorities:

(a) An established right of entry occupancy of the real property in question, including, but not limited to: . . . (iii) A lease, easement, contract, privilege or other legal right to enter, remain upon, possess or use the real property;

(b) A lawful authority to enter onto or remain upon the real property in question, including, but not limited to: . . . (iii) Any licensed professional otherwise authorized to enter or remain on the real property during the course and scope of fulfilling his lawful duties; or Any other person with a



legally prescribed right to enter or remain upon the real property in question."

The response also stated, "These statutes also provide illustrative examples of persons excluded from trespass, including, but not limited to, "a meter reader in the scope and course of his employment" and "power company personnel fixing downed power lines." The two cited reference "pursuant to a Prescribed Right to Enter". One might argue that as a condition of accepting power service from Idaho Power and the associated meter would constitute a Prescribed Right to Enter as a condition of acceptance otherwise your meter could not be read and appropriately billed. Repairing a downed power line, a matter of safety is considered an emergency life safety issue. Idaho Power would have the Commission believe that they have some type of prescriptive property rights or implied easement to entire private property.

The Complaint maintains the trespass committed during Incident 2 is not exempted from trespass nor are the damages resulting thereof. Idaho Power exceeded their authority. They would have the Commissioners believe they have unlimited access to private property, in fact this was the statement of Mr. Van Patten. The response also claims, "The Idaho Legislature delegated its police power to ensure public safety by giving the IPUC regulatory oversight over utility safety. by giving the IPUC regulatory oversight over utility safety." How does utility safety grant access to private property outside of the prescribed and platted easement.

They appear to have more access and rights than police. Police access is limited to lawful duties specifically described in the trespass statutes as, only for probable cause, while in pursuit or to issue warrants. Idaho Power claims that *Idaho Code* § 61-515 grants them police powers through the IPUC. Are we reading the same code. By their logic, you just have to be an Idaho Power employee to enter any private property with police power in tow. The report goes onto cite IDAHO PUBLIC UTILITIES COMMISSION TARIFF NO. 29 Idaho Power Company I.P.U.C. No. 29, Tariff No. 101 Original Sheet No, Section 7. Rights of Way. This Tariff as cited the Complaint, and considered by the Complainant has being in violation of Idaho Code Idaho Code § 61-515 and arbitrary and cupreous. Idaho Code Idaho Code § 61-515 authorizes the IPUC to enact safety regulations for public utilities, but it doesn't give them the authority to violate private property or constitutional rights by granting unlimited access to private property. Idaho Powers response also claims, as "a condition of service" Idaho Power has unrestricted right to access private property.

This must be new, there are two power meters on my property and I was never asked, conditioned or requested to signed away my property rights as a condition of service when they were installed. Can they provide a signed document to this fact? It would appear from their statements Idaho Power has a lot of power and authority and consider themselves as having complete and unlimited power over all land in Idaho.



8. Contractor Personnel and Training. Idaho Power alleges more than 3 men were onsite during the maintenance work of Incident 2. The fact is, only three men were on site; a tree pruner, a helper, and flagger-noticer as they identified themselves. Idaho Power claims that, ". . . each crew is required to have either a Senior Trimmer or Foreman present. Both classifications require certification from the ISA, Tree Care Industry Association, or an equivalent Company-approved training program." This sounds great, but the alleged fourth man must have been invisible. If there was a fourth man present that day, a so called Senior Trimmer or Foreman why didn't that person come to my door to notice me regarding the damaged irrigation pipe. Why would Tim claim he broke the pipe while trimming the trees and paid for a unsuitable replacement pipe out of his pocket. It was mentioned earlier that my neighbours trees were trimmed. I observed the maintenance crew working on my neighbours tree to the north for more than 40 minutes while I was irrigating my field, my field abuts my northern neighbour. Only 3 men were present, not 4. Then I went to where the crew was working as I had to adjust my irrigation head gates. The lower head gate was directly below the tree they were trimming, the upper head gate is about 100 feet directly west from the that gate. I went to the upper head gate first and made my adjustment and then sat on my quad runner and continued to observed their work. I was perplexed as to why they were there and cutting up a class 1 tree that had just been pruned. The tree was a Russian Olive with a maximum height of 15 to 20-feet at maturity. They were cutting the middle out of the

tree. These head gates are shared with this neighbour and if this tree is not kept trimmed it makes it difficult to access the head gate. A month or so earlier my neighbour had all the trees on his property professionally pruned. This tree did not need pruning. After watching them for about 10 minutes, I drove down to the lower head gate where they were working. I told the 3 men, I'm in no hurry, finish your cuts and then please lower your boom so I can safely access my head gate, the one directly below the tree. They replied, no problem. After about 5 minutes they lowered the boom. Then the helper moved the live branch debris out of my way, there were no dead branches observed. He did this so I could access the gate. The largest branch observed was about 2 inches in diameter. All very pleasant men, all 3 of them as we chatted awhile. I adjusted the gate and left. I returned about 40 minutes later to readjust that gate and they were gone. But all the branches were cut into nice 2-foot pieces and scattered about my neighbour's lawn and the ROW. He is also disabled, and I saw him a week or so later to ask about noticing. He was furious about the damage done to his tree and the mess they left. He could not understand why they did not chip the branches. I remember exactly what he said, but did not make notes of this conversation as I hadn't intended to mention it. However, Idaho Power's response left me with no choice. I won't use quotation marks, since I don't have notes but I remember exactly what he said. He said, It was the oddest thing I have ever seen, they cut all the branches into 2-foot sections. I don't know why, but what a mess it took me hours to clean up. He also said he called Idaho Power to complain but never



received a return call. To recap, there was no 4th man that day as required according to Idaho Power. Perhaps this is why he complained about his tree being destroyed by Idaho Powers that day.

A few days later, on my neighbours property to the south a maintenance crew showed up. I was sitting on my front porch enjoying the day when the maintenance crew arrived. I thought this was also strange as their 1 and only tree in question was another class 1 tree and it is located 20 or more feet from a secondary power line, the line that feeds my property. This tree is also located outside of the 10-foot easement (5-feet on either side of the property line) and more than 70-feet west of Ten Mile Road. In my 18 years on the Property, I have never seen this tree pruned. It is brittle tree and the limbs snap off with every wind storm and sometimes blow onto my property. The neighbours there now are new, the older couple who lived for over 16 years never trimmed any of their trees. This tree as well as all their trees were trimmed by the new neighbours recently. Again I didn't see the need for trimming, but without distance standards who knows. While on my porch, I observed 3 men in total, no 4th man that day either. I observed their arrival. After parking 2 men went to the house and the returned, the 3rd man stood by the truck. I later learned from my neighbour the men asked permission to trim their tree. They cut a few small branches, mostly they stood around talking and it looked like they were done. I went inside to refill my beverage and to get my phone to take some pictures. This took approximately 5 minutes.

When I returned they were gone and no debris on the ground. They were there less than 45 minutes maybe a bit longer I did not record any times. At no time did I see the alleged 4th man required by Idaho Power as stated in their response. The one they claim is with every crew, the trained and certified master pruner and foreman. The person who assures the pruning plan is strictly followed. It would appear the 4th man scenario is a myth, or policy not being followed by Idaho Power contractors? This is another example of a false claim that was not verified with first hand information by contacting the crew there that day who topped my trees during incident 2. The Complainant was on the property and provided first hand eyewitness evidence. Evidence that Tyler, Van Patten or the Idaho Power attorney did not have. So on what grounds do they claim conjecture on the Complainant part, an invoice from the contractor. I thought eyewitness testimony trumps hearsay evidence.

In their response they stated, "According to the contractor's timesheets and statements, the crew Foreman was on site and involved in discussions with Complainant. The Foreman supervised the work of a Trimmer and a Trimmer Trainee at the site; a traffic control company also had personnel present." This is a false statement by Idaho Power and not derived from first hand evidence. They are trying to tell the Complainant that he talked to this alleged foreman, poppycock. Idaho Power failed to interview Tim or the other 2 men on site that day. Or they did and they are not disclosing the true facts to the Commission. I believe the Complainant would have



noticed a 4th person, a person alleged to have spoken to him about the broken pipe. Idaho Powers entire response is riddled with inaccurate and false statements. I have no way to cross examine or ascertain the truth from Idaho Power. They repeatedly allege statements in the Complaint are false, when in fact their statements are false and misleading. It appears they are being over charged by their contractor and Idaho Power failed to obtain direct testimony from the eye witnesses there that day. This shows their arrogance and lack of respect toward the Commission and validates the Complaints comments regarding failed auditing of their contractors. It leads one to believe Idaho Power is paying thousands of dollars yearly on false invoices. The Commission should investigate this matter, as a ratepayer I'm outraged. They go on to state, "The Foreman supervised the work of a Trimmer and a Trimmer Trainee at the site; a traffic control company also had personnel present." First, there was no traffic control company on site, one of the three men identified himself has a flagger. This is another false statement, unless the traffic control company was also invisible like the alleged 4th man. I'm assuming the trimmer trainee they are referring to is Tim. I cannot offer evidence or testimony on invisible people and equipment. If Tim was not the Forman as he claimed and a Trimmer Trainee its gross negligence upon Idaho Power for allowing a trainee to damage my trees. There were only 3 men, not 4 on site. I just evidenced 2 other examples of 3 not 4 man crews. If Tim was not in charge, why did he pay for the pipe and give me his phone number to call if I had additional

questions or issues. The Complainant has his phone number and will gladly provide it the Commission if they want to question him. If this alleged foreman was present wouldn't that have provided his name and number or business card. Idaho Power also claims that its not the contractors policy to require their workers to pay for damages. Then why did Tim state this and why did he pay? Why didn't the alleged foreman stop Tim from paying if it was against company policy?

Idaho Power has made many unfounded claims. They suggested they cannot interview Tim as he is no longer with the company. This is why I was reluctant to bring up the broken irrigation pipe. I did not want Tim fired or penalized for being denied proper equipment. He told me he had a family. I hope the IPUC will seek the truth has as many of Idaho Powers claims need to be investigated. I am both saddened and find it very suspicious that I file a Formal Complaint, mention the pipe, and then suddenly Tim is no longer with the company. What about the helper and flagger-noticer were they fired. Is this a cover-up at the expense of 3 innocent men sacrificed for a contractors continued contract with Idaho Power or conjecture by Idaho Power?

9. Work Plan. The response states that, "An Idaho Power contractor creates a work plan for the trees in Idaho Power's vegetation management software application, which is



provided to Idaho Power's vegetation management contractor and assigned to a crew. The day the work is to be completed, the vegetation management crew arrives, performs the work identified in the work plan, cleans up the work zone as described in the notification literature and other program materials, marks the work plan as complete in the tracking software, and leaves a survey card at the property agent's door." The Complainant reaffirms that the vegetation management crew of Incident 2, had no work plan as they were asked by the Complainant for any work orders or documentation. Secondly, the vegetation management crew stated they were supposed to have noticed the Complainant prior to starting work but failed and made no attempt as they stated at the Complainants door. It has been documented herein that this is a standard practice and validates the statements made in the Complaint to be true and accurate. To date, Idaho Power has offered no proof, just biased testimony from employees, contractors and obvious conjecture referencing electronic entries and plans. They failed to seek the truth by not deposing the 3 men on the crew. If you recall both my neighbours were noticed by the vegetation management crew prior to starting work. It would appear Idaho Power wants the Commission to believe that the Complaint and his family failed to hear the Idaho Power Notice door knock, but somehow heard the maintenance crews door knock during the Covid shut down and their no knock safety policy. Also for the record, it should be noted of the 3 maintenance crews observed and mentioned herein none wearing face masks, is this requirement in their Covid Policy?

