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September 25, 2020

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, pursuant to Order No. 34602, is Idaho Power Company's Answer and Motion to Dismiss.

If you have any questions about the attached document, please do not hesitate to contact me.

Very truly yours,

Lisa D. Nordstrom

LDN:slb
Attachment

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Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

Mark Pecchenino,)	
)	Case No. IPC-E-20-29
Complainant,)	
)	IDAHO POWER COMPANY'S
vs.)	ANSWER AND MOTION TO
)	DISMISS
Idaho Power Company,)	
)	
Respondent.)	

COMES NOW, Idaho Power Company ("Respondent," "Idaho Power" or "Company") and pursuant to Procedural Rules 56 and 57, hereby answers the formal Complaint of Mark Pecchenino ("Complainant") filed July 15, 2020, in the above-entitled case ("Complaint"). Idaho Power's vegetation management is critical to public safety, system reliability, access to facilities, regulatory compliance, security, and fire risk mitigation. Idaho Power has a robust vegetation management program to ensure these objectives are met, and which complies with and follows the guidance of the National Electric Safety Code ("NESC"), American National Standards Institute ("ANSI"), and the International Society of Arboriculture ("ISA").

After describing its vegetation management program and the ability to access

property to engage in vegetation management activities lawfully, the Company answers and moves the Commission to dismiss the Complaint as follows:

I. INTRODUCTION, BACKGROUND, AND FACTS

Vegetation Management Authority

1. Idaho Power's Vegetation Management Program is subject to federal and state regulatory oversight. The Federal Energy Regulatory Commission ("FERC") oversees and approves reliability standards for the bulk transmission system. The state and local jurisdictions have authority over the physical location (siting) of transmission lines and state agencies also oversee all aspects of the distribution system, including vegetation management.

2. Vegetation management standards for distribution lines are regulated by the utility regulatory commission within each state. In Idaho, most vegetation management that affects homeowners involves local distribution lines that are subject to state regulation by the Idaho Public Utilities Commission ("IPUC").

3. Idaho law requires every public utility, including Idaho Power, to provide safe and adequate service that promotes "the safety, health, comfort and convenience" of the public. *Idaho Code* § 61-302 provides:

61-302. Maintenance of adequate service. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall 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.

4. The Idaho Legislature delegated its police power to ensure public safety by giving the IPUC regulatory oversight over utility safety. *Idaho Code* § 61-515 authorizes

the IPUC to enact safety regulations for public utilities.¹

5. In 1993, the IPUC promulgated the *Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission*. 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., Vegetation Management states:

1. Vegetation management should be performed around supply and communication lines as experience has shown to be necessary. Vegetation that may damage ungrounded supply conductors should be pruned or removed.

6. To the extent that “[a] condition immediately dangerous or hazardous to life, physical safety, or property exists, or if necessary to prevent a violation of federal, state or local safety or health codes,” the IPUC’s *Utility Customer Relations Rules 303.01 and 604.01* permit utilities to deny service to new applicants, or terminate service to existing customers, without notice.³

7. Vegetation threatening power facilities also constitutes a “public nuisance,” a condition contrary to law, to which the public and Idaho Power have the right to eliminate under *Idaho Code § 52-111*.⁴ Idaho Power therefore trims trees that threaten to interfere with its power lines and impact service to its customers, to avoid such public nuisance.

¹ *Idaho Code § 61-515*.

² IDAPA 31.11.01.101. The Commission adopted the 2017 edition of the NESC in April 2019.

³ IDAPA 31.21.01.303.01 for residential customers; IDAPA 31.21.01.604.01 for industrial, large commercial, and irrigation customers.

⁴ *Idaho Code § 52-102* defines a public nuisance as “one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.”

Vegetation Management Practices Overview

8. As the Commission noted in 2004, "A good vegetation management program reduces customer outages and maintains system integrity."⁵ To comply with NESC Rule 218, Idaho Power and its contractors perform vegetation management around distribution lines on an approximately three-year cycle.

9. Idaho Power contracts with third parties to perform vegetation management activities and requires specific training and certification requirements for each class of worker. These vegetation management contractors are Idaho Power's agents and, as such, have the same rights and authority as the Company to manage vegetation and maintain appropriate clearances around Idaho Power's lines. This includes, and is not limited to, authority pursuant to Rule C of Idaho Power's tariff to "trim trees and other vegetation to the extent necessary to avoid interference with the Company's lines to protect public safety." The Company has the right to periodically audit contractor training records for any or all employees that perform work under the active contracts. Contractors' leaders attest that their employees meet the contract requirements before being allowed by Idaho Power to invoice hours. Quality control audits of worksites are also conducted on a sample of vegetation management crew worksites.

Vegetation Management Notification

10. Before beginning vegetation management activities in a given work zone, an informational e-mail is sent to customers that have a valid e-mail address on record a few weeks in advance. An Idaho Power contractor then patrols the feeder and identifies tree pruning and removal work necessary to prevent contact with power lines over the

⁵ *In the Matter of the Application of Avista Corporation for the Authority to Increase Its Rates and Charges for Electric and Natural Gas Service to Electric and Natural Gas Customers in the State of Idaho*, Case Nos. AVU-E-04-01 and AVU-G-04-01, Order No. 29602 at 18 (October 8, 2004).

next three years. Idaho Power or its contractor then provides notice to the owner or occupier of the property ("property agents") of the required work either through an in-person meeting or by leaving a door-hanger along with a pamphlet describing Idaho Power's vegetation management activities with a website address where the property agent can find additional information and contact Idaho Power with any questions.

11. 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. By contacting the notifier listed on the door hanger, the property agent can also request notice the day before commencement of the work. 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.

Pruning Practices

12. Idaho Power contractors make pruning cuts designed to directionally prune trees, maintain appropriate clearance from powerlines until the next pruning cycle, minimize impacts to tree health, and comply with the ANSI A300 Pruning Standard.⁶ Compliance with the ANSI A300 Pruning Standard includes: performing a minimum number of cuts, performing cuts outside branch bark collars without leaving stubs, performing cuts at points of connection with lateral branches that are of adequate size

⁶ American National Standards Institute, ANSI A300 (Part 1) – 2017, Tree, Shrub, and Other Wood Plant Management – Standard Practices (Pruning). These voluntary industry consensus standards are developed by the Tree Care Industry Association and drafted by an Accredited Standards Committee comprised of experts from industrial and government organizations.

(i.e., greater than or equal to one-third the diameter of the parent branch), and at a slight downward angle.⁷ These pruning cuts are made in specific locations to prune the tree and promote growth away from Idaho Power's lines (directional pruning). Directional pruning involves removing branches growing toward Idaho Power's lines and leaving in place those branches extending away from the lines. This results in the remaining branches having a natural appearance (i.e., branches of varying lengths and laterals growing from parent branches) even though the overall tree may not look symmetrical due to bare spots where branches and foliage had to be removed.

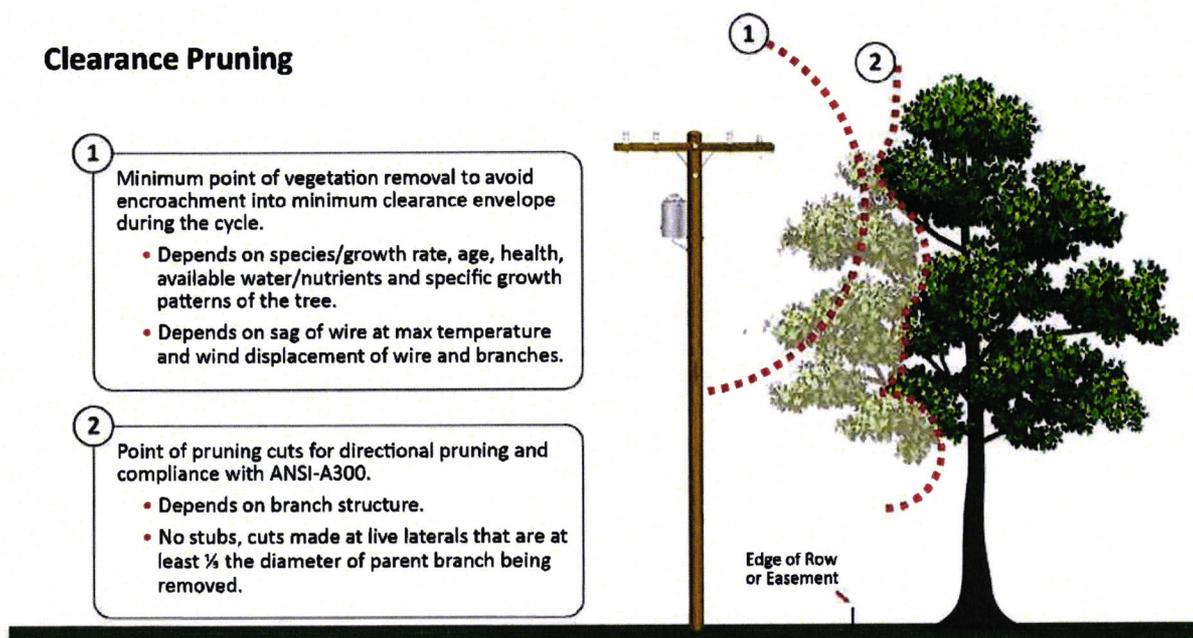
13. To allow appropriate clearance, Idaho Power's contractors directionally prune away from Idaho Power's lines to avoid leaves and branches from contacting the lines before crews return to the site for the next period (approximately a three-year cycle). The distance created by the tree-trimming depends on the growth rate and growth pattern for each specific tree. The Company and its contractors consider the tree species, branch structure, local environmental condition, tree health, access to nutrients and water, potential branch displacement due to the wind, power line voltage, and possible power line displacement due to wind. To accommodate the different growth rates of these species and avoid contact with the power lines between pruning cycles, fast-growing trees such as poplars and willows are pruned to create a greater distance to the power line than slow-growing trees such as pine and spruce trees. This is to accommodate the different growth rates of these species and avoid contact with the power lines between pruning cycles. With so many factors involved in determining the appropriate clearance, it is not practical to follow a single specification based on prescribed clearances. Instead, the trained professionals performing the work use their professional judgment to obtain

