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## VIA ELECTRONIC AND U.S. MAIL

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

**Re: UE 233 – Idaho Power Company's Application for Authority to Increase its Rates and Charges for Electric Service to its Customers in the State of Oregon**

Attention Filing Center:

Enclosed for filing in Docket UE 233 is an original and five copies of Idaho Power Company's Prehearing Brief.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached Certificate of Service.

Please contact me with any questions.

Very truly yours,

Wendy McIndoo  
Office Manager

Enclosures

cc: Service List

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

3 **UE 233**

4  
5 In the Matter of  
6 IDAHO POWER COMPANY  
7 Request for General Rate Revision.

**IDAHO POWER COMPANY'S  
PREHEARING BRIEF**

8  
9 **I. INTRODUCTION**

10 Pursuant to Administrative Law Judge (“ALJ”) Shani Pines’ Prehearing Conference  
11 Memorandum of May 30, 2012, revised September 12 and 20, 2012, Idaho Power  
12 Company (“Idaho Power” or “Company”) submits this Prehearing Brief to the Public Utility  
13 Commission of Oregon (“Commission”). This brief addresses the single issue that  
14 remains unresolved in Docket UE 233—the prudence of the Company’s incremental  
15 pollution control investments that were installed at Jim Bridger Unit 3 during the 2011 Test  
16 Year (“the Jim Bridger Unit 3 Scrubber Upgrade Project” or “scrubber upgrade”).<sup>1</sup>

17 The record in this docket, along with that in the companion PacifiCorp rate case,  
18 Docket UE 246, demonstrates that the Company’s decision to invest in the Jim Bridger  
19 Unit 3 Scrubber Upgrade Project was prudent based upon what Idaho Power knew or  
20 should have known at the time the decision was made. Therefore, the investment should  
21 be included in the Company’s Oregon rates.

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26 <sup>1</sup> *Re Idaho Power Company*, Docket UE 233, Order No. 12-055 Appendix A at 6 (Feb. 23, 2012);  
*Idaho Power/1300, Carstensen/2*.

1 **II. BACKGROUND**

2 **A. Procedural History of Docket UE 233.**

3 On July 29, 2011, Idaho Power filed a general rate case with the Commission to  
4 revise its schedules of rates and charges for electric service in Oregon. The Company  
5 requested a revision to customer rates that would increase the Company's annual Oregon  
6 jurisdictional revenues by \$5.8 million, which represents a 14.7 percent increase in rates.  
7 The Company submitted its proposed tariffs with a rate effective date of September 1,  
8 2011, which, with the addition of the full nine-month statutory suspension period, would  
9 result in the new rates becoming effective June 1, 2012. Idaho Power's filing was based  
10 on a 2011 calendar year test period.

11 Following extensive discovery and the filing of opening testimony by Staff, the  
12 Citizens' Utility Board of Oregon ("CUB"), Oregon Industrial Customers of Idaho Power  
13 ("OICIP"), and Oregon Irrigation Pumpers Association, Inc. ("OIPA"), the parties to the  
14 case reached a Partial Stipulation. The Partial Stipulation resolved all issues in the case,  
15 with the exception of the prudence of the Jim Bridger Unit 3 Scrubber Upgrade Project.<sup>2</sup>  
16 The Partial Stipulation called for Idaho Power to respond to discovery and file  
17 supplemental testimony regarding the prudence of the Jim Bridger Unit 3 Scrubber  
18 Upgrade Project.<sup>3</sup> The Partial Stipulation also allowed the parties to seek a Commission  
19 decision if the supplemental discovery and testimony did not resolve the issue.

20 On February 1, 2012, the Partial Stipulation, along with supporting testimony, was  
21 filed with the Commission. On February 23, 2012, the Commission issued Order No. 12-  
22 055, which adopted the Partial Stipulation in its entirety.<sup>4</sup> The Commission also ordered  
23 "that a procedural conference be scheduled to address the means to resolve the

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<sup>2</sup> Order No. 12-055 Appendix A at 6.

25 <sup>3</sup> *Id.*

26 <sup>4</sup> *Id.* at 6.

1 evidentiary questions posed by the parties [related to the prudence of the Jim Bridger Unit  
2 3 Scrubber Upgrade Project] and promptly provide the Commission with the factual bases  
3 for resolving the issue.”<sup>5</sup>

4 Meanwhile, also on February 1, 2012, Idaho Power filed supplemental testimony  
5 addressing the prudence of the Jim Bridger Unit 3 Scrubber Upgrade Project.<sup>6</sup>

6 On March 6, 2012, ALJ Allan Arlow convened a prehearing conference, pursuant to  
7 the Commission’s Order No. 12-055, to establish a procedural schedule to address the  
8 single remaining issue in this case.

9 Pursuant to ALJ Arlow’s Prehearing Conference Memorandum of March 6, 2012, on  
10 April 13, 2012, Staff and CUB filed testimony regarding the prudence of the Jim Bridger  
11 Unit 3 Scrubber Upgrade Project.

12 Following the publication of CUB’s testimony, on April 19, 2012, PacifiCorp filed a  
13 Petition to Intervene in UE 233 based on the fact that it is a co-owner, with Idaho Power,  
14 of the Jim Bridger Unit 3 and “will be affected by the Commission’s decision regarding the  
15 prudence of the environmental control investments at issue in [Docket UE 233].”<sup>7</sup> The  
16 prudence of the same Jim Bridger Unit 3 Scrubber Upgrade Project at issue in Docket UE  
17 233 is also at issue in PacifiCorp’s rate case, Docket UE 246.<sup>8</sup> PacifiCorp’s petition  
18 indicated that it intended only to file briefs on the legal issues. The next day, April 20, ALJ  
19 Arlow granted PacifiCorp’s petition.

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23 <sup>5</sup> *Id.*

24 <sup>6</sup> Idaho Power/1300-1302.

25 <sup>7</sup> *Re Idaho Power Company*, Docket UE 233, Petition to Intervene of PacifiCorp, d/b/a Pacific  
26 Power (Apr. 19, 2012).

<sup>8</sup> *Re Idaho Power Company*, Docket UE 233, PacifiCorp’s Response to CUB and OICIP’s  
Objections to Petition to Intervene at 1 (Apr. 27, 2012).

1           Then, on April 24, 2012, CUB and OICIP filed an objection to PacifiCorp's petition  
2 and requested that ALJ Arlow reconsider his decision and deny PacifiCorp's petition.<sup>9</sup> On  
3 April 27, 2012, PacifiCorp filed its response to CