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January 31, 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 Response to Greg Larkin’s Motion for Review of Idaho Power Company’s Discovery Request, *expedited consideration is requested*.

Please contact this office with any questions.

Thank you,

A handwritten signature in black ink that reads "Alisha Till".

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 RESPONSE
TO GREG LARKIN’S MOTION FOR
REVIEW OF IDAHO POWER COMPANY’S
DISCOVERY REQUEST**

Expedited Consideration Requested

1 **I. INTRODUCTION**

2 Idaho Power Company (“Idaho Power” or “Company”) offers this response to the Motion
3 for Review of Idaho Power’s Discovery Request filed by Greg Larkin on January 30, 2023
4 (“Motion”), objecting to data requests served upon him by Idaho Power on January 25, 2023.
5 Idaho Power requests that the Public Utility Commission of Oregon (“Commission”) schedule a
6 discovery conference, pursuant to OAR 860-001-0500(6), on an expedited basis, to allow for
7 prompt resolution of the dispute.

8 **II. BACKGROUND**

9 In his Opening Testimony, Mr. Larkin argues that he has two medical conditions that will
10 be exacerbated by noise from the Boardman to Hemingway Transmission Line Project (“B2H”).
11 Specifically, he argues that he has tinnitus and insomnia, and that when sound from B2H is
12 introduced into his environment, these two conditions will make his home “uninhabitable” for
13 him.¹ Mr. Larkin further testifies that both his insomnia and tinnitus can be verified by medical
14 records from Oregon Health Sciences University, and that “***my medical records document***

¹ Intervenor Opening Testimony of Greg Larkin at 12 (Jan. 17, 2023) (Greg Larkin/100, Greg Larkin/Page 12) [hereinafter, “Larkin Testimony”].

1 **that my medical conditions make me particularly sensitive to noise.**² Mr. Larkin further
2 states that he is “not providing records at this time due to their confidential nature” and that he
3 will only make his medical records available to the Commission in accordance with protections
4 afforded by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).³

5 To respond to Mr. Larkin’s Opening Testimony, Idaho Power has retained a medical
6 expert to review Mr. Larkin’s symptoms and diagnoses, so that the expert may opine as to how
7 expected sound levels from B2H would be expected to impact Mr. Larkin, and whether expected
8 sound levels would indeed render his home “uninhabitable” for him. Because Idaho Power’s
9 Reply Testimony is due on February 21, 2023—and considering the length of time it may take
10 for Mr. Larkin to obtain his medical records from Oregon Health Sciences University—Idaho
11 Power served additional data requests on January 30, 2023, in which the Company requested
12 that Mr. Larkin answer a series of questions about his health that are specifically tailored to
13 allow Idaho Power’s medical expert to respond to Mr. Larkin’s concerns, pending receipt of his
14 formal medical records. Responses to this Second Set of Data Requests are also necessary to
15 supplement the type of information that is typically contained in medical records. Idaho Power’s
16 First and Second Sets of Data Requests are attached as Attachment A.

² Larkin Testimony at 12 (Greg Larkin/100, Greg Larkin/Page 12). Mr. Larkin also testifies as follows:

A lack of sleep can make my tinnitus worse and I am to be “cautious about additional exposure to loud noise, as additional damage to the inner ear may aggravate my tinnitus.” I also developed high blood pressure due to the stress that has occurred over the years with the threat of losing my home. I developed heart issues which necessitated me wearing a heart monitor for a period of time during the [Energy Facility Siting Council (EFSC)] Contested Case Process. *Id.* at 12-13 (Greg Larkin/100, Greg Larkin/Page 12 – Greg Larkin/Page 13).

³ Larkin Testimony at 12 (Greg Larkin/100, Greg Larkin/Page 12).

1 **III. LEGAL STANDARD**

2 Oregon Rule of Civil Procedure (“ORCP”) 36, which governs the Commission’s
3 discovery practice in most instances, permits broad discovery.⁴ Parties must make every effort
4 to engage in cooperative informal discovery and to resolve disputes themselves.⁵ However, if
5 parties are unable to resolve a discovery dispute informally, then any of the parties involved in
6 the dispute may request that the Administrative Law Judge (“ALJ”) conduct a conference to
7 facilitate the resolution of discovery disputes.⁶ A party’s assertion that information responsive to
8 a discovery request is confidential may not be used to delay the discovery process; provided,
9 however, a party pursuing protection will not be required to produce information that it claims is
10 inadequately protected until such time as its claim for the need for a general protective order or
11 a modified protective order is resolved.⁷

