

# McDowell Rackner & Gibson PC



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April 8, 2013

## VIA ELECTRONIC AND U.S. MAIL

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: UE 257 In The Matter of IDAHO POWER COMPANY's 2013 Annual Power Cost Update**

Attention Filing Center:

Enclosed for filing in the above-referenced matter is an original and one copy of Idaho Power Company's Motion for Modified Protective Order.

A copy of this filing has been served on all parties to the service list. Please contact this office with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Vimla Mathi". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Vimla Mathi  
Legal Assistant

Enclosures  
cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **UE 257**

4 In the Matter of:

5 Idaho Power Company's

6 2013 Annual Power Cost Update

**MOTION FOR MODIFIED PROTECTIVE  
ORDER**

**EXPEDITED CONSIDERATION  
REQUESTED**

7  
8 Pursuant to OAR 860-001-0420(7) and OAR 860-001-0080(4) and Paragraph 16 of  
9 the General Protective Order issued in this docket, Order No. 12-440, Idaho Power Company  
10 ("Idaho Power" or "Company") moves the Public Utility Commission of Oregon ("Commission")  
11 for the entry of a Modified Protective Order in this proceeding. As part of Idaho Power's  
12 Annual Power Cost Update, parties have sought through discovery the production of  
13 documents containing Highly Confidential Information. In order to provide adequate  
14 protections to that information while facilitating the discovery process in this case, the parties  
15 have negotiated and agreed to a Modified Protective Order, which is designed to govern the  
16 disclosure and use of Highly Confidential Information. The agreed upon Modified Protective  
17 Order is attached hereto as Attachment A.

18 The Company requests expedited consideration of this motion pursuant to OAR 860-  
19 001-0420(7) because the parties to this case have reached a settlement in principle and are  
20 working diligently to finalize the settlement and resolve all issues in this case. The production  
21 of the requested Highly Confidential Material, which cannot be produced until this Modified  
22 Protective Order is in place, will further the parties settlement process.

23 As required by OAR 860-001-0080(4)(a)(A) to (F), and Paragraph 16 of Order No. 12-  
24 440, Idaho Power provides the following information:  
25  
26

1           **1. Parties Involved:** All parties to this docket—Idaho Power, Commission Staff,  
2 and the Citizens' Utility Board of Oregon (“CUB”)—have agreed to the terms included in the  
3 attached Modified Protective Order.

4           **2. Exact Nature of the Information Involved:** The information for which the  
5 Company seeks additional protection includes, but is not limited to, minutes from the meetings  
6 of Idaho Power's Risk Management Committee and supporting documents referenced  
7 therein. These minutes and associated documents include Idaho Power's highly sensitive  
8 market positions, hedge transactions, detailed operating and dispatch plans for the Company  
9 generating plants, and other highly sensitive and confidential material the disclosure of which  
10 poses a highly significant risk of competitive harm to Idaho Power Company.

11           **3. Legal Basis for the Claim of Confidentiality:** The information is commercially  
12 sensitive information within the scope of ORCP 36(C)(7).

13           **4. Exact Nature of the Relief Requested:** The Company requests that the  
14 Commission enter the attached Modified Protective Order. The terms of this order were  
15 negotiated by the parties to this docket and reflect an agreed upon treatment for Highly  
16 Confidential Information.

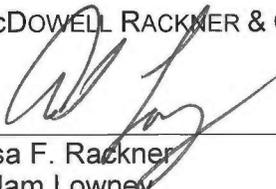
17           **5. Reasons the Relief Requested is Necessary:** Entry of the Modified Protective  
18 Order is necessary to protect from disclosure Highly Confidential information, the disclosure of  
19 which poses a highly significant risk of competitive harm to Idaho Power Company.

20           **6. Measures Taken by the Parties:** As discussed above, Idaho Power, CUB, and  
21 Staff worked together to craft appropriate protections for Highly Confidential Information and  
22 developed the attached Modified Protective Order to memorialize those protections. The  
23 Modified Protective Order is the result of good faith negotiations by the parties and should be  
24 entered by the Commission.