⁷ ANSI A300 (Part 1) – 2017 Pruning, Section 7.

the appropriate and necessary clearances to accommodate growth until the next three-year vegetation management tree-trimming cycle.

14. Upon determining the appropriate clearance, Idaho Power's contractors perform the pruning consistent with the ANSI A300 Pruning Standard - specifically Sections 7.1 General Pruning Cuts, 7.2 Branch Removal Cuts, and 7.3 Reduction Cuts to not only achieve the required clearance but also minimize impacts to tree health and promote growth away from Idaho Power's lines.⁸ The below Figure 1 provides an illustrative example of Idaho Power's vegetation management near power lines in relation to road rights-of-way and utility easements.⁹

Figure 1



15. Reduction, or crown reductions, are pruning techniques used in the line-clearing process when appropriate. Paragraph 10.38 of the ANSI A300 Pruning Standard

⁸ ANSI A300 (Part 1) – 2017 Pruning, Section 7 (Pruning Cuts).

⁹ ANSI A300 (Part 1) – 2017 Pruning, Section 8.4 (Clearance Pruning).

defines reduction as an “arboricultural term referring to decreasing branch length, or plant height and/or spread;” paragraph 10.39 further explains a reduction cut as “a pruning cut that removes the larger of two or more branches or stems, or one or more codominant stem(s), to a live lateral branch, typically at least one-third the diameter of the stem or branch being removed.”¹⁰ Idaho Power and its vegetation management contractors perform these cuts after considering tree health and structural integrity.

16. 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. The ANSI A300 Pruning Standard describes and defines topping as follows:

8.6 Topping. Reduction of tree size by cutting to stubs without regard for long-term tree health or structural integrity, shall be considered an unacceptable practice.

10.60 Topping: Reduction of tree size by cutting live branches and leaders to stubs, without regard to long-term tree health or structural integrity.

17. Rounding, or roundover, is a pruning practice where branches are pruned to create a specific or desired look with a smooth surface similar to a manicured hedge or sculpted shrub. The ISA defines roundover as a, “discredited pruning technique whereby trees are severely reduced to a predetermined shape using heading cuts.”¹¹ Rounding results in small stubs that serve as entry points for insects and disease. Neither Idaho Power nor its vegetation management contractors perform rounding.

18. In the utility vegetation management context, “hazardous trees” are those

¹⁰ ANSI A300 (Part 1) – 2017 Pruning, Section 10 (Definitions).

¹¹ *Utility Arboriculture - The Utility Specialist Certification Study Guide*, Randall H. Miller and Geoffrey Kempter, International Society of Arboriculture, p. 230 (2018).

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.¹² 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.

Debris Cleanup

19. As a general practice, the Company's vegetation management contractors will chip and haul away pruned wood. Typical cleanup activities also include raking and sweeping up small debris in landscaped areas to the extent practicable.

20. The Company's vegetation management contractors generally do not haul away wood larger than four (4) inches in diameter. Instead, because the larger wood may have commercial value (such as firewood or woodworking material) and belongs to the property agent, Idaho Power's contractors cut into manageable lengths and leave on the property. If the tree is in a landscaped area, the contractors attempt to stack/pile the wood at the base of the tree.

21. Deadwood, which cannot be chipped because it can damage wood-chipping equipment and is hazardous to the wood-chipper operator, is left on the property. Idaho Power's vegetation management contractor cuts deadwood into manageable lengths and places the pieces at the base of the tree in landscaped areas or leaves in place to biodegrade in non-landscaped areas.

¹² A "hazard tree" is a "tree that has been assessed and found to be likely to fail and cause an unacceptable degree of injury, damage, or disruption. Hazard trees pose a high or extreme level of risk." *Id.* See also ANSI A300 (Part 7) – 2018 Integrated Vegetation Management, pp. 14-15.

Public Rights of Way

22. When a power line is in the public road right-of-way, Idaho Power trims branches that cross the vertical boundary to overhang into the road right-of-way. The Idaho Power-owned distribution line referenced in the Complaint (the "Distribution Line") is appropriately located in the Ten Mile Road right of way ("Road ROW"). The Distribution Line delivers electricity to the Company's other power lines that tap off the Distribution Line to serve the lots within the McClure Subdivision, including Complainant's property (Lot 2 in Attachment 1). The Distribution Line meets all applicable NESC electrical requirements and the Company's internal power line design standards.

Rule C Rights of Way

23. As a condition of service, Section 7 of Rule C of Idaho Power's tariff filed with the IPUC requires customers to grant Idaho Power a right-of-way at no cost.¹³ This right-of-way includes giving Idaho Power personnel (including Idaho Power contractors acting on its behalf) reasonable access to facilities located on customers' property for maintenance and vegetation management.

7. Rights of Way. The Customer shall, without cost to the Company, grant the Company a right of way for the Company's lines and apparatus across and upon the property owned or controlled by the Customer, necessary or incidental to the supplying of Electric Service and shall permit access thereto by the Company's employees at all reasonable hours. *The Customer shall also permit the Company to trim trees and other vegetation to the extent necessary to avoid interference with the Company's lines and to protect public safety.*¹⁴

¹³ I.P.U.C. No. 29, Tariff No. 101, Rule C (Service and Limitations).

¹⁴ The IPUC approved addition of the italicized language to Section 7 of Rule C in Advice No. 19-04 effective April 16, 2019.

Private Easements

24. In addition to public road rights-of-way and Rule C right-of-way, Idaho Power also obtains private power line easements over private land where necessary and appropriate ("private easements"). Idaho Power's private easements are perpetual right-of-way grants and typically include a defined easement width for Idaho Power's power line facilities. Private easements are recorded with the County Recorder's office, and copies are typically kept on file with the county.

25. Idaho Power has a valid subdivision utility easement for managing vegetation and trimming trees on Complainant's property. Complainant's property is shown as Lot 2 on the Amended Plat of McClure Subdivision ("Plat"), which is included as Attachment 1 to this Answer and Motion to Dismiss. The Plat includes a series of Notes, including the following three (3) utility easement grants:

(3) All lots are here by designated as having a permanent public utilities, drainage and irrigation easement over the ten (10) feet adjacent to any street that is dedicated to the use of the public and private lane. The easement shall not preclude the construction of hard-surfaced driveways to each lot.

(5) A ten (10) foot utility easement is located along the exterior boundary lines.

(10) There will be a ten (10) foot public utility, drainage and irrigation easement lying five feet either side of the interior lot lines.

26. 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").

Idaho Trespass Statutory Exemptions

27. 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.

28. 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.

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."¹⁵

29. Although neither statute relieves any person from civil or criminal liability under applicable law for causing damage while entering or remaining on the property (even those lawfully entering),¹⁶ the statutory definition of "damage" excludes cutting down or injuring trees on another's land when conducted with "lawful authority," such as that described in Section II of this Answer and Motion to Dismiss.¹⁷

II. ANSWER

30. Mr. Pecchenino did not make specifically numbered allegations in his formal

¹⁵ Idaho Code §§ 6-202(8) and 18-7008(7).

¹⁶ Idaho Code §§ 6-202(9) and 18-7008(8).

¹⁷ Idaho Code §§ 6-202(1)(c) and 18-7008(1)(c).

Complaint, but instead 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. Idaho Power reserves the right to supplement and/or amend its Answer if Mr. Pecchenino amends his Complaint, responds to discovery requests, or if additional defenses arise throughout the course of discovery or otherwise.

31. As detailed below, Idaho Power denies that it exceeded its tree-trimming authority with respect to Complainant's trees, or that it trespassed on Complainant's real property. Complainant introduces numerous unfounded allegations and claims of interactions with both Idaho Power and Asplundh (the Company's vegetation management contractor). Accordingly, the Company clarifies these interactions to the best of its ability but, considering some of Complainant's allegations occurred several years ago, Idaho Power does not have access to certain contractor employees to confirm or deny some of Complainant's allegations.

Idaho Power Personnel

32. Brent Van Patten is employed as an Engineering Leader in Idaho Power's Planning, Engineering and Construction Department and has managed Idaho Power's Vegetation Management team since June of 2018. Mr. Van Patten is a licensed Professional Engineer in the state of Idaho in the discipline of Mechanical Engineering and has been employed with the Company since 2006. Since 2007, before his current vegetation management role, Mr. Van Patten led the Idaho Power Transmission and Distribution Lines Construction, Station Construction, Project Portfolio Management, and Joint Use teams at different times.

33. Employed as an Idaho Power Utility Arborist since November 2019, Tyler Hopper is an ISA Certified Arborist, ISA Certified Utility Specialist, and ISA Certified Tree Risk Assessor with approximately ten years of experience in utility vegetation management. Mr. Hopper has also completed the Utility Vegetation Management Professional Course which is offered jointly through the Utility Arborist Association and Utility Vegetation Management Association. Mr. Hopper previously worked for Idaho Power's vegetation management contractor to notify customers of upcoming vegetation management to be performed on Idaho Power's system.

Incident 1¹⁸ on July 6, 2016

34. Work Performed. Although the Complainant alleges the first incident occurred between 2017 and 2018,¹⁹ Idaho Power's records indicate that Idaho Power's vegetation management contractor used a bucket truck and flaggers to perform tree-trimming at the Complainant's property on July 6, 2016. The work included side trims on six (6) poplar trees, crown reductions on three (3) poplar trees, and a side trim on one willow tree. Attachment 2 to this Answer and Motion to Dismiss is a survey of the Complainant's property and provides clarity regarding the specific locations and spacing of the subject trees. Unlike Exhibit 2 to the Complaint,²⁰ which is not drawn to scale and thus has limited evidentiary value, Attachment 2 to this Answer and Motion to Dismiss is a survey conducted by Idaho Power on September 16, 2020, showing the road right-of-way, distribution line, tree locations, and utility easement to scale based on survey data.

¹⁸ For consistency and ease of comprehension, Idaho Power uses the same "incident" language found on page 6 of the Complaint.

¹⁹ Complaint at 6.

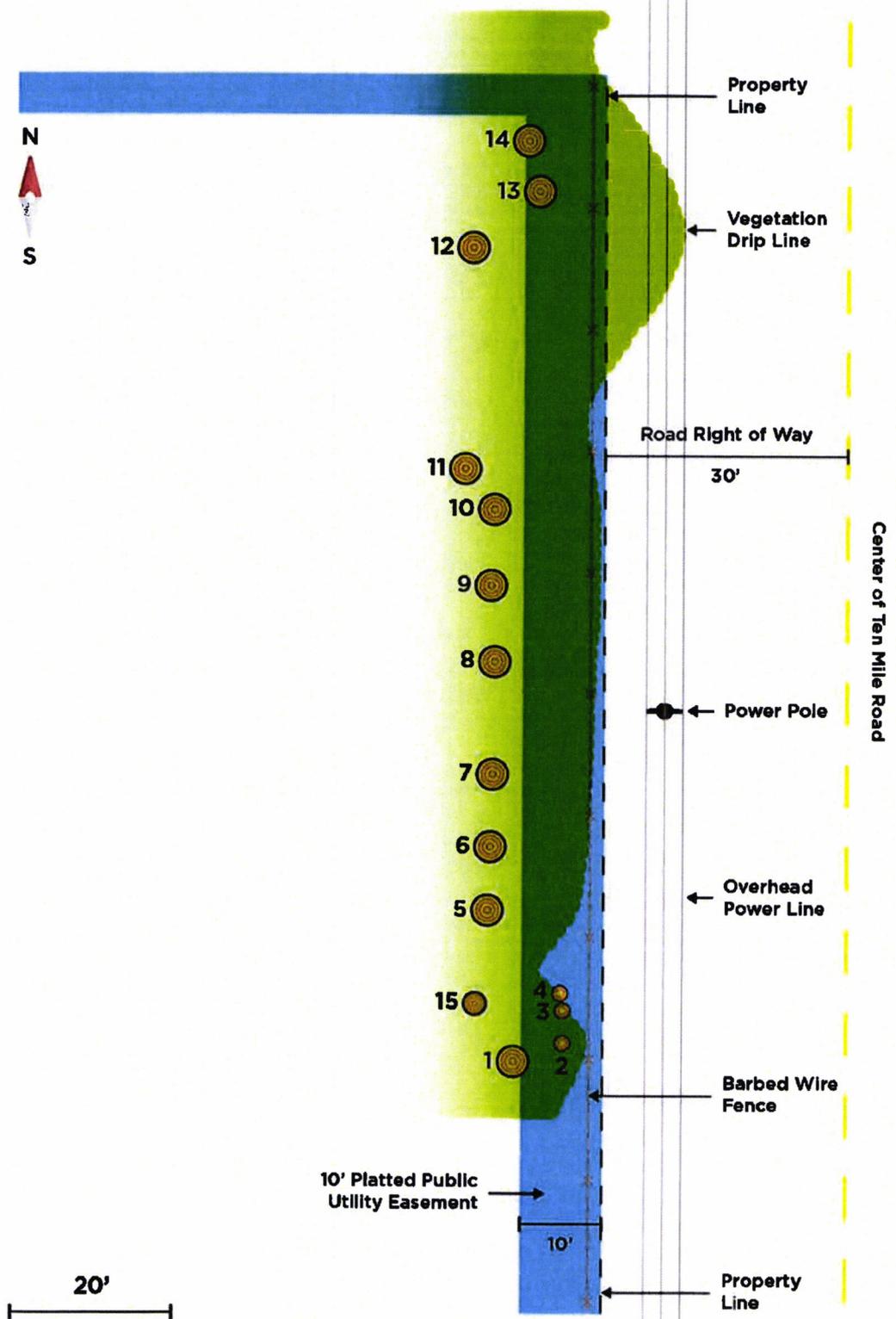
²⁰ Complaint at 5.

Idaho Power also provides Figure 2 to illustrate the key components of the survey and the facts that are misrepresented in Complainant's Exhibit 2.²¹ The green shading represents the "vegetation drip line" and indicates how far the branches presently extend. Trees 1, 2, 3, 4, 13, and 14 are planted inside the 10-foot utility easement and all trees shown in Idaho Power's Figure 2 and Attachment 2 extend into the utility easement.

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²¹ Complaint at 5.

Figure 2



Note: Figure 2 is drawn to scale in accordance with the survey data included in Attachment 2 (September 16, 2020).

35. Notification. Although Complainant alleges he did not receive notice,²² Idaho Power's records indicate the homeowner at Complainant's address was notified of the upcoming work during a May 12, 2016 site visit.