12 **IV. ARGUMENT**

13 Mr. Larkin argues that Idaho Power’s request for his medical records is “excessively
14 broad, intrusive, [and] overly burdensome” and that it lacks direct relevance to his claims.⁸ On
15 the issue of relevance, Mr. Larkin claims that his real concern is that Idaho Power has not done
16 enough to document the health impacts on the inhabitants of all 41 households that will be

⁴ ORCP 36 B(1) (“For all forms of discovery, parties may inquire regarding any matter, not privileged, that is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”); *see also In re Application of Portland General Electric Company for Approval of the Customer Choice Plan*, Docket No. UE 102, Order No. 98-163, 1998 Ore. PUC LEXIS 99 at *7-9 (Apr. 20, 1998) (“[ORCP] 36 governs our discovery practice in most instances.”).

⁵ OAR 860-001-0500(5).

⁶ OAR 860-001-0500(6).

⁷ OAR 860-001-0500(8); *see also* ORCP 36 C (describing protective orders).

⁸ Greg Larkin Motion for Review of Idaho Power’s Discovery Request at 1 (Jan. 30, 2023) [hereinafter, “Larkin Motion”].

1 impacted by sound levels from B2H.⁹ He argues that he brought up his own medical conditions
2 only as an example of the types of health conditions that are impacted by noise.¹⁰ However, Mr.
3 Larkin's objections are without basis.

4 As noted above, Mr. Larkin has clearly placed his medical conditions at issue in this
5 case. Mr. Larkin has made very specific claims about the impact he believes B2H will have on
6 his health and has suggested that he will be forced out of his home if the Commission grants
7 Idaho Power's request for a certificate for public convenience and necessity ("CPCN").
8 Moreover, in his January 30, 2023 Motion to ALJ John Mellgren, Mr. Larkin suggests that the
9 impacts on his health may be "fatal."¹¹ Idaho Power cannot respond to these claims without
10 understanding more about Mr. Larkin's symptoms and diagnoses, and any other underlying
11 conditions.

12 Moreover, Mr. Larkin's concern that the request for medical records is "intrusive" can be
13 addressed by Mr. Larkin providing them confidentially, so that they will not be generally
14 available to the public. In addition, Idaho Power would not object to an order that would allow
15 *only* Idaho Power, Staff and the Commission to view these records, to minimize the number of
16 parties that have access to them. However, the claim of confidentiality should not be used to
17 delay the discovery process.

18 And finally, there is nothing burdensome about the request. If Mr. Larkin has not already
19 requested his medical records, he can do so quite easily by requesting them from his
20 physicians. It should be noted that he may possess at least some records already, given that
21 his Opening Testimony appears in places to quote from them.¹² And as to the questions
22 contained in the Company's Second Set of Data Requests, they are the typical types of

⁹ Larkin Motion at 1.

¹⁰ Larkin Motion at 1.

¹¹ Larkin Motion at 1.

¹² See *supra* note 2.

1 questions that any responsible physician would ask a patient with insomnia and tinnitus to
2 answer, in order to confirm a diagnosis and to determine the severity and treatment for the
3 conditions.

4 In short, the questions posed in Idaho Power's First and Second Sets of Data Requests
5 to Mr. Larkin are clearly relevant and necessary to evaluate Mr. Larkin's allegations about the
6 impact of B2H on his health. They can be protected by confidential designation, and they
7 should be relatively simple to respond to. In the event that Mr. Larkin does not wish to provide
8 these clearly pertinent records, he can simply withdraw those sections of his testimony that
9 pertain to his personal health conditions.

10 **V. CONCLUSION**

11 For all of the above reasons, Idaho Power requests that ALJ Mellgren schedule an
12 expedited discovery conference to resolve the dispute between Idaho Power and Mr. Larkin.

DATED: January 31, 2023

McDOWELL RACKNER GIBSON PC



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ATTACHMENT A

to

Idaho Power Company's Response to Greg Larkin's Motion for Review of Idaho Power Company's Discovery Request

Idaho Power's First and Second Set of Data Requests to Greg Larkin

IDAHO POWER COMPANY'S FIRST SET OF DATA REQUESTS TO
GREG LARKIN

DOCKET PCN 5

Issued: January 25, 2023

Response Due By: *Please provide your responses to these questions by **5:00 p.m. on Wednesday, February 8, 2023***, and if you have any questions, please contact the undersigned counsel for Idaho Power Company (Idaho Power) immediately.