25           For the foregoing reasons, Idaho Power requests entry of a Modified Protective Order  
26 in this docket.

1 DATED: April 8, 2013.

McDOWELL RACKNER & GIBSON PC

2  
3   
4 Lisa F. Rackner  
Adam Lowney

5 **IDAHO POWER COMPANY**

6 Lisa Nordstrom  
7 Idaho Power Company  
8 P.O. Box 70  
1221 W. Idaho Street  
Boise, Idaho 83707-0070

9 Attorneys for Idaho Power Company

**Attachment A**

to

Motion for Modified Protective Order

in Docket UE 257

## MODIFIED PROTECTIVE ORDER

### Scope of this Order

1. This order governs the acquisition and use of "Confidential Information" and "Highly Confidential Information" in Docket UE 257.

### Definitions

2. "Confidential Information" is information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information").

3. "Highly Confidential Information" is commercially sensitive information including but not limited to minutes from the meetings of Idaho Power's Risk Management Committee and supporting documents referenced therein. These minutes and associated documents include Idaho Power's highly sensitive market positions, hedge transactions, detailed operating and dispatch plans for the Company generating plants, and other highly sensitive and confidential material the disclosure of which poses a highly significant risk of competitive harm to Idaho Power Company.

4. With respect to Confidential Information, a "qualified person" is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. An employee of the Citizens' Utility Board of Oregon;
- d. Counsel of record for a party;
- e. A person employed directly by counsel of record; or
- f. A person qualified pursuant to paragraph 14. This includes all other parties and their employees.

5. With respect to Highly Confidential Information, a "qualified person" is an individual who is:

- a. An author(s), addressee(s), or originator(s) of the Confidential Information;
- b. A Commissioner or Commission staff;
- c. An employee of, or counsel for, the Citizens' Utility Board of Oregon;
- d. A person qualified pursuant to paragraph 12. This includes all other parties, their employees, counsel of record for a party, and a person employed directly by counsel of record.

### Designation of Confidential or Highly Confidential Information

6. A party providing Confidential Information shall inform other parties that the material has been designated confidential by placing the following legend on the information:

CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER

To the extent practicable, the party shall designate as confidential only those portions of the document that fall within ORCP 36(C)(7).

A party providing Highly Confidential Information shall inform other parties that the material has been designated Highly Confidential by placing the following legend on the information:

**HIGHLY CONFIDENTIAL  
SUBJECT TO MODIFIED PROTECTIVE ORDER**

To the extent practicable, the party shall designate as highly confidential as few documents as necessary to protect the party's interests in its Highly Confidential Information.

7. A party may designate as confidential or highly confidential any information previously provided by giving written notice to the other parties. Parties in possession of newly designated Confidential Information or Highly Confidential Information shall, when feasible, ensure that all copies of the information bear the above legend to the extent requested by the party desiring confidentiality.

**Information Given to the Commission**

8. Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on YELLOW paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO.  
AND CONTAINS CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

9. Highly Confidential Information that is: (a) filed with the Commission or its staff; (b) made an exhibit; (c) incorporated into a transcript; or (d) incorporated into a pleading, brief, or other document, shall be printed on GREEN paper, separately bound and placed in a sealed envelope or other appropriate container. An original and five copies, each separately sealed, shall be provided to the Commission. Only the portions of a document that fall within ORCP 36(C)(7) shall be placed in the envelope/container. The envelope/container shall bear the legend:

THIS ENVELOPE IS SEALED UNDER ORDER NO.  
AND CONTAINS HIGHLY CONFIDENTIAL INFORMATION. THE  
INFORMATION MAY BE SHOWN ONLY TO QUALIFIED  
PERSONS AS DEFINED IN THE ORDER.

10. The Commission's Administrative Hearings Division shall store the Confidential Information and Highly Confidential Information in a locked cabinet dedicated to the storage of Confidential Information and Highly Confidential Information.

**Disclosure of Confidential Information or Highly Confidential Information**

11. Confidential Information. Parties desiring receipt of Confidential Information shall sign the Consent to be Bound Form attached as Appendix A. This requirement does not apply to the Commission staff. Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 4. Confidential Information shall be delivered to qualified persons who are on the service list. If the Confidential Information is voluminous it may, in the alternative, be made available to qualified persons at a place and time agreeable to the parties or as directed by the Administrative Law Judge.