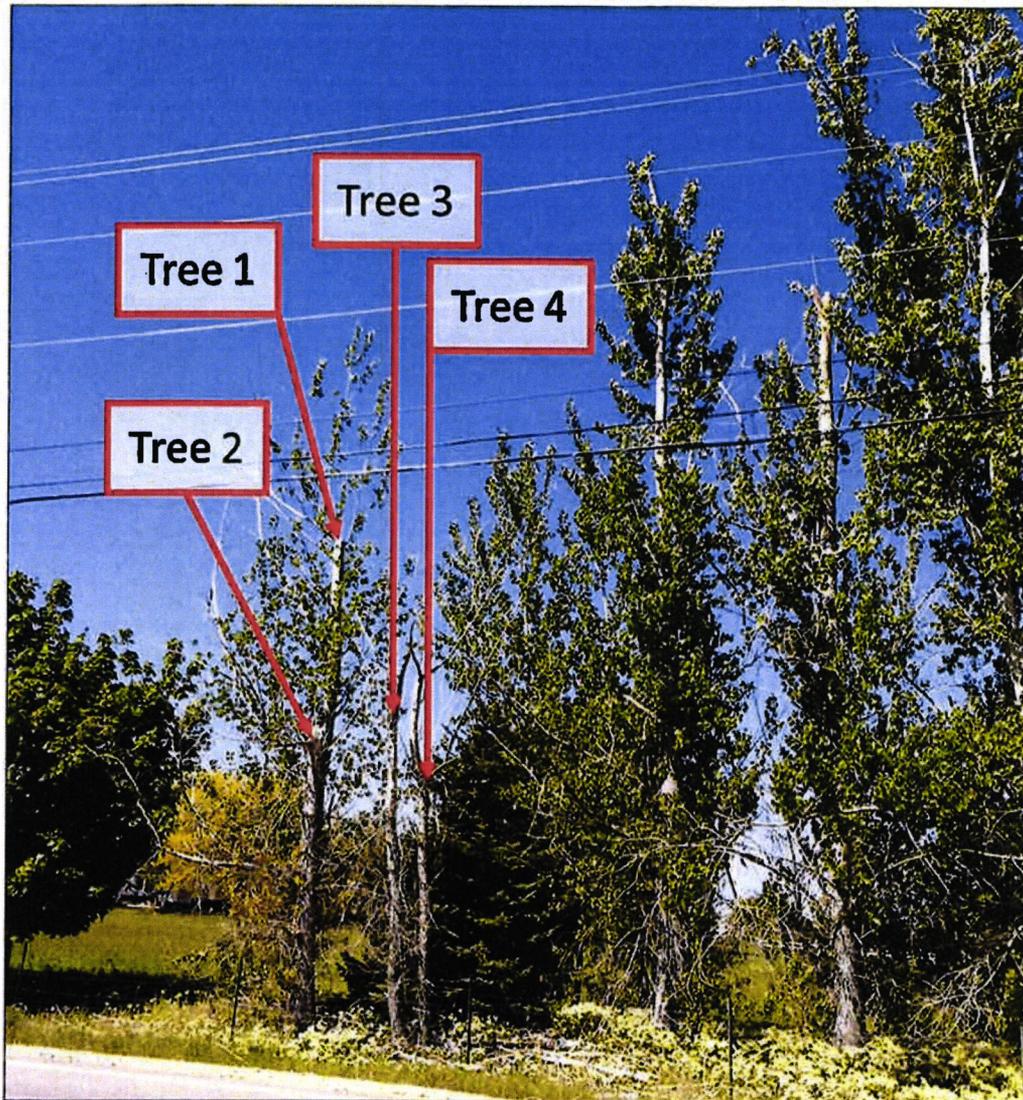
36. Damage to Trees. Complainant alleges Trees 1, 2, 3, and 4, identified in both Attachment 2 and Figure 2, died as a result of topping and over-pruning from the tree-trimming work performed during Incident 1.²³ Idaho Power not only denies all such trees are dead, Idaho Power further denies the declining 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. Idaho Power's April 28, 2020 inspection confirmed only Trees 3 and 4 are dead, as demonstrated by Figure 3 below. Idaho Power admits that Tree 2 is in poor health but denies it is dead or creates a safety concern to Idaho Power's line.

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²² Complaint at 11, 32, and 33.

²³ Complaint at 6.

Figure 3

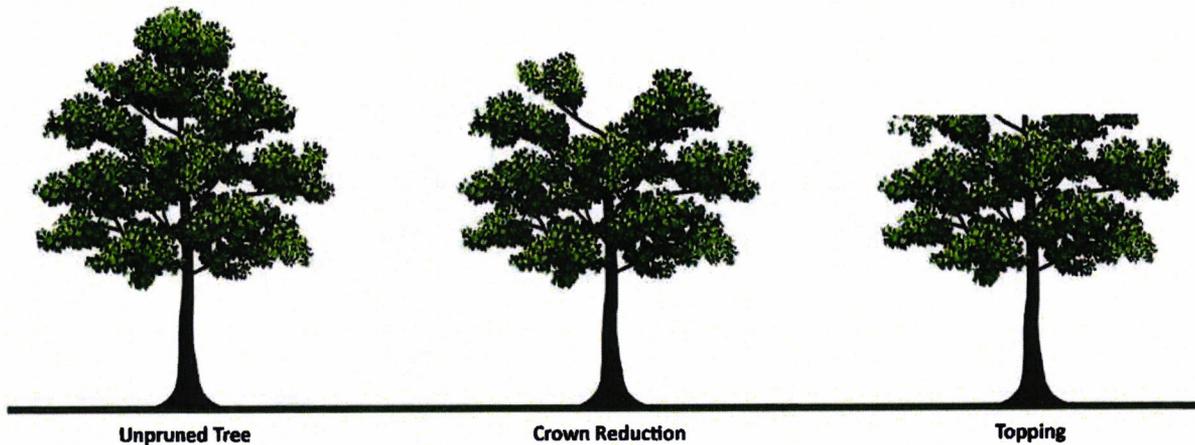


37. Crown Reduction Pruning. Complainant alleges Idaho Power employed a “topping” technique not recommended by the ANSI A300 Pruning Standard.²⁴ Idaho Power denies this was the type of pruning employed on the Complainant’s trees. Crown reductions, as described in paragraph 15 above, are an ANSI-approved form of pruning used to clear lines when appropriate. Crown reductions are performed after considering

²⁴ Complaint at 6.

the tree health and structural integrity. Figure 4 is an illustrative example of the differences between an unpruned tree, crown reductions, and topping.

Figure 4



38. Lions Tailing versus Clearance Pruning. Idaho Power denies Complainant's allegation that Trees 5, 6, and 7 were "severely over-pruned" using a practice known as "lions tailing."²⁵ Lions tailing involves removing lateral branches along a parent branch and leaving a nearly bare parent branch with a tuft of foliage at the end. Figure 5 is an illustrative example of the lions tailing pruning practice. Neither Idaho Power nor its vegetation management contractors prune trees using this practice. Rather, branches are shortened by pruning them back to an appropriate lateral branch as illustrated in Figure 1. In some cases, these branches are pruned back to the trunk or main stem to achieve proper clearance or when no suitable lateral branch exists. This practice, with which Idaho Power's contractor complied in this case, is "clearance pruning" performed in accordance with paragraph 8.4.1 of the ANSI A300 Pruning Standard:

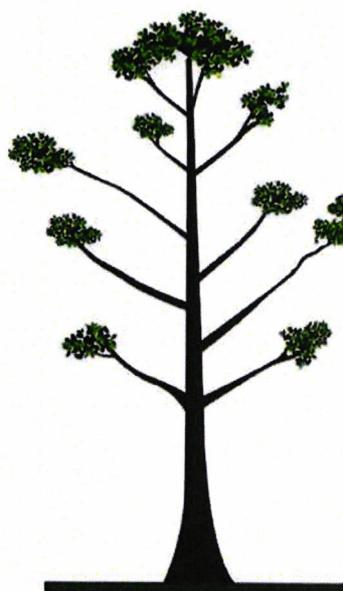
8.4.1 Branches growing toward specified clearance areas should be reduced to lateral branches or removed to parent stems growing outside and/or away from the clearance area (see subclause 10.15 directional pruning).

²⁵ Complaint at 6.

In addition, Idaho Power's vegetation management contractor also performed in accordance with the ANSI A300 Pruning Standard paragraph 8.4.2:

8.4.2 When a minimum clearance distance is required, a branch removal or reduction cut should be made beyond the specified clearance distance at a suitable branch union.

Figure 5



Lions Tailing

Incident 2 on April 27, 2020

39. Work Performed. Idaho Power admits that on April 27, 2020, its vegetation management contractor used a bucket truck and flaggers to perform side trims on five (5) poplar trees, crown reduction on two (2) poplar trees, and a side trim on one (1) willow tree. 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. This is consistent with the stated objectives outlined in Section 4.2

of the ANSI A300 Pruning Standard to manage risk and tree health, as well as ensure safe and reliable utility services. Because the remaining live portions of these particular trees did not meet Idaho Power's criteria for a "hazard tree," it was unnecessary to remove these trees entirely. In Figure 2, Trees 5 and 7, along with Trees 9, 10, 13, and 14 (not shown in Complainant's Exhibit 2),²⁶ were side-trimmed. As shown in Figure 2, Trees 1 through 4 are either partially or fully planted in the Utility Easement. In addition, the vegetation drip line in Figure 2 indicates all of the tree canopies presently extend into the Utility Easement. Further, these canopies extend up to, and in some cases past, the Road ROW. Tree 13 is a willow tree that requires additional pruning with the canopy extending beyond Idaho Power's line as indicated in Figure 2.

40. Notification. Idaho Power denies Complainant's allegations that Idaho Power did not provide advance notice of the tree-trimming.²⁷ 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

²⁶ Complaint at 5.

²⁷ Complaint at 11.

requested in discovery²⁸ 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 30.²⁹

41. Derogatory Statements. Idaho Power wholly denies Idaho Power made any derogatory statements as alleged by Complainant.³⁰ Instead, the Company admits these discussions involved opinions about the completed work, impacts to the trees, proper pruning techniques, notification practices, and Idaho Power's easements and rights to prune Complainant's trees on private property. With respect to its vegetation management contractor, although Idaho Power's investigation indicates no derogatory statements were made, Idaho Power is unable to confirm or deny the content of such interactions based on lack of access to certain of its contractor's employees. Again, the Company seeks copies of the video surveillance and/or voice recordings from Complainant to demonstrate these disparaging remarks did not occur as Complainant alleges.

42. Contractor Personnel and Training. Complainant alleges³¹ he saw only

²⁸ Idaho Power's First Production Request to Mark Pecchenino filed July 24, 2020, Idaho Power's Reissued First Production Request to Mark Pecchenino filed August 27, 2020 after the Summons was issued on August 21, 2020, and the Complainant's response to Idaho Power dated September 16, 2020, can be found in Attachment 3. As of the filing of this Answer and Motion to Dismiss, the Complainant has refused to produce the recordings and/or documentation referenced in his Complaint. If the Complainant subsequently makes this information available, Idaho Power requests that it have an opportunity to review and respond to the material in accordance with procedural due process.

²⁹ Prior to leaving the door-hanger, Idaho Power also sent 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. 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.

³⁰ See Complaint at 11, 13, 32, 33, and 34 (e.g., calling Complainant a "liar").

³¹ Complaint at 6.

three men on site that self-identified as a "tree pruner," "helper," and "flagger."³² 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. Idaho Power recognizes the contractor's Line-Clearing Safety Qualification training as an equivalent training program. All Idaho Power's vegetation management contractor's Senior Trimmers and Foreman have completed this training. 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.

43. Pruning Documentation. Complainant alleges he requested Idaho Power's vegetation management contractor provide documentation or policies related to tree-trimming services and the contractor had none to provide.³³ Based on information provided by such contractor's crew Foreman, Idaho Power denies Complainant ever made such request. In the event such a request had been made, the contractor has documentation in every truck that explains proper pruning techniques.

44. Contractor Identification. Idaho Power denies Complainant's allegation that its contractor did not have identification or a work order authorizing tree-trimming on Complainant's property.³⁴ Idaho Power confirmed with its contractor that every employee is issued an identification badge and is required to have identification on the truck; the general Foreman performs daily checks to ensure appropriate identification. Each crew

³² Complaint at 8.

³³ Complaint at 7.

³⁴ Complaint at 7.

also has a tablet that includes the anticipated scope of work, which the crew Foreman confirmed Complainant never requested.

45. Contractor Equipment. Idaho Power denies Complainant's allegation that vegetation management contractor's truck used at the Complainant's property on April 27, 2020, had only a 10-foot boom.³⁵ None of the contractor's trucks have a 10-foot boom; the truck on site had a 55-foot lift that the crew used to safely access the trees in question.

46. Responsibility for Damages to Personal Property. Idaho Power admits its contractors are generally responsible for paying damages caused to personal property while performing vegetation management activities. Complainant alleges that a contractor employee indicated he would be suspended for damaging personal property.³⁶ Idaho Power confirmed with its contractor that it is not contractor's policy to suspend employees for damaging customer property or to require employees pay damages out of their own pocket. The employee against whom Complainant asserts made these statements was not the crew Foreman and is no longer employed by the contractor.

47. Conversations with Idaho Power Employees. Idaho Power denies the Complainant's version of events on April 27 and 28, 2020,³⁷ with the exception of the following: Tyler Hopper received an e-mail from Idaho Power's Customer Interaction Center ("CIC") on April 27, 2020, stating Mr. Pecchenino called the CIC, was upset about tree pruning activities on his property, and would like an Idaho Power representative to contact him. Mr. Hopper called Mr. Pecchenino that same afternoon and agreed to meet

³⁵ Complaint at 8.

³⁶ Complaint at 9.

³⁷ Complaint at 11-14.

at his residence the following morning. Mr. Hopper met with Mr. Pecchenino at his home around 8:00 a.m. on April 28, 2020. In Mr. Hopper's professional opinion as an arborist, the work completed by the vegetation management crew was appropriate and met Idaho Power's requirements. Mr. Hopper ultimately referred Complainant to his supervisor, Brent Van Patten. Following their meeting, Mr. Hopper contacted Mr. Van Patten, briefed him on the issue, and provided the phone number where he could reach Mr. Pecchenino.

48. Mr. Van Patten contacted Complainant by phone the morning of April 28, 2020, which was followed-up with an in-person meeting at Complainant's home around noon that same day. Upon inspection, Mr. Van Patten determined the work generally met Idaho Power's requirements. While he saw nothing wrong with the pruning, Mr. Van Patten preferred some additional pruning on a couple of trees located at the north end of the grove to minimize potential encroachment on the power line before the next pruning cycle (Trees 13 and 14 in Figure 2 and Attachment 2). While deadwood left on the ground follows Idaho Power's practices in non-landscaped areas, Mr. Van Patten also preferred the deadwood be cut and arranged more neatly at the base of the trees. Mr. Van Patten also observed two (2) dead trees at the south end of the grove (Trees 3 and 4 in Figure 2 and Attachment 2), which had been reduced sometime in the past. Because they were short enough to pose no threat to Idaho Power's line, no work was performed on them during Incident 2 on April 27, 2020.

49. Idaho Power's Debris and Tree Removal Offer. Complainant contends Idaho Power's debris-removal and compensation for tree removals in the form of a standard voucher are insufficient.³⁸ Idaho Power admits on April 28, 2020, it offered a crew to return to Complainant's property to prune more branches on the trees at the north

³⁸ Complaint at 29-30.

end of the grove and haul away the dead debris previously left at the property. Idaho Power admits it offered to remove the two dead trees (Trees 3 and 4) and provide the standard voucher for tree removals despite there being no evidence Idaho Power's pruning techniques killed Trees 3 and 4. Complainant declined Idaho Power's offer.

50. Complainant's Tree Request. After declining its offer, Idaho Power admits Complainant asked Mr. Van Patten on April 28, 2020, to remove all damaged trees and compensate with values commensurate with mature trees. Although Complainant referred to these as "dead" trees, they were not dead and could be managed with pruning.³⁹ Except for the two trees mentioned above, the other trees are alive with green leaves. Accordingly, Idaho Power did not agree to Complainant's request.

51. Damaged Irrigation Pipe. Complainant alleges Idaho Power's contractor damaged an irrigation pipe and contractor's employee paid to have it replaced.⁴⁰ He further alleges additional out-of-pocket expenses associated with such replacement.⁴¹ However, Complainant failed to raise this issue of the replacement pipe being unacceptable or the additional out-of-pocket expense he now claims during either of the two April 28, 2020 visits Idaho Power made to Complainant's property.

52. Idaho Power holds monthly meetings with its vegetation management contractors. During such meetings, Idaho Power regularly discusses claims made by customers regarding damages alleged against its contractors during performance of vegetation management services. If Complainant contacted Idaho Power or its vegetation management contractor regarding a damage claim, it would have been

³⁹ Complaint at 11-14.

⁴⁰ Complaint at 9.

⁴¹ Complaint at 9.

reviewed in this meeting.

53. 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.

54. Trimming Outside the Utility Easement. Complainant alleges Idaho Power was not authorized to trim or remove trees outside the 10-foot Utility Easement.⁴² However, based on its April 2020 tree trimming activity and the surveyed distances shown in Figure 2 and Attachment 2 to this Answer and Motion to Dismiss, Idaho Power did not trim Complainant's trees beyond the 10-foot Utility Easement. 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. 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. 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.⁴³ 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

⁴² Complaint at 17.

⁴³ Complaint at 5.

management contractor.

55. 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. 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. Poplar trees, similar to Complainant's, are likely to grow between 5 and 10 feet per year. The willow trees are likely to grow between 8 and 12 feet per year. There are trees south of Tree 1 (not pictured in Figure 2) that have not been pruned by the Company's contractor; they will likely require pruning in the future as they begin to encroach on Idaho Power's line. This is also true of the conifer tree (Tree 15 in Figure 2, pictured behind Trees 3 and 4 in Figure 3).

III. AFFIRMATIVE DEFENSES

56. Mark Pecchenino's Complaint, and all allegations and requests for relief therein, fails to state a claim upon which relief can be granted.

57. 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. The Company has the right to install, operate, maintain, and protect the Distribution Line under the Road ROW and Utility Easement. Property agents, including Complainant, do not have the right to interfere with Idaho Power's facilities validly located within the Road ROW or Utility Easement to provide service to the subdivision. In the present case, Complainant's trees on Lot 2 were interfering with the Distribution Line and the branches had grown too close to the Distribution Line, creating a hazardous condition. Accordingly, Idaho Power was entirely

within its rights to trim the trees to protect and maintain adequate Distribution Line clearance during the next three-year vegetation management cycle.

58. The Commission is an agency of limited jurisdiction and may only exercise authority delegated by the Idaho Legislature.⁴⁴ The Commission is not empowered to award damages for losses, damages, or injuries.⁴⁵ 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.⁴⁶

59. The Commission also lacks subject matter jurisdiction over Complainant's claim under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et. seq. ("ADA"). Complainant fails to state a claim under the ADA upon which relief can be granted. Complainant's claims are barred because Complainant's property is not a place of "public accommodation," and Respondent did not deny Complainant full and equal access to goods and services. Even if it were determined the ADA applies here, which it does not, Idaho Power has not run afoul of ADA requirements with its vegetation management practices raised in Complainant's Complaint. Idaho Power maintains policies and procedures related to equal access and reasonable accommodation under

⁴⁴ *Washington Water Power v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979).

⁴⁵ *Idaho Code* § 61-702 provides that "any corporate or person" injured by the conduct of a public utility may file an "action to recover such loss, damage or injury . . . in any court of competent jurisdiction . . ."

⁴⁶ *City of Spencer, Complainant v. PacifiCorp DBA Utah Power & Light Company, Respondent*, Case No. UPL-E-91-05, Order No. 24114 (January 1992); *Pamela and Scott Bowers, Complainants v. Idaho Power Company, Respondent*, Case No. IPC-E-07-14, Order No. 30615 at 6 (August 7, 2008); *Grace Joint School District No. 148, Complainant v. Qwest Corporation, Respondent*, Case No. QWE-T-10-04, Order No. 31099 (June 3, 2010); *In the Matter of Idaho Power Company's Petition for a Declaratory Ruling Regarding Its Rights and Obligations under Schedule 15*, Case No. IPC-E-14-10, Order No. 33065 at 2 (June 27, 2014).

the ADA and at no point did Complainant provide notice to Idaho Power of a disability under the ADA or request a reasonable accommodation under the ADA.

60. Idaho Power has not “condemned” or committed a “taking” of Complainant’s trees as asserted in the Complaint.⁴⁷ First, as indicated in paragraph 50 above, Idaho Power maintains that all of Complainant’s trees in question are alive except Trees 3 and 4, and Idaho Power denies that its pruning techniques killed Trees 3 and 4. Accordingly, there has been no “taking” of the trees to begin with. Second, Idaho Power is not a government entity with the inherent right of condemnation that would be subject to a claim of inverse condemnation. Idaho Code 7-701(11) provides a right of condemnation for the following electric power uses:

11. Electric distribution and transmission lines for the delivery, furnishing, distribution, and transmission of electric current for power, lighting, heating or other purposes; and structures, facilities and equipment for the production, generation, and manufacture of electric current for power, lighting, heating or other purposes.

This provision grants the right of condemnation for electric power uses, not to electric power entities. Idaho Power has the right to condemn for electric facilities under Section 7-701(11) like other entities engaging in power development in Idaho, but Idaho Power does not have an inherent right of condemnation like a governmental entity, and thus is not subject to a claim for inverse condemnation “taking.”

Third, as discussed in this Answer and Motion to Dismiss, Idaho Power had the legal right to trim the interfering tree branches in question within the Road ROW and within the platted Utility Easement, to protect the Distribution Line and maintain compliance with the NESC. Idaho Power’s power line has never caused damage to the

⁴⁷ Complaint at 29-30, 40.

trees. Complainant allowed the tree branches to encroach into the power line and create a dangerous condition, requiring Idaho Power to trim the branches back. Exercising a legal right to trim encroaching tree branches to protect Idaho Power's facilities and public safety does not constitute a "taking."

61. Idaho Power hereby reserves the right to assert any and all additional defenses, ascertained during the course of discovery or otherwise, by amendment to this answer as the Commission's rules, procedures, and/or Orders may allow and/or withdraw or amend the above affirmative defenses.

IV. COMMUNICATIONS AND SERVICE PLEADINGS

62. Service of pleadings and communications with reference to this case should be sent to the following:

Lisa D. Nordstrom
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
lnordstrom@idahopower.com
dockets@idahopower.com

Brent Van Patten
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
bvanpatten@idahopower.com

V. REQUESTED RELIEF

63. WHEREFORE, having fully answered, Idaho Power respectfully requests:

The Commission issue its Order denying the relief sought by Mark Pecchenino in his Complaint's "Compensation – Remedy" request;

Mr. Pecchenino's Complaint be dismissed with prejudice and without cost or delay; and

Such other relief as the Commission deems just and reasonable.

Dated at Boise, Idaho, this 25th day of September 2020.

Lisa D. Nordstrom

LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of September 2020 I served a true and correct copy of the within and foregoing IDAHO POWER COMPANY'S ANSWER AND MOTION TO DISMISS upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff

Dayn Hardie
Deputy Attorney General
Idaho Public Utilities Commission
472 West Washington (83702)
P.O. Box 83720
Boise, Idaho 83720-0074

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 E-mail Dayn.Hardie@puc.idaho.gov

Mark Pecchenino
2173 N. Ten Mile Road
Kuna, Idaho 83634

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 E-mail mpecchenino@msn.com



Stephanie Buckner, Executive Assistant

**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-20-29**

IDAHO POWER COMPANY

**ATTACHMENT 1 - AMENDED PLAT OF McCLURE
SUBDIVISION
TO
IDAHO POWER COMPANY'S ANSWER MOTION TO
DISMISS**

Book 58 Page 562

McCLURE SUBDIVISION

"AMENDING THE OWNERS CERTIFICATE"

A PORTION OF THE E 1/2 SE 1/4, SECTION 15,
12N, R1W, B1M,
ADA COUNTY, IDAHO
1991



NOTES

- BOUNDARY STRUCKS SHALL BE IN ACCORDANCE WITH THE ZONING ORDINANCE AT THE TIME OF ISSUANCE OF THE BUILDING PERMIT.
- ANY RESUBDIVISION OF THIS PLAT SHALL CONFORM TO THE APPLICABLE ZONING REGULATIONS IN EFFECT AT THE TIME OF RESUBDIVISION.
- ALL LOTS ARE HERE BY DESIGNATED AS BEING A PERMANENT PUBLIC UTILITY RIGHT-OF-WAY AND SHALL BE MAINTAINED TO THE USE OF THE PUBLIC AND ANY PRIVATE LANE THAT IS ADJACENT TO THE USE OF THE PUBLIC UTILITY RIGHT-OF-WAY SHALL BE MAINTAINED TO THE USE OF THE PUBLIC UTILITY RIGHT-OF-WAY.
- SECTION 3-300 CONCERNING AMMUNITION WATER, APPLICATION TO THE LOTS WITHIN THE SUBDIVISION WILL BE PROVIDED.