The following instructions apply to Idaho Power's Data Requests ("Requests"):

INSTRUCTIONS

1. Each Request and every subpart thereof should be answered separately and to the full extent required by the Public Utility Commission of Oregon's (Commission) discovery guidelines and Oregon Administrative Rules on the basis of all information known to Mr. Larkin and his witnesses and consultants, unless the Request or subpart thereof is objected to, in which event the reasons for the objection should be stated in detail.
2. Where a complete answer to a particular Request is not possible, the Request should be answered to the extent possible and a statement should be made indicating why only an incomplete answer is given. If any claim of privilege is asserted, the claim and the grounds upon which it is asserted should be set forth fully, and any part of an answer as to which privilege is not claimed should be given in full.
3. The response to each Request should set forth the full text of the Request being answered.
4. Where appropriate, responses to these Requests should include any pertinent information revealed or contained in each document (as defined herein) or other property in the possession, custody or control of Mr. Larkin, or his consultants or witnesses in this case or others acting on his behalf (including attorneys).
5. The term "documents" as used in each Request includes all writings and records of every type in the possession, custody or control of Mr. Larkin, or his consultants or witnesses in this case or others acting on his behalf (including attorneys)—whether the information is stored electronically, on paper, or any other medium—including reports, studies, analysis, correspondence, memoranda, drawings, maps, letters, studies, spreadsheets, or audio recordings.
6. In responding to each Request, identify each document relied upon in responding to such Request and each document containing all or part of the information reported in responses to the Request. If the response includes any attachments or documents, please provide them in their native format (e.g., spreadsheets in original Excel spreadsheets with cell formulae intact).
7. You must mark confidential responses, including those related to personal medical and/or healthcare provider records, as "Confidential" and post them to Huddle in the

appropriate "Confidential" folder. Access to Confidential folders is limited to individuals who have signed the general protective order. You should not send confidential documents (hard copy or electronic) separately to the Commission, its Staff, or Idaho Power; you should post confidential responses **only** to the Huddle account

8. In the event that Mr. Larkin asserts that any requested data is not relevant or material to any issue in this matter, Mr. Larkin should describe, in detail, the specific basis for such assertion.
9. Please provide responses to the following Requests by the due date. Please note that all responses must be posted to the Commission's Huddle account. Contact the undersigned counsel before the response due date noted above if the Requests are unclear or if you need more time.

DATA REQUESTS

1. Identify each physician and/or healthcare provider from whom you have sought treatment relating to your physical or medical conditions, illnesses, or disabilities that you anticipate would be impacted by corona noise (e.g., tinnitus and insomnia) and for each physician and/or healthcare provider state the following:
 - a) Full name;
 - b) Address;
 - c) Contact information (e.g., phone number, email address, etc.); and
 - d) Dates of medical or consultation visits related to the above-mentioned physical or medical conditions, illnesses, or disabilities for the past 12 years.
2. Please provide a copy of any and all documents (see definition of documents above), including all medical and/or healthcare provider records, reports, surgical records, bills, invoices, writings, tests, results, notes, electronically stored data, or memoranda relating in any way to your physical or medical conditions, illnesses, or disabilities that you anticipate would be impacted by corona noise (e.g., tinnitus and insomnia).

As stated above, if you have any questions about these Requests, please have your lawyer contact Ms. Pease and I as soon as possible. If you are not represented by counsel you may contact Ms. Pease and I directly.

Sincerely,



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IDAHO POWER COMPANY'S SECOND SET OF DATA REQUESTS TO
GREG LARKIN

DOCKET PCN 5

Issued: January 30, 2023

Response Due By: *Please provide your responses to these questions by **5:00 p.m. on Monday, February 13, 2023***, and if you have any questions, please contact the undersigned counsel for Idaho Power Company (Idaho Power) immediately.

The following instructions apply to Idaho Power's Data Requests ("Requests"):