The clean up of the work zone as described in the notification literature and other program materials as mentioned above including leaving a survey card at the property agent's door when work is completed. As evidenced in the Complaint they had no documentation, work plan or survey card.

However Idaho Power said they had a tablet that contained the plan and had the Complainant asked to see the tablet they would have shown it to him. As evidenced in the Complaint, Tim was specially asked, ". . . if he had any documentation, memorandums, plans, policies or specific instructions from Idaho Power or Asplundh on how he was supposed to trim the Trees on the Property?" He had nothing the other 2 men heard the question and did not respond with any documentation. Idaho Power failed to mention that the tablet was with the 4th invisible man. I hope the Commission can see through all this poppycock.

10. Debris. The debris was not cleaned up or cut to manageable sizes as evidenced in the Complaint. It was also evidenced that the clean up policy as stated in the notification literature and other program materials is arbitrary and cupreous. Tyler stated the debris was cut to manageable sizes while Van Patted indicated they were not. No size specification are cited. Based on my neighbours recent maintenance work the standard appears to be 2-foot, or at least that crews standard. But no standards has ever been addressed by Idaho Power. If fact, Van Patten offered to have a crew come back and cut the debris into manageable sizes, but never stated what



manageable was. Idaho Powers response failed this issue. It further demonstrates their reluctance and unwillingness to address they core issues of the complaint, their arbitrary and cupreous policies.

11. Topping and Pruning. Idaho Power did state in their response that topping is unacceptable. They said, "Topping is a form of pruning considered unacceptable by the ANSI A300 Pruning Standard and is therefore not performed by Idaho Power or its vegetation management contractors." They go onto state that, "In the utility vegetation management context, "hazardous trees" are those posing a real and impending threat of structural failure that could result in falling across a power line. More specifically, "hazard trees" are within striking distance of power lines and are dead, in poor health, or exhibiting structural problems that are likely to result in falling into the power line. Pursuant to NESC Rule 218, such trees must be removed, either partially or entirely, during each vegetation management tree-trimming cycle as experience has shown to be necessary." The Complaint stated that Idaho Power considered the Subject Trees hazardous, therefore condemning them. Idaho Power dismissed theses facts as conjecture claiming their employee never stated this. But in their response, they claimed the trees were topped as they were deemed hazardous.

Idaho Power has been selectively targeting the Subject Trees every maintenance cycle because they consider them hazardous. This targeted approach relieves them from their policy of having to pay for removal of hazardous trees. Instead they use a different technique, over pruning which leads to height reduction when the crowns or tops die resulting from the over pruning. This is how it works, they come in every three years, severely over prune the trees. This causes the tops to die, then they come back during the next maintenance cycle and top them citing they are a hazard due to dead tops. They repeat this process until they achieve their desired height goal. Then the tree dies and they claim no culpability and removal of the dead snag is at the property owner's expense. This is basically what Idaho Power stated in their response and what was stated by Tim. Instead of claiming culpability, they cite poor management by the property owner. Then the process begins again. They continue this systematic killing practice until all the trees they deem hazardous are dead. This is their unwritten practice as it protects their bottom line. The photographs in the Complaint document this fact. Idaho Power response states, "Complainant alleges Trees 1, 2, 3, and 4, identified in both Attachment 2 and Figure 2, died as a result of topping and over-pruning from the tree-trimming work performed during Incident 1. Idaho Power not only denies all such trees are dead, Idaho Power further denies the declining tree health or deaths resulted from the 2016 pruning. Potential causes of such declining health include water shortage, nutrient deficiency, incompatible soil pH, disease,



