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February 1, 2023

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
P.O. Box 1088
201 High Street S.E., Suite 100
Salem, OR 97308-1088

Re: Docket No. PCN 5 – In the Matter of Idaho Power Company’s Petition for Certificate of Public Convenience and Necessity.

Attention Filing Center:

Attached for filing in the above-referenced docket is Idaho Power Company’s Reply to the STOP B2H Coalition’s Response to Idaho Power’s Motion for Modified Protective Order.

Please contact this office with any questions.

Thank you,

Alisha Till
Paralegal

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY

PETITION FOR CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY.

IDAHO POWER COMPANY'S REPLY TO
STOP B2H COALITION'S RESPONSE TO
MOTION FOR MODIFIED PROTECTIVE
ORDER

1 On January 11, 2023, Administrative Law Judge John (“ALJ”) Mellgren issued an Order
2 in the above-captioned case, finding that good cause exists to grant Idaho Power Company’s
3 (“Idaho Power” or “Company”) Motion for a Modified Protective Order on an expedited basis and
4 setting forth a schedule for parties to file responses to Idaho Power’s Motion for Modified
5 Protective Order (filed January 10, 2023), and for parties to file a reply to those responses. The
6 STOP B2H Coalition (“STOP B2H”) filed its Response on January 25, 2023,¹ and Idaho Power
7 files this Reply to ask the ALJ to affirm his prior ruling issuing a Modified Protective Order in this
8 proceeding.

I. REPLY

9
10 In its Response, STOP B2H raises three primary arguments: (1) the Modified Protective
11 Order will be used arbitrarily; Idaho Power provided similar data in LC 68 under a General
12 Protective Order rather than a Modified Protective Order; (2) STOP B2H will never be able to
13 have access to Highly Confidential Information; (3) challenges regarding designation of Highly
14 Confidential Information should occur before such information is filed.² As discussed below,

¹ STOP B2H also filed a response on January 10, 2023 objecting to the request for expedited consideration of the Motion for Modified Protective Order and asking that the ALJ deny Idaho Power’s Motion.

² STOP B2H’s Response to ALJ Mellgren Memorandum from January 11, 2023 at 1 (Jan. 25, 2023).

1 none of these arguments has merit.

2 *First*, STOP B2H expresses a concern that the Modified Protective Order will be used
3 arbitrarily. However, this concern is unfounded and without any support in this record. In its
4 Motion, Idaho Power previewed that the Modified Protective Order was necessary to provide a
5 specific piece of Critical Energy Infrastructure Information (“CEII”) to Staff, and to date, Idaho
6 Power has provided only that one document subject to a Highly Confidential designation. STOP
7 B2H further asserts that the Highly Confidential designation is applied arbitrarily, because Idaho
8 Power disclosed CEII under a Confidential designation (rather than Highly Confidential) in a
9 different proceeding approximately five years ago. However, the additional protection requested
10 in this docket at this time is entirely warranted. When preparing responses to discovery requests
11 Idaho Power evaluates the nature of the information requested in light of current circumstances
12 when the response is prepared. Given the recent infrastructure attacks in North Carolina and
13 Oregon that occurred in the fourth quarter of 2022, and given the fact that the information
14 requested by Staff could facilitate potential terrorist action against Idaho Power and the regional
15 electric grid, the Company reviewed the requested information and determined that a Modified
16 Protective Order is appropriate for this information. This need for additional protection is further
17 amplified by the fact that there are intervenors in this proceeding that may be less familiar with
18 the protections for Confidential and Highly Confidential Information. In any event, Idaho Power
19 plans to designate all CEII as Highly Confidential in dockets before the Commission going
20 forward to ensure that CEII is appropriately protected.