CURVE DATA

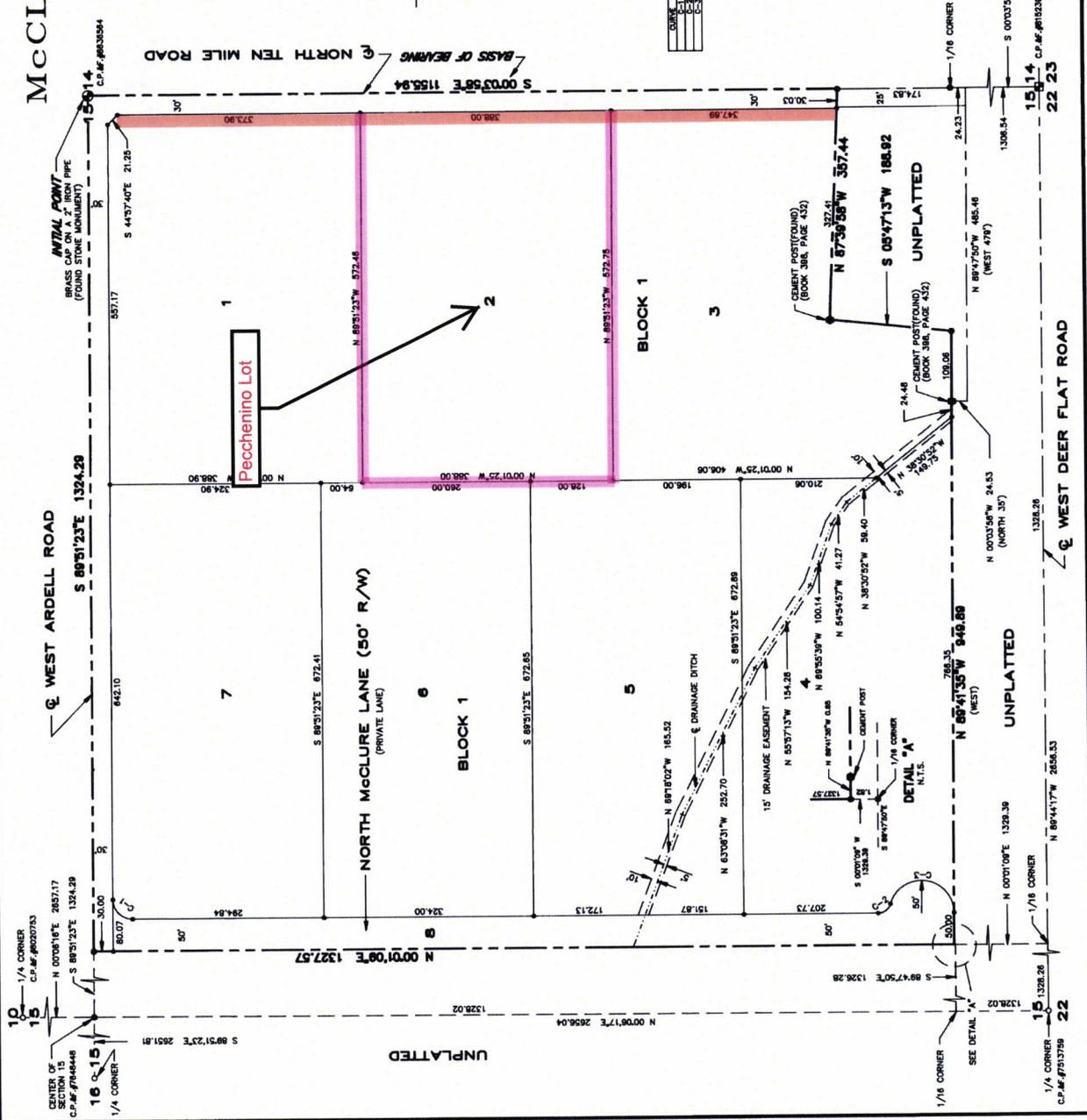
CURVE	RADIUS	LENGTH	CHORD	ANGLE	BEARING	AREA
1	100.00	157.08	100.00	90.00	N 00°00'00"E	15708.00
2	100.00	157.08	100.00	90.00	S 00°00'00"E	15708.00
3	100.00	157.08	100.00	90.00	E 00°00'00"E	15708.00
4	100.00	157.08	100.00	90.00	S 00°00'00"E	15708.00
5	100.00	157.08	100.00	90.00	W 00°00'00"E	15708.00

LEGEND

- BOUNDARY LINE
- FOUND ALUMINUM CAP
- FOUND 5/8" IRON PIN
- SET 5/8" x 30" IRON PIN W/CAP
- SET 1/2" x 24" IRON PIN
- DATA OF RECORD (WEST 35')



TEALEY'S LAND SURVEYING
478 MAIN ST. POB-305-0038 BOISE, IDAHO

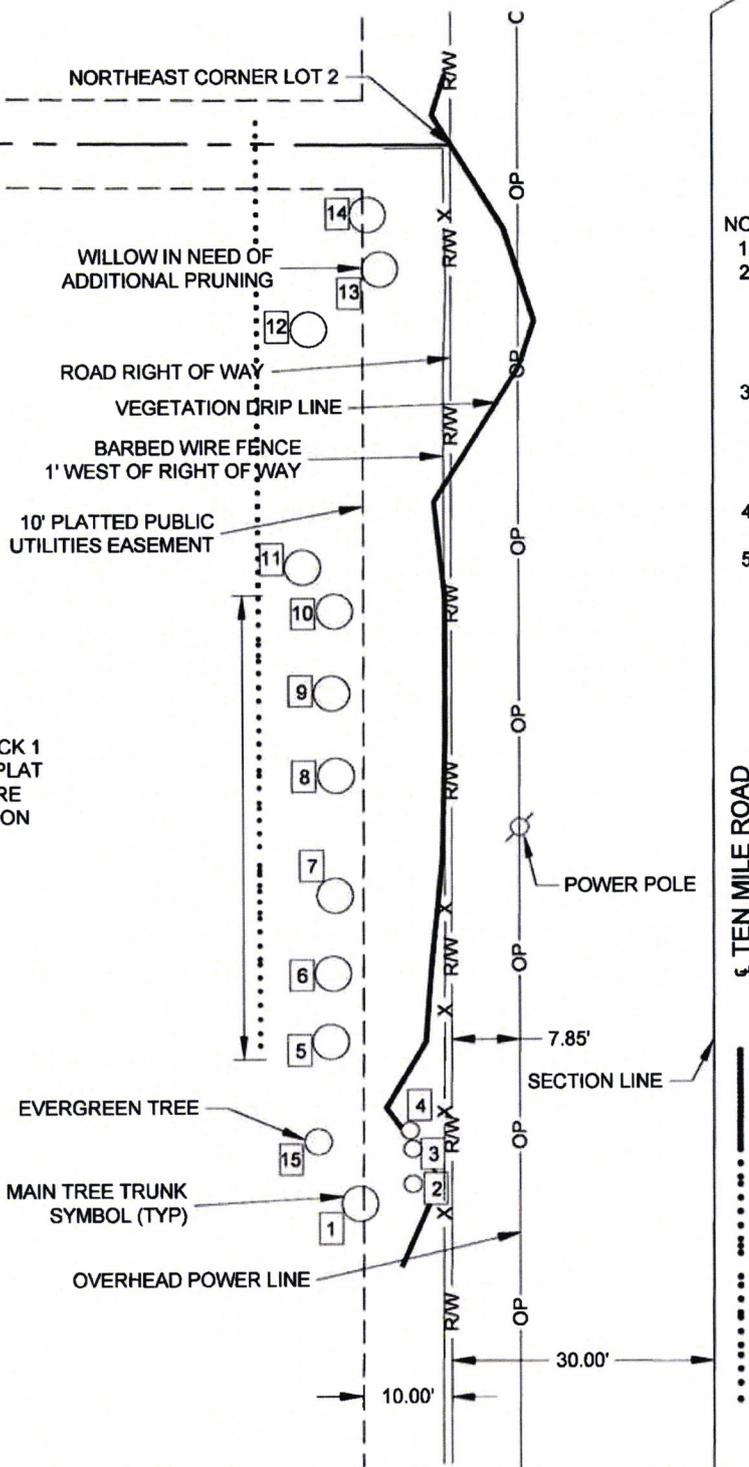


**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-20-29**

IDAHO POWER COMPANY

**ATTACHMENT 2 - PECCHENINO TREE SURVEY
TO
IDAHO POWER COMPANY'S ANSWER AND MOTION
TO DISMISS**

FOUND BRASS CAP 15 14



NOTES:

1. SITE SURVEYED 9/14/2020 AND 9/16/2020
2. PROPERTY/EASEMENT/RIGHT OF WAY LINES SHOWN HEREON ARE ESTABLISHED BY THE SURVEYED SECTION LINE AND THE RECORD LINES FROM THE AMENDED PLAT OF McCLURE SUBDIVISION.
3. THE TOPOGRAPHIC FEATURES SHOWN HEREON WERE SURVEYED REMOTELY WITH A TRIMBLE S7 ROBOTIC TOTAL STATION USING REFLECTORLESS METHODS.
4. BASIS OF BEARINGS IS IDAHO STATE PLANE WEST ZONE GRID AZIMUTH.
5. TREES ARE NUMBERED BY THIS SYMBOL # FOR IDENTIFICATION PURPOSES.