pests, herbicides applied along the roadside for weed control, and ice melt chemicals applied to the roadway during winter." This determination was the same rhetoric used by Van Patten. Their decline and culpability determinations are made by biased Idaho Power employees. The Commission should require a neutral 3rd party arborist to evaluate complaints about Idaho Powers culpability. Testing for nutrient deficiency, incompatible soil pH, disease, pests, herbicides could all be done with a soil sample. There statement is pure conjecture and a falsehood. If the Subject Trees declined due to water shortage, nutrient deficiency, incompatible soil pH, disease, pests, herbicides applied along the roadside for weed control, and ice melt chemicals as claimed by Idaho Power then why are the other 20 plus trees fronting Ten Mile Road doing well. Those trees have not pruned and killed by Idaho Power, that's why. There is no water shortage to the Subject Trees as they are flood irrigated every two weeks. Hundreds of dollars have been spent by the Complainant on tree fertilizer and other supportive tree nutrients. Finally, the Subject Trees are 25 feet from the shoulder of the ROW so how is roadside weed control, and ice melt chemicals doing damage. Idaho Power's ignorance abounds with more smoke and mirrors, one only needs to look at the evidence and the photographs.

Idaho Power seems to be conflicted in their response. In one statement they say they don't top trees and in another they say the trees were topped to

remove dead wood. They claim the trees were reduced using the Crown Reduction method. This was toughly discussed in the Complaint. Crown reduction is removing a lateral branches to reduce height. This method works on fruit trees, maple trees and locust trees for example. These types of trees all have one thing in common, they have a main trunk generally 5 to 6 feet in height and then limbs coming off the trunk and then branches forming off the limbs. Theses trees gain height through their limbs and branches. A columnar tree, like a conifer tree has a single trunk stemming from the ground to the tip. It gains height through the extension of the trunk. So their are no lateral branches to crown only a trunk and this is called topping. I have inserted a document, Insert 4, to explain topping vs crowning along with pictures of a Poplar and Maple Tree in Insert 5 and 6 respectively. Idaho Powers example only shows an open canopy tree such as a Maple tree. Again they are trying to confuse the Commission.



#### Insert 4, Topping vs. Crown Reduction

##### The Difference Between Topping and Crown Reduction Pruning

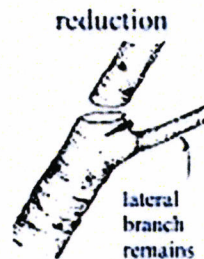
John Eisenhower, ISA Certified Arborist WE-5213A  
Integrity Tree Service, Inc. 602-788-0005 [www.itreeservice.com](http://www.itreeservice.com)

**Topping** is the “T” word in the tree industry. It is the unacceptable pruning practice of reducing the height or spread of a tree using heading cuts. Heading cuts reduce the trunk or branches of a tree to stubs or to lateral branches too small to assume the terminal role of the branch being cut. In spite of providing short-term control of tree size, topping causes serious future problems. When a tree or shrub is topped, several things happen:

1. The branch at the point of the heading cut produces a flush of new growth, usually numerous, vigorous and disorganized sprouts. This “witch’s broom” of new growth destroys the tree’s natural growth habit and beauty. Sprouts are often long and upright with little variation in shape and structure.
2. In producing such profuse growth to replace the lost foliage, the plant is soon as tall as it was before topping. But now the crown is denser, requiring extra time and effort to prune.
3. The sprouts also create a foliage shell, shading the plant’s interior, often causing inside branches to die back.
4. Finally, the new sprouts are weakly attached, crowded and prone to breakage. Although topping is sometimes done to make trees safer, trees can become more hazardous after topping.

##### The alternative to topping is Crown Reduction.

**Crown Reduction** is the selective removal of live branches to decrease the height or spread of a tree’s crown. Use of drop-crotch pruning cuts is required. A drop-crotch pruning cut removes the end of a branch by cutting back to a crotch created by a lateral branch. This side branch needs to be at least 1/3 the diameter of the branch being cut. If the branch is 1/3 the diameter of the parent branch or larger, water and nutrients will be redirected into the lateral branch and it will assume the terminal growth responsibility of the removed branch. The tree will produce less sprouts at the point of the pruning cut and the tree’s natural growth habit will be preserved.