21 Moreover, STOP B2H’s stated concern with the Modified Protective Order is not the
22 provision of CEII requested in Staff’s Data Request No. 78—to the contrary, STOP B2H has

1 explicitly stated they do not intend to request this information.³ Therefore, whether or not similar
2 information provided in discovery in a past case was protected by a Modified Protective Order or
3 General Protective Order is wholly irrelevant. STOP B2H's stated objection is based upon a
4 mistaken belief that Idaho Power will abuse the Highly Confidential designation available under
5 the Modified Protective Order in the future in an attempt to conceal said information from Staff
6 and intervenors. While Idaho Power disagrees with STOP B2H's assertion as it has no basis in
7 fact, if STOP B2H were to oppose the designation of any highly confidential information in the
8 future, the Modified Protective Order clearly details avenues for STOP B2H to address their
9 concerns at that time.⁴

10 *Second*, the Modified Protective Order provides that any party that qualifies under
11 paragraphs 12 through 14 may access Highly Confidential Information.⁵ If STOP B2H retains
12 counsel, the counsel may qualify under Paragraph 13. If STOP B2H retains a consultant, STOP
13 B2H may seek to designate the consultant as eligible to gain access to Highly Confidential
14 Information in accordance with Paragraph 14.

15 *Third*, STOP B2H's proposal that argument regarding the designation of Highly
16 Confidential Information should occur before it is filed is unworkable and unjustified in this case.
17 The Modified Protective Order provides a process for parties to challenge the designation of
18 Highly Confidential Information, and specifically contemplates that parties will "promptly confer
19 and attempt to resolve the dispute on an informal basis."⁶ Thus the process contemplated by
20 the Modified Protective Order already addresses STOP B2H's proposal that parties attempt to

³ Attachment A at 3. (STOP B2H's Data Request No. 11 to Idaho Power. "STOP does not intend to seek qualification to view CEII in this docket.")

⁴ Order No. 23-003, App'x A at 2 (Jan. 11, 2023).

⁵ Order No. 23-003, App'x A at 2-3.

⁶ Order No. 23-003, App'x A at 3.

1 resolve conflicts about the designation of Highly Confidential Information through informal
2 discussion.

3 **II. CONCLUSION**

4 For the foregoing reasons, Idaho Power respectfully requests that the ALJ conclude that
5 the Modified Protective Order is warranted in this proceeding and affirm his earlier ruling.

DATED: February 1, 2023

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ATTACHMENT A

to

**Idaho Power Company's Reply to STOP B2H's
Response to Motion for Modified Protective
Order**

STOP B2H's Data Request No. 11 to Idaho Power

January 2, 2023

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RE:	<u>Docket No.</u>	<u>STOP Request Nos.</u>	<u>Response Due By</u>
	PCN 5	DR 11	January 16, 2023

Please provide responses to the following data requests by the due date. Please note that all responses must be posted to the PUC Huddle account. Contact the undersigned before the response due date noted above if the request is unclear or if you need more time. In the event any of the responses to the requests below include spreadsheets, the spreadsheets should be in electronic form with cell formulae intact.

DR 11

Please refer to Idaho Power Company's Response to Staff Data Request DR. #78. In subject Response, Idaho Power states:

"With regard to the remaining substation, Hemingway, while developing its response to this request. Idaho Power determined that the requested information is classified as Critical Electric Infrastructure Information ("CEII"), which is highly confidential information. Therefore, a Modified Protective Order ("MPO") will be required to govern the provision of this highly confidential information. Idaho Power is currently working with Staff and parties and will file a motion for approval of the MPO as soon as possible. The requested information for the Hemingway substation will be provided upon approval of the MPO."

- a) Please confirm or deny that Critical Energy Infrastructure Information is a defined term in Idaho Power's Open Access Transmission Tariff (OATT) and is defined as follows:

1.18 Critical Energy Infrastructure Information

"Critical Energy Infrastructure Information" or "CEII" means information as defined in 18 C.F.R. § 388.113(c), as may be amended from time to time.

- b) Please confirm that 18 C.F.R. § 388.113(c) defines CEII as follows:

(c) Definitions. For purposes of this section:

- (1) Critical electric infrastructure information means information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the [Commission](#) or other Federal agency other than classified national security information, that is designated as critical electric infrastructure information by the [Commission](#) or the [Secretary](#) of the Department of Energy pursuant to section 215A(d) of the [Federal Power Act](#). Such term includes information that qualifies as critical energy infrastructure information under the [Commission's](#) regulations. Critical Electric Infrastructure Information is exempt from mandatory disclosure under the [Freedom of Information Act, 5 U.S.C. 552\(b\)\(3\)](#) and shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or

tribal law requiring public disclosure of information or records pursuant to section 215A(d)(1)(A) and (B) of the [Federal Power Act](#).