LOT 2, BLOCK 1
AMENDED PLAT
OF McCLURE
SUBDIVISION

TEN MILE ROAD



FOUND ALUMINUM CAP
15 14
22 23

By: amf0713 Date: 9/16/2020 4:28 PM Path: \\adach\land\Survey\0-Projects\2020\CHQ\Wen Patten\Kuna Tree Issue\Survey Files\Pecchenino Tree Survey

DS: XXX	SCALE: 1" = 20'	DATE: 09/16/2020
DR: AMF		
SV: AMF	SHT: 1 / 1	WO. NO.: N/A

PECCHENINO TREE SURVEY
ADA COUNTY, IDAHO
SEC. 15, T. 2N, R. 1W, B.M



**BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION
CASE NO. IPC-E-20-29**

IDAHO POWER COMPANY

**ATTACHMENT 3 – IDAHO POWER’S FIRST
PRODUCTION REQUEST TO MARK PECCHENINO
FILED JULY 24, 2020; IDAHO POWER’S REISSUED
FIRST PRODUCTION REQUEST TO MARK
PECCHENINO FILED AUGUST 27, 2020;
COMPLAINANT’S RESPONSE TO IDAHO POWER -
SEPTEMBER 16, 2020**

TO

**IDAHO POWER COMPANY’S ANSWER AND MOTION
TO DISMISS**

LISA D. NORDSTROM (ISB No. 5733)
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-5825
Facsimile: (208) 388-6936
lnordstrom@idahopower.com

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE RULE 54)
FORMAL COMPLAINT OF MARK) CASE NO. IPC-E-20-29
PECCHENINO)
) IDAHO POWER COMPANY'S
) FIRST PRODUCTION REQUEST
) TO MARK PECCHENINO
)
)
_____)

COMES NOW, Idaho Power Company ("Company"), by and through its attorney, and hereby requests that Mark Pecchenino answer the following production requests and provide the following information and documents in accordance with the Commission's Rules of Procedure and applicable scheduling orders and notices to be issued by the Commission in this proceeding.

Please provide information that is responsive to this request as soon as possible but **no later than August 14, 2020**.

This production request is to be deemed continuing in nature and Mark Pecchenino is requested to provide, through supplementation, additional documents or

information that is responsive to this request that it, or any person acting on its behalf, may later come into possession or become aware of.

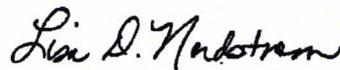
REQUEST NO. 1:

Please provide a copy of any outdoor video surveillance of the Property for Friday, March 27, 2020, and Monday, March 30, 2020.

REQUEST NO. 2:

Please provide a copy of recorded audio and/or any other supporting documentation to substantiate the claims of statements made by Idaho Power Company personnel or personnel of its contractor, Asplundh, to Complainant as explicitly quoted in the formal complaint on page numbers 6-14, 25-26, 29-31, 37, and 39.

DATED at Boise, Idaho, this 24th day of July 2020.



LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of July 2020 I served a true and correct copy of IDAHO POWER COMPANY'S FIRST PRODUCTION REQUEST TO MARK PECCHENINO, upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff

Deputy Attorney General
Idaho Public Utilities Commission
11331 W. Chinden Boulevard
Building 8, Suite 201-A
Boise, Idaho 83714

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email secretary@puc.idahho.gov

Complainant

Mark Pecchenino
2173 N Ten Mile Road
Kuna, Idaho 83634

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email mpecchenino@msn.com



Sandra Holmes,
Legal Administrative Assistant

LISA D. NORDSTROM (ISB No. 5733)
Idaho Power Company
1221 West Idaho Street (83702)
P.O. Box 70
Boise, Idaho 83707
Telephone: (208) 388-5825
Facsimile: (208) 388-6936
lnordstrom@idahopower.com

Attorney for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

MARK PECCHENINO,)	
)	CASE NO. IPC-E-20-29
COMPLAINANT,)	
)	IDAHO POWER COMPANY'S
vs.)	REISSUED FIRST PRODUCTION
)	REQUEST TO MARK
IDAHO POWER COMPANY,)	PECCHENINO
)	
RESPONDENT.)	
)	

COMES NOW, Idaho Power Company ("Company"), by and through its attorney, and hereby requests that Mark Pecchenino answer the following production requests and provide the following information and documents in accordance with the Commission's Rules of Procedure and applicable scheduling orders and notices to be issued by the Commission in this proceeding.

Please provide information that is responsive to this request as soon as possible but **no later than September 17, 2020**.

This production request is to be deemed continuing in nature and Mark Pecchenino is requested to provide, through supplementation, additional documents or information

that is responsive to this request that it, or any person acting on its behalf, may later come into possession or become aware of.

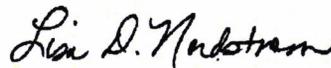
REQUEST NO. 1:

Please provide a copy of any outdoor video surveillance of the Property for Friday, March 27, 2020, and Monday, March 30, 2020.

REQUEST NO. 2:

Please provide a copy of recorded audio and/or any other supporting documentation to substantiate the claims of statements made by Idaho Power Company personnel or personnel of its contractor, Asplundh, to Complainant as explicitly quoted in the formal complaint on page numbers 6-14, 25-26, 29-31, 37, and 39.

DATED at Boise, Idaho, this 27th day of August 2020.



LISA D. NORDSTROM
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August 2020, I served a true and correct copy of IDAHO POWER COMPANY'S REISSUED FIRST PRODUCTION REQUEST TO MARK PECCHENINO, upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff

Dayn Hardie
Deputy Attorney General
Idaho Public Utilities Commission
11331 W. Chinden Boulevard
Building 8, Suite 201-A
Boise, Idaho 83714

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email dayn.hardie@puc.idaho.gov

Complainant

Mark Pecchenino
2173 N Ten Mile Road
Kuna, Idaho 83634

Hand Delivered
 U.S. Mail
 Overnight Mail
 FAX
 Email mpecchenino@msn.com



Sandra Holmes,
Legal Administrative Assistant

September 16, 2020

Re: Case No. IPC-E-20-29
Mark Pecchenino vs. Idaho Power Company
Response to IPC Second Production Request

Dear Ms. Noriyuki: Attached for electronic filing is the Complainant's response to the Idaho Power Company Reissued First Production Request. The request is not in accordance with Idaho Rules of Civil Procedure specifically RP 225 01. (b), whereas the request seeks a copy of recorded audio and/or any other supporting documentation concerning **matters of opinion or policy or the application of law, and/or policy statements of opinion by Idaho Power employees and/or their alleged contractor**. Therefore, this request is not reasonably calculated to lead to the discovery of relevant evidence as the information requested is of opinion in nature and not address the core issues of the Complaint, trespass, arbitrary and cupreous policies, takings without due process and no ADA policies as addressed in the Complaint by t6he Complainant.

Therefore, the Complainant is denying their request for this reason and the reasons stated below. As previously stated, if the PUC deems this information curtail to their deliberation of the Complaint and findings of fact, the Complainant would respond promptly to any such requests directly from the PUC.

REQUEST NO. 1: Please provide a copy of any outdoor video surveillance of the Property for Friday, March 27, 2020, and Monday, March 30, 2020.

RESPONSE NO, 1:

1. The request is overly broad and unduly burdensome as no specific date or time was requested just two day (48 hours).
2. Idaho Power has repeatedly claimed to have proof of notice. The Complainant has provided exhaustive testimony on this issue. This request is not reasonably calculated to lead to the discovery of relevant evidence as the information requested will not produce evidence to the matters at hand, addressing the core issues of the Complaint, trespass and arbitrary and cupreous policies. The Complaint has stated in the Formal Complaint " . . .

the policy suggests that by noticing they can do what they want on the Property without regard to private property rights or trespass issues. Their policy states. ". . .we do like to notify our customers when access to their Trees or property is necessary. . ." This policy is an attempt to circumvent private property rights and statutes by implying that by "notify our customers " somehow relieves the Respondent from trespass laws. . ." Again the policy is arbitrary and capacious as it states "we do like to notify" when it should say we shall notify. All of the Respondents policies are written to benefit them and not their customers.

REQUEST NO. 2: Please provide a copy of recorded audio and/or any other supporting documentation to substantiate the claims of statements made by Idaho Power Company personnel or personnel of its contractor, Asplundh, to Complainant as explicitly quoted in the formal complaint on page numbers 6-14, 25-26, 29-31, 37, and 39. DATED at Boise, Idaho, this 27th day of August 2020.

RESPONSE NO, 2:

1. This request is overly broad and unduly burdensome. It is vague lacking specificity as it requests page numbers without specific questions.
2. The request is not reasonably calculated to lead to the discovery of relevant evidence and has no bearing of the matters at hand, addressing the core issues of the Complaint, trespass and arbitrary and capricious policies.
3. The request is not in accordance with Idaho Rules of Civil Procedure specifically RP 225 01. (b), whereas the request seeks a copy of recorded audio and/or any other supporting documentation concerning **matters of opinion or policy or the application of law, and/or policy statements of opinion by Idaho Power employees and/or their alleged contractor**. Therefore, this request is not reasonably calculated to lead to the discovery of relevant evidence as the information requested is of opinion in nature and not address the core issues of the Complaint, trespass, arbitrary and capricious policies, takings without due process and no ADA policies as addressed in the Complaint by the Complainant.