

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 233

In the Matter of)	
	)	Citizens' Utility Board of Oregon's
IDAHO POWER COMPANY	)	Motion to Compel Idaho Power
	)	Company to Respond to CUB's Data
Request for General Rate Revision	)	Requests and for Additional Time to
	)	Analyze and File Supplemental
	)	Testimony Related to Any Additional
	)	Information Provided
	)	Expedited Review Requested
)	

I. INTRODUCTION.

The Citizens' Utility Board of Oregon (CUB), pursuant to OAR 860-001-0500(7) and OAR 860-001-0540 hereby files the "Citizens' Utility Board of Oregon's Motion to Compel Idaho Power Company to Respond to CUB's Data Requests and for Additional Time to Analyze and File Supplemental Testimony Related to Any Additional Information Provided". **Expedited Review is Requested.** CUB's next round of Testimony is due on June 18, 2012.

The Motion to Compel, and request for additional time, result from IPCO's decision not to provide discovery to CUB requested in CUB's Data Requests 49, 50 and 52 issued on May 15, 2012. **CUB hereby certifies that its Counsel has attempted to work with Counsel for IPCO to resolve this discovery dispute,** calling on June 8, 2012, and seeking discussion of the offending data request responses.¹ IPCO requested time to

¹ Exhibit A Affidavit of Catriona McCracken.
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respond and was granted until Monday, June 11, 2012 at 4:00 p.m. to respond. When IPCO did not respond Counsel for CUB once again emailed requesting a response. IPCO Counsel responded at 4:46 p.m. as follows:

“With respect to the others, DRs 48, 49, 50, and 52, Idaho Power will not be providing the requested information.”²

II. CUB’S DATA REQUESTS.

Exhibit B contains the three CUB Data Requests in question (CUB Data Requests 49, 50 and 52) and the IPCO objections thereto. In addition, Exhibit B also contains a copy of CUB Data Request 48 - IPCO’s response to which caused CUB to file Data Requests 49, 50 and 52(b) and (c) to which IPCO is objecting. All three of the Data Requests that IPCO is objecting to in whole, or in part, pertain, in whole or in part, to the same topic the decision to obtain and install a Selective Catalytic Reduction (“SCR”) at Jim Bridger 3 as part of the Regional Haze Rules (RHR). IPCO is objecting to each of these three Data Requests because, in its words:

[they] seek[] information that is irrelevant to the issue of the prudence of the scrubber upgrades at Jim Bridger Unit 3. *See* ORCP 36B(1). The prudence of the SCR investment is not at issue in this case.

CUB does not agree with IPCO. The three Data Requests at issue are highly relevant to this proceeding and CUB respectfully requests that IPCO be ordered to produce the full and complete information being requested by CUB.

² IPCO actually has responded to CUB DR 48 already. It is IPCO’s inclusion of the CIA study in its testimony, and its response to section CUB Data Request 48(g), that caused CUB to issue CUB Data Requests 49, 50 and 52. A copy of CUB DR 48 is included in Exhibit B for ease of reference.

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III. THE COMMISSION SHOULD FIND THAT THE INFORMATION REQUESTED BY CUB IS RELEVANT TO THIS DOCKET AND MUST BE PROVIDED IN THE FORM OF DETAILED, COMPLETE RESPONSES TO CUB.

A. IPCO's Objections to CUB's Data Requests 49, 50 and 52(b) and (c)

The Commission has previously stated that:

Discovery is a right afforded to parties in a legal proceeding by our rules and the Oregon Rules of Civil Procedure, which we follow except where our rules differ. *In re PGE*, Order No. 98-294 at 3

and,

Matter is discoverable if it appears reasonably calculated to lead to the discovery of admissible evidence, whether or not it would itself be inadmissible. *In re Portland EAS*, Order No. 91-958 at 5. *See also* ORCP 36(B)(1).

IPCO cites to ORCP 36 B(1) in making its objections to each CUB Data Request and its subparts. In doing so IPCO ignores the fact that ORCP 36(B)(1) concludes by stating that: “[i]t is not 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.”³ Indeed ORCP 36 B(1) begins by stating:

[f]or all forms of discovery, parties may inquire regarding any matter, not

³ ORCP 36(B) **B Scope of discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

B(1) **In general.** For all forms of discovery, parties may inquire regarding any matter, not privileged, which 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 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.

privileged, which 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 (emphasis added)

B. CUB DRs 49, 50 and 52:

The sole remaining issue in this docket – the prudence of the clean air investments made by Idaho Power Company at the Bridger Unit 3 Power Plant – requires a review of all of the investments that have been made, are being made, and will be made at Bridger 3 in order to comply with clean air regulations. In order for any investment by IPCO to be deemed prudent, the Commission must review what IPCO knew or should have known when it made its decision to make each of the clean air investments in Bridger 3.

A normal company wishing to demonstrate its due diligence in a given docket would be happy to provide all the documentation that it has showing its diligent review of the technologies available and its assessment of whether those technologies were the least cost as compared to the possible early closure of the plant. But IPCO does not seem to be acting normally in this regard. Rather than hustling to prove that it was diligent in its review of available technologies, and in studying the possibilities for least cost compliance with the existing and possible future clean air compliance statutes and regulations, IPCO appears to be trying to inhibit CUB’s review of what should be readily available, and is, highly relevant documentation.

The Commission cannot conduct the prudence review that it is required to conduct if the parties to the docket do not place into evidence information related to the topics under review. CUB is attempting to obtain, and if appropriate, submit into

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evidence information related to the clean air investment studies and analyses conducted by IPCO, and others, and also decisions made related to those studies and analyses completed by IPCO, or others, in relation to the Bridger Unit 3 Power Plant. Why is IPCO objecting to CUB's Data Requests? CUB believes that it is IPCO's goal to have each of the clean air investments it makes, or agrees to make, in the plants in which it holds an ownership share, reviewed piecemeal so that its diligence, or lack of diligence in conducting studies and creating a plan, does not become obvious to the Commission when ruling on whether each IPCO clean air investment in the plant was prudent – part of a well researched and analyzed plan demonstrating available options and the selection of the least cost option that complies with existing and possible future clean air statutes and regulations.

As noted earlier, in the standard of review section above, it is not even ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. So if the information CUB was seeking was not relevant, but might lead to relevant information, CUB would still be entitled to receive the requested information. Here, the information CUB is requesting is relevant to the docket. This information relates to clean air investments at the Bridger Unit 3 power plant under Wyoming's State Implementation Plan (SIP) relating to RHR. The investment at issue in UE 233 is not sufficient to comply with the SIP without the SCR – arguably it is not used and useful without the additional investment in the SCR. A full record of the clean air investments being considered by IPCO for the Bridger Unit 3 Power Plant, in order to meet the clean

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air compliance statutes and regulations, and any plan or analysis conducted by IPCO in determining what it needed, and needs, to do to stay in compliance with state and federal clean air regulations is relevant to whether the scrubber upgrades already completed at Bridger Unit 3 were part of a prudent plan and were themselves a prudent investment. CUB respectfully requests the Commission to order IPCO to immediately produce the requested information in full and complete form.

C. CUB DR 52 (b) and (c): Information provided to IPCO by the Operator of Jim Bridger 3 is also relevant to this docket.

In its responses to Data Request 52 (b) and (c) IPCO is objecting to the provision of information to CUB that was prepared by the Operator of the Jim Bridger 3 Power Plant. This seems particularly odd to CUB given that IPCO just spent a lot of time and effort trying to get information prepared by the Operator of the Jim Bridger Unit 3 Power Plant into evidence in this docket. Apparently IPCO only wants selective information prepared by the Operator of the plant to come into evidence. And besides, IPCO in response to CUB Data Request 48, stated that based on its review of the CAI study, that it fought so hard to have included in this docket, it appeared an SCR was included in the CAI study. Indeed the ALJ in ruling on CUB's Motion to Strike in this docket related to the inclusion of the CAI study in the record stated:

our prudence standard looks both to what a utility knew at the time it made its decision and to the objective reasonableness of the utility's decision, taking into account historical facts and circumstances. Striking studies that examine those facts and circumstances from the record because the utility does not prove that it relied on those studies in making its decision, or because the studies themselves were created after the utility's decision, would misapply our prudence standard. (citation omitted) *I reject the*

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parties' argument that studies provided to a utility after it acts are per se barred from a prudence analysis.(emphasis added)

What IPCO has made relevant through its submission into the record of the CAI study, and the ALJ's prior ruling allowing inclusion of later studies into the prudence analysis, make information pertaining to the subjects included in the CAI study relevant and fair game for discovery.⁴ As noted in ORCP 36 B:

It is not 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.

And as previously discussed, here the information sought is relevant to whether or not IPCO's clean air investment decisions in regard to Bridger Unit 3 were prudent.

D. CUB is also requesting additional time to analyze any new information produced in response to an order resulting from this Motion to Compel and then to file supplemental testimony thereon.

All of CUB's Data Requests are relevant to its claims and all of its data requests are reasonably calculated to lead to the discovery of admissible evidence. The fact that UE 233 has been put on the same scheduling track of UE 246 should not be allowed to influence the conduct of discovery in this matter or the full and effective provision of testimony in this docket. IPCO is blocking CUB's ability to prepare for and deliver testimony relevant to this proceeding, CUB should be permitted additional time to file testimony related to any new information obtained as a result of an order issuing as a result of this Motion to Compel. CUB is, therefore, also asking that the Commission grant CUB time to analyze this information and to write supplemental testimony on any new information that is provided before the docket proceeds further.