- (2) Critical energy infrastructure information means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:
 - i. Relates details about the production, generation, transportation, [transmission](#), or distribution of energy;
 - ii. *Could be useful to a person in planning an attack on critical infrastructure;*
 - iii. Is exempt from mandatory disclosure under the [Freedom of Information Act, 5 U.S.C. 552](#); and
 - iv. Does not simply give the general location of the critical infrastructure.
 - (3) Critical electric infrastructure means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.
 - (4) Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.
- c. Please provide support for Idaho Power's representation to Staff that CEII is highly confidential information and not solely national security information.
 - d. Please confirm that Idaho Power's reference to a "Modified Protective Order" in the response to Staff means Idaho Power intends to file a motion for approval of an MPO under **ORCP 36(C)(1)** with a claim that CEII is a trade secret or other confidential research, development, or commercial information. If not confirmed, under what authority does Idaho Power intend to move to establish a Modified Protective Order in this Docket.
 - e. If the answer to question d. above is "confirmed," please provide a detailed description of the intermediate measures, including selected redaction, explored between Idaho Power and Staff, and why these measures are insufficient, which is required to be included in a Motion for a Modified Protective Order under **ORS Rule 860-001-0080 (3)(a)(E)**
 - f. Please explain why Idaho Power believes that facilitating Staff's execution of FERC's specialized "State Agency Employee Nondisclosure Agreement" for CEII would not be sufficient to meet the needs of staff to view CEII?
 - g. Please confirm that the OPUC can qualify select staff to view CEII information by executing a FERC approved CEII form of non-disclosure agreement either directly with Idaho Power or FERC and that this would be a faster way for Staff to obtain access to CEII than filing a motion for a Modified Protective Order. If the answer is denied, please explain.
 - h. When working with Staff to prepare and file a Motion for a Modified Protective Order as represented in Idaho Power's response to Staff Data Request #78, has Idaho Power directed Staff to FERC's webpage on CEII located at <https://ferc.gov/ceii> ? If not, why not?
 - i. Has Idaho Power identified any reason to file a motion for a Modified Protective Order in this Docket other than to provide Commission staff and attorneys access to CEII, which they have a right to see under FERC rules governing CEII? If the answer is yes, please explain what other information besides CEII Idaho Power intends to

seek to withhold from intervenors in this docket.

- j. Is Idaho Power's stated intention to file a motion for a Modified Protective Order under ORCP36 (C) (1) meant to limit STOP's legitimate participation in this Docket?

If, prior to January 16, 2022, Idaho Power notifies STOP in writing that Idaho Power no longer intends to file a motion for an MPO based upon a need to protect CEII from unauthorized disclosure, or should Staff inform STOP that they have reached agreement with Idaho Power to obtain access to any and all CEII requested by Staff in connection with PCN-5 without the need for a Modified Protective Order, STOP will withdraw this data request. STOP does not intend to seek qualification to view CEII in this docket.

Please name your response file to include the Data Request (DR) number being responded to and upload to Huddle.

You must mark confidential responses as such and post them to Huddle in the appropriate "Confidential" folder. Access to Confidential folders is limited to individuals who have signed the protective order. You should not send confidential documents (hard copy or electronic) separately to the Commission or its Staff; you should post confidential responses only to the Huddle account.

Should you need to request an extension to the due date for the data responses please contact Jim Kreider (jkreider@campblackdog.org) with any questions.

Submitted by



Jim Kreider
Co-Chair, STOP B2H Coalition | <http://stopb2h.org/>
541.406.0936 (c) | 541-406-0727 (o)
jkreider@campblackdog.org | jim@stopb2h.org

DOCKET PCN 5 - CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2023 Idaho Power Company's Reply to the STOP B2H Coalition's Response to Idaho Power's Motion for Modified Protective Order was served by USPS First Class Mail and Copy Center to said person(s) at his or her last-known address(es) as indicated below:

By: USPS First Class Mail and Copy Center:

John C. Williams
PO Box 1384
La Grande, OR 97850

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DATED: February 1, 2023

/s/ Alisha Till

Alisha Till
Paralegal