INSTRUCTIONS

1. Each Request and every subpart thereof should be answered separately and to the full extent required by the Public Utility Commission of Oregon's (Commission) discovery guidelines and Oregon Administrative Rules on the basis of all information known to Mr. Larkin and his witnesses and consultants, unless the Request or subpart thereof is objected to, in which event the reasons for the objection should be stated in detail.
2. Where a complete answer to a particular Request is not possible, the Request should be answered to the extent possible and a statement should be made indicating why only an incomplete answer is given. If any claim of privilege is asserted, the claim and the grounds upon which it is asserted should be set forth fully, and any part of an answer as to which privilege is not claimed should be given in full.
3. The response to each Request should set forth the full text of the Request being answered.
4. Where appropriate, responses to these Requests should include any pertinent information revealed or contained in each document (as defined herein) or other property in the possession, custody or control of Mr. Larkin, or his consultants or witnesses in this case or others acting on his behalf (including attorneys).
5. The term "documents" as used in each Request includes all writings and records of every type in the possession, custody or control of Mr. Larkin, or his consultants or witnesses in this case or others acting on his behalf (including attorneys)—whether the information is stored electronically, on paper, or any other medium—including reports, studies, analysis, correspondence, memoranda, drawings, maps, letters, studies, spreadsheets, or audio recordings.
6. In responding to each Request, identify each document relied upon in responding to such Request and each document containing all or part of the information reported in responses to the Request. If the response includes any attachments or documents, please provide them in their native format (e.g., spreadsheets in original Excel spreadsheets with cell formulae intact).
7. You must mark confidential responses, including those related to personal medical and/or healthcare provider records, as "Confidential" and post them to Huddle in the

appropriate "Confidential" folder. Access to Confidential folders is limited to individuals who have signed the general protective order. You should not send confidential documents (hard copy or electronic) separately to the Commission, its Staff, or Idaho Power; you should post confidential responses **only** to the Huddle account.

8. In the event that Mr. Larkin asserts that any requested data is not relevant or material to any issue in this matter, Mr. Larkin should describe, in detail, the specific basis for such assertion.
9. Please provide responses to the following Requests by the due date. Please note that all responses must be posted to the Commission's Huddle account. Contact the undersigned counsel before the response due date noted above if the Requests are unclear or if you need more time.

DATA REQUESTS

1. Please answer the following questions regarding your tinnitus:
 - a. Please describe your tinnitus symptoms in detail. What does it sound like? Does it change in character? Does it have a pulsating quality? Does it hum, buzz, pulsate, or does it have a particular frequency (i.e., pitch)?
 - b. How frequently do you experience your tinnitus symptoms? Is your tinnitus present all the time or some of the time? If some of the time, what makes it come or go?
 - c. When did your tinnitus begin?
 - d. Is your tinnitus in one ear or both ears?
 - e. Is your tinnitus getting worse, better, or staying the same in recent months or years?
 - f. Does anything make your tinnitus worse or better (e.g., environmental conditions, medications, modifications to your home, etc.)? If so, please explain.
 - g. Have you ever seen a medical provider to discuss the possibility of tinnitus, or have you ever been told that you have or might have tinnitus by a medical provider? Such medical provider might include a primary care doctor, audiologist, "ear, nose and throat" (ENT) specialist, neurologist, or other. If so, please state when this occurred, and the name and contact information for the medical provider.
 - h. Have you ever had any evaluations for the tinnitus? Such evaluations might include hearing testing, balance testing, and/or brain imaging.

2. Please answer the following questions regarding your insomnia:
 - a. Please describe your insomnia symptoms in detail. For example, are you having trouble falling asleep, staying asleep or are you getting up early in the morning? Or some combination of these?
 - b. How frequent is your insomnia? For example, on any given month, how often would your insomnia symptoms be a problem? Every night? Most nights? Half of the nights or less?
 - c. When did your insomnia begin?
 - d. Is your insomnia getting worse, better, or staying the same in recent months or years?
 - e. Have you noticed anything that makes your insomnia better or worse (e.g., environmental conditions, medications, modifications to your home, etc.)? If so, please explain.
 - f. What are the daytime consequences, if any, that you attribute to insomnia? For instance, are you tired, unable to work because of fatigue or poor concentration, problems with mood, or other?
 - g. Have you ever seen a medical provider to discuss the possibility of insomnia, or have you ever been told that you have or might have insomnia by a medical provider? Such medical provider might include a primary care doctor, sleep specialist, neurologist, or other. If so, please state when this occurred, and the name and contact information for the medical provider.
 - h. Have you ever had your sleep formally evaluated by a sleep study of any kind (e.g., laboratory study, actigraphy, or home-based study)?