12. Highly Confidential Information. Parties desiring receipt of Highly Confidential Information shall file a motion with the Commission requesting access to Highly Confidential Information. The party filing such a motion must show that (a) the party has a legitimate and non-competitive need for the Highly Confidential Information (i.e. customers may suffer potential harm if the party does not receive access to the Highly Confidential Information) and not simply a general interest in the information and (b) the legitimate need identified by the party outweighs the potential for competitive harm to Idaho Power Company resulting from disclosure of the Highly Confidential Information. If the Commission grants such a motion, the party shall sign the Consent to be Bound Form attached as Appendix B certifying that:

- a. the person requesting access for the party to Highly Confidential Information is not now involved, and will not for a period of two years involve themselves in, decision-making with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with Idaho Power Company;
- b. the person requesting access to Highly Confidential Information does not, and will not for a period of two years provide to any decision makers described in paragraph 12(a) information with respect to which the Highly Confidential Information may be relevant;
- c. the person requesting access to Highly Confidential Information understands that ORS 756.990(2) allows the Commission to impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.

The requirements in this paragraph 12 do not apply to the Commission staff or to employees, outside experts, and counsel of the Citizens' Utility Board of Oregon, except that employees, outside experts, and counsel of the Citizens' Utility Board of Oregon must sign the Consent to be Bound Form attached as Appendix B. Highly Confidential Information shall not be disclosed to any person other than a "qualified person," as defined in paragraph 5. When feasible, Highly Confidential Information shall be delivered to qualified persons who are on the service list. In the alternative, Highly Confidential Information may be made available for inspection and review by qualified persons in a place and time agreeable to the parties or as directed by the Administrative Law Judge.

13. Qualified persons may disclose Confidential Information to any other qualified person, unless the party desiring confidentiality protests as provided in paragraph 15. Qualified persons may disclose Highly Confidential Information to any other person qualified to receive Highly Confidential Information, unless the party desiring confidentiality protests as provided in paragraph 15.

14. To become a qualified person under paragraph 4(c) or (f) or 5, a person must:

- a. Read a copy of this Modified Protective Order;
- b. Execute the Consent to be Bound Form relevant to Confidential Information or Highly Confidential Information, as applicable;
- c. Date the statement;
- d. Provide a name, address, employer, and job title; and
- e. If the person is a consultant or advisor for a party, provide a description of the nature of the person's consulting or advising practice, including the identity of his/her current, past, and expected clients.

Counsel shall deliver a copy of the signed statement including the information in (d) and (e) above to the party desiring confidentiality and to all parties of record. Such notification may be made via e-mail or facsimile. A person qualified under paragraph 4(f) shall not have access to Confidential Information and a person qualified under paragraph 5 shall not have access to Highly Confidential Information sooner than five (5) business days after receipt of a copy of the signed statement including the information in (d) and (e) above by the party desiring confidentiality.

15. All qualified persons shall have access to Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The qualified persons who have signed the Consent to be Bound relevant to Highly Confidential Information shall have access to Highly Confidential Information, unless the party desiring confidentiality protests as provided in this paragraph. The party desiring to restrict the qualified person(s) from accessing specific Confidential Information or Highly Confidential Information must provide written notice to the qualified person(s) and counsel for the party associated with the qualified person(s) as soon as the party becomes aware of reasons to restrict access. The parties must promptly confer and attempt to resolve any dispute over access to Confidential Information or Highly Confidential Information on an informal basis before filing a motion with the Administrative Law Judge. If the dispute cannot be resolved informally, either party may file a motion with the Administrative Law Judge for resolution. Either party may also file a motion if the other party does not respond within five days to a request to resolve the dispute. A motion must describe in detail the intermediate measures, including selected redaction, explored by the parties and explain why such measures do not resolve the dispute. After receipt of the written notice as required in this paragraph, the specific Confidential Information or Highly Confidential Information shall not be disclosed to the qualified person(s) until the issue is resolved.

### **Preservation of Confidentiality**

16. All persons who are given access to Confidential Information or Highly Confidential Information by reason of this order shall not use or disclose the Confidential information or Highly confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and shall take all reasonable precautions to keep the Confidential Information or Highly confidential Information secure. Disclosure of Confidential Information or Highly Confidential Information for purposes of business competition is strictly prohibited.