⁴ UE 233 Ruling issued May 22, 2012 at 3.

IV. CONCLUSION.

All of the information necessary to prove IPCO's due diligence, or lack thereof, is in IPCO's possession and control. Contrary to IPCO's objections, the information sought by CUB is calculated to lead to the discovery of admissible evidence. ORCP 36(B)(1).

CUB respectfully requests that the Commission grant CUB's "Citizens' Utility Board of Oregon's Motion to Compel Idaho Power Company to Respond to CUB's Data Requests and for Additional Time to Analyze and File Supplemental Testimony Related to Any Additional Information Provided **Expedited Review Requested.**"

DATED this 12th day of June, 2012.

Respectfully submitted,



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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 233

In the Matter of)	
)	
IDAHO POWER COMPANY)	AFFIDAVIT OF
	)	CATRIONA MCCRACKEN
Request for General Rate Revision	)	CERTIFYING TO DISCUSSION
	)	WITH COUNSEL FOR IPCO
)	

I, Catriona McCracken, being duly sworn on oath, depose and say:


1. My name is Catriona McCracken. I am General Counsel for the Citizens' Utility Board of Oregon (CUB). My business address is 610 SW Broadway, Suite 400, Portland, Oregon, 97205.

2. I hereby certify that I have discussed via telephone and e-mail a number of discovery issues in this proceeding. On June 8, 2012, I called Lisa Rackner, Counsel for IPCO, seeking discussion of several outstanding data requests. During the phone conversation, Ms. Rackner requested additional time to respond, which CUB granted. Later that day in email correspondence with Adam Lowney, Counsel for IPCO, CUB and IPCO agreed that IPCO would respond to CUB's outstanding data requests by Monday, June 11, 2012 at 4:00 p.m. otherwise CUB would file a Motion to Compel.

3. On June 11, 2012, at 4:38 p.m., I once again e-mailed Counsel for IPCO requesting a response to CUB's outstanding data requests. Around 4:46 p.m. on June 11, 2012, IPCO Counsel responded that the Company would not be responding to CUB DRs 49, 50, and 52.

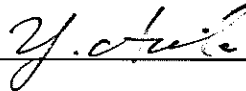
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF OREGON THAT THE FOREGOING IS TRUE AND CORRECT BASED ON MY INFORMATION AND BELIEF.

Signed this 12th day of June, 2012.

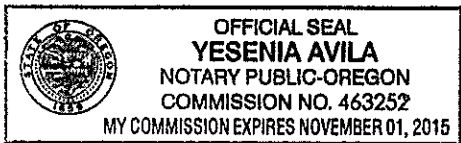


Catriona McCracken

Subscribed and sworn to before me this 12 day of June, 2012.



My Commission expires: Nov 01, 2015



CUB'S DATA REQUEST NO. 49:

When did Idaho Power become aware that a Selective Catalytic Reduction ("SCR") would be required at Jim Bridger 3 as part of the RHR?

IDAHO POWER COMPANY'S RESPONSE TO CUB'S DATA REQUEST NO. 49:

Idaho Power objects to this request because it seeks information that is irrelevant to the issue of the prudence of the scrubber upgrades at Jim Bridger Unit 3. See ORCP 36 B(1). The prudence of the SCR investment is not at issue in this case.

CUB'S DATA REQUEST NO. 50:

Has Idaho Power given consent for the SCR investment? If so, when was this consent given?

IDAHO POWER COMPANY'S RESPONSE TO CUB'S DATA REQUEST NO. 50:

Idaho Power objects to this request because it seeks information that is irrelevant to the issue of the prudence of the scrubber upgrades at Jim Bridger Unit 3. See ORCP 36 B(1). The prudence of the SCR investment is not at issue in this case.

CUB Data Request 52 and Idaho Power Company's Response to CUB DR 52 are confidential subject to Protective Order No. 11-288.

UE 233 – CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of June, 2012, I served the foregoing **Citizens' Utility Board of Oregon's Motion to Compel Idaho Power Company to Respond to CUB's Data Requests and for Additional Time to Analyze and File Supplemental Testimony Related to Any Additional Information Provided** in docket UE 233 upon each party listed in the UE 233 OPUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and one copy by U.S. mail, postage prepaid, to the Commission's Salem offices.

(W denotes waiver of paper service)
(HC denotes highly confidential)

(C denotes service of Confidential material authorized)

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UE 233 - Certificate of Service **Citizens' Utility Board of Oregon's Motion to Compel Idaho Power Company to Respond to CUB's Data Requests and for Additional Time to Analyze and File Supplemental Testimony Related to Any Additional Information Provided**

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UE 233 - Certificate of Service Citizens' Utility Board of Oregon's Motion to Compel Idaho Power Company to Respond to CUB's Data Requests and for Additional Time to Analyze and File Supplemental Testimony Related to Any Additional Information Provided

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