3. Please answer the following questions regarding your general medical history and conditions which may impact insomnia and tinnitus:
 - a. What is your current age, weight, and height?
 - b. Blood Pressure:
 - i. Please describe your blood pressure history and whether it is within normal limits as prescribed by your primary physician.
 - ii. Have you ever been diagnosed or suspected of having high blood pressure?
 - iii. If so, please explain, including any instances where you were evaluated for high blood pressure.
 - c. Hearing:
 - i. Have you ever been diagnosed or suspected of having hearing loss?
 - ii. Are you currently experiencing, or do you suspect yourself of having hearing loss?
 - iii. If so, please explain, including any instances where you were evaluated for hearing loss (e.g., a hearing study).
 - d. Vision:
 - i. Have you ever been diagnosed or suspected of having vision loss?
 - ii. Are you currently experiencing, or do you suspect yourself of having vision loss?
 - iii. If so, please explain, including a description of your vision, if you are currently having any trouble with your vision, if you wear prescription glasses, if you have ever been evaluated for vision loss, etc.
 - e. Diabetes:
 - i. Have you ever been diagnosed or suspected of having diabetes?
 - ii. If so, please explain, including any instances where you were evaluated for diabetes.
 - f. Vascular Disorders:
 - i. Have you ever been diagnosed or suspected of having vascular disorders (e.g., heart disease)?
 - ii. If so, please explain, including any instances where you were evaluated for vascular disorders.
 - g. Neurological Disorders:
 - i. Have you ever been diagnosed or suspected of having any neurological disorders, such as brain traumas, strokes, seizures, brain tumors, meningitis, epilepsy, Parkinson disease, or parasomnias (e.g., night-time walking or acting out dreams)?
 - ii. If so please explain, including any instances where you were evaluated for neurological disorders.
 - h. Sleep Disorders:
 - i. Have you ever been diagnosed or suspected of having any sleep disorders besides insomnia?
 - ii. Are you currently experiencing, or do you suspect yourself of having another sleep disorder other than insomnia?
 - iii. If so, please explain, including any instances where you were evaluated for sleep disorders other than insomnia.

- i. Mental or Psychiatric Illnesses:
 - i. Have you ever been diagnosed or suspected of having anxiety, depression, or any other known mental or psychiatric illnesses?
 - ii. If so, please explain, including which mental or psychiatric illnesses and any instances where you were evaluated for such illnesses.
- j. Patient History:
 - i. Do you get headaches regularly? If so, how often?
 - ii. Are you having any trouble with balance, vertigo or dizziness? If so, please explain.
 - iii. Do you experience frequent ear infections, or did you experience regular ear infections as a child or earlier in life? Please explain.
 - iv. Do you have any problems with pain or discomfort, particularly when trying to sleep, such as neck pain or other?
 - v. Do you snore, gasp for breath, or experience apneas during sleep?
 - vi. What is your sleeping environment like? Is it quiet, dark, loud, bright, etc.?
 - vii. Would you consider yourself a night person, morning person, or neither?
 - viii. What is your typical sleep schedule? Specifically, what time do you go to bed, and what time do you wake up? If that varies night to night or weekday to weekend, please list each separately.
 - ix. What loud noise exposures have you encountered in life? Specifically, do you regularly work in any setting, or with any machines or vehicles that would expose you to loud noises (e.g., alarms)? Were you exposed to loud noises earlier in life, and if so, when?
 - x. Do you own and operate a firearm? If so, please explain the frequency with which you operate a firearm and the surrounding conditions. For example, do you use shooting ear protection, such as ear plugs or earmuffs?
 - xi. Do you or have you served in military, militia, work with law enforcement or any other profession or hobby that might employ firearms or sirens or similar?
- k. Medications and Stimulants:
 - i. Do you take medications for pain relief such as Aspirin, Tylenol, Advil, or other? If so, at what dosage?
 - ii. Please list the medications you were taking when you first experienced tinnitus and insomnia, their respective dosages, and their purpose (e.g., blood pressure, mental or psychiatric illness, etc.).
 - iii. Please list the medications you take now, their respective dosages, and their purpose (e.g., blood pressure, mental or psychiatric illness, etc.).
 - iv. What medications, if any, have you taken for sleep (including over the counter medications such as melatonin or "night-time" pills)?
 - v. Do you drink coffee or tea, or take any stimulant medication? If so, how late in the day? Do you drink coffee or tea, or take any stimulant medication after noon?

As stated above, if you have any questions about these Requests, please have your lawyer contact Ms. Pease and I as soon as possible. If you are not represented by counsel you may contact Ms. Pease and I directly.

Sincerely,



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DOCKET PCN 5 - CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2023 Idaho Power Company's Response to Greg Larkin's Motion for Review of Idaho Power Company's Discovery Request 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:

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DATED: January 31, 2023

/s/ Alisha Till

Alisha Till
Paralegal