Qualified persons may copy, microfilm, microfiche, or otherwise reproduce Confidential Information or Highly Confidential Information to the extent necessary for the preparation and conduct of this proceeding. Qualified persons may disclose Confidential Information to other qualified persons. Qualified persons may disclose Highly Confidential Information to other persons qualified to receive highly confidential information in this proceeding.

### **Duration of Protection**

17. The Commission shall preserve the confidentiality of Confidential Information or Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Confidential Information or Highly Confidential Information.

### **Destruction after Proceeding**

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Confidential Information or Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Confidential Information or Highly Confidential Information or documents containing such Confidential Information or Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

If the Commission adopts a different retention policy addressing the destruction of Confidential or Highly Confidential Information in Docket AR 553, the retention policy adopted in that docket shall supersede the terms of paragraph 18 and apply to all Confidential and Highly Confidential Information provided to any party in this docket.

### **Appeal to the Presiding Officer**

19. If a party disagrees with the designation of information as confidential or highly confidential, the party shall contact the designating party and attempt to resolve the dispute on an informal basis. If the parties are unable to resolve the dispute, the party desiring to use the information may move for exclusion of the information from the protection conferred by this order. The motion shall:

- a. Specifically identify the contested information; and
- b. Assert that the information does not fall within ORCP 36(C)(7) and state the reasons therefore.

The party resisting disclosure has the burden of showing that the challenged information falls within ORCP 36(C)(7). If the party resisting disclosure does not respond to the motion within ten (10) calendar days, the challenged information shall be removed from the protection of this order.

### **Additional Protection**

20. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary; and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, shall not be disclosed pending the Commission's ruling on the motion.

**APPENDIX A**

**CONFIDENTIAL INFORMATION**

**I. Consent to be Bound**

This Modified Protective Order governs the use of "Confidential Information" and "Highly Confidential Information" in this proceeding.

\_\_\_\_\_ (Party) agrees to be bound by its terms of this Modified Protective Order.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**II. Persons Qualified pursuant to Paragraphs 4(a), (b), (d), and (e): Confidential Information**

\_\_\_\_\_ (Party) identifies the following person(s) automatically qualified under paragraph 4(a), (b), (d), and (e).

PRINTED NAME	DATE

**III. Persons Qualified pursuant to Paragraph (4)(c) and (f) and Paragraph 14:  
Confidential Information**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

**APPENDIX B**

**HIGHLY CONFIDENTIAL INFORMATION**

**I. Consent to be Bound**

This Modified Protective Order governs the use of "Confidential Information" and "Highly Confidential Information" in this proceeding.

\_\_\_\_\_ (Party) agrees to be bound by its terms of this Modified Protective Order.

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Date: \_\_\_\_\_

**II. Persons Qualified pursuant to Paragraph 5 and Paragraph 14: Highly Confidential Information**

I have read the Modified Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 14.

I certify that:

(1) I am not now involved, and will not for a period of two years involve myself in, decision-making with respect to which the Highly Confidential Information may be relevant, by or on behalf of any company or business organization that competes, or potentially competes, with the Idaho Power Company;

(2) I do not, and will not for a period of two years provide to any decision makers described in paragraph 12(a) information with respect to which the Highly Confidential Information may be relevant;

(3) I understand that ORS 756.990(2) allows the Commission to impose monetary sanctions if a party subject to the jurisdiction of the Commission violates an order of the Commission.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_

Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

By: Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job Title: \_\_\_\_\_  
 Paragraph 14(e) information also provided.

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 257 on the following named person(s) on the date indicated below by email addressed to said person(s) at his or her last-known address(es) indicated below.

OPUC Dockets  
Citizens' Utility Board of Oregon  
[dockets@oregoncub.org](mailto:dockets@oregoncub.org)

Robert Jenks  
Citizens' Utility Board of Oregon  
[bob@oregoncub.org](mailto:bob@oregoncub.org)

Catriona McCracken  
Citizens' Utility Board of Oregon  
[catriona@oregoncub.org](mailto:catriona@oregoncub.org)

Michael T. Weirich  
Department of  
Justice [Michael.weirich@state.or.us](mailto:Michael.weirich@state.or.us)

John Crider  
Public Utility Commission of Oregon  
[john.crider@state.or.us](mailto:john.crider@state.or.us)

DATED: April 8, 2013



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Vimla Mathi  
Legal Assistant