A drop-crotch pruning cut is illustrated above

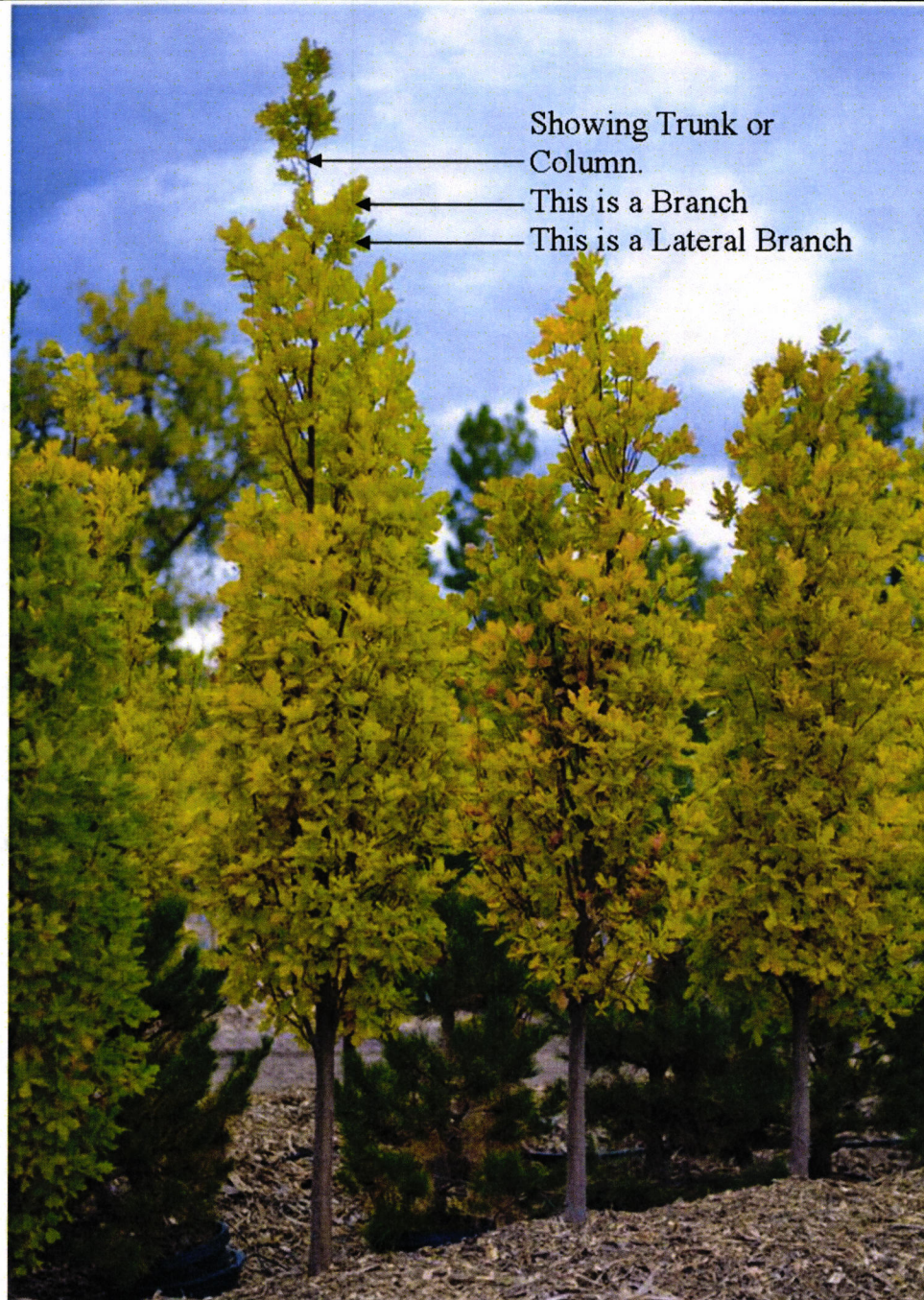
Integrity Tree Service, Inc. © 2009

The Difference Between Topping and Crown Reduction Pruning

Source: [itreeservice.com/pdfs/topping\\_and\\_crown\\_reduction.pdf](http://itreeservice.com/pdfs/topping_and_crown_reduction.pdf)



Insert 5, Image of Poplar Tree



Notice the long trunk and how the top of the tree is the extension of the trunk. You could cut branches but the tree would still gain in height unless the centre trunk is cut and that's called topping.



Insert6, Image of Maple Tree



These trees gain height from the limbs and branches steaming from the low trunk. Height is gained through limb and branch growth. Height is controlled through crown reduction.

Idaho Power maintains they did not top the Subject Trees and the Complaints allegations are false. However, they made the following statement, "The dead tops in Trees 1, 5, and 6 were at risk of falling into Idaho Power's line and were therefore crown-reduced for deadwood to mitigate this risk. When removing the dead tops from Trees 1, 5 and 6,



Idaho Power's vegetation management contractor complied with the ANSI A300 Pruning Standard by making reduction cuts at live laterals and not leaving stubs." They clearly stated "When removing the dead tops" and the pictures show stubs. They also stated that they reduced live laterals, what live laterals? Commissioners please look at the Topping and Crown Reduction insert which shows a lateral branch with a crown reduction cut. Then look at the images of the Subject Trees in the Complaint and the Poplar and Maple tree images 5 and 6 contained herein. Then see if you can find the lateral branches Idaho Power claimed to have cut. I believe you will conclude they cut the tops as they have stated above and affirmed by the Complaint.

12. The IPUC *Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission*. The response states, "Rule 101 requires electric utilities to abide by the provisions of the NESC.2 The NESC requires electric utilities to maintain both vertical and horizontal clearances near its power lines for public safety and reliability. NESC Rule 218.A . . ."
- The NESC Rule 218.A is a generic rule which has left the individual state utilities to define vertical and horizontal clearance requirements. Idaho Power has failed to define the distance from power lines deemed safe and that require vegetation management. The Complaint evidences policies that conflict and where no specific safety distances are stated. Their policies are arbitrary and capricious and non compliant with



*Idaho Code § 61-515* as no safety standards have been offered or approved by the IPUC.

13. Damages. Idaho Power stated , " The Commission is not empowered to award damages for losses, damages, or injuries. Damage claims for trespass to real or personal property are tort matters that do not raise a utility customer issue within the Commission's jurisdiction." The tree values requested by the Complainant provide an example for the IPUC to demonstrate how arbitrary Idaho Powers \$50.00 voucher is. The Complainant requested compensation for the trees so he could demonstrate to the Commission the true value of trees and how other agencies determine value. It was also to demonstrate that Idaho as no policy or rational process to determine tree value. A subject avoided in the complaint.

14. Condemnation. Idaho Power maintains the Subject Trees were not condemned. However thought their response they have categorized the Subject Trees as being hazardous and posing a threat to their power line. When a tree is considered hazardous their policy states it should be removed by Idaho Power at their expense. To avoid this and the associated costs they just systematically reduce the height and kill the tree until the end result is a snag well below their power line as discussed in a previous section.

15. Replacement Pipe. Idaho Powers response misrepresents a phone call between Casie Sansoucie an Idaho Power employee and the Complainant as evidenced in the attached notes. The response stated, "Although Complainant did not contact Idaho Power or its vegetation management contractor regarding a damage claim, after reviewing the formal Complaint, Idaho Power contacted Mr. Pecchenino on September 11, 2020, to gather more information and schedule replacement of the pipe. Idaho Power admits that Complainant is claiming unresolved damages associated with the irrigation pipe, but that Complainant has also requested postponing resolution until a later date." The Complainant told Ms. Sansoucie, a complaint was pending and she replied that she was instructed to go-ahead and replace the pipe. The Complaint told her, ". . . we dont need to meet about the pipe. I told her the name of the pipe and dimensions." If the Complainant wanted to hold off why would he had followed up the same day with a text message at 3:17pm clarifying the pipe description and the difference between an above and underground transfer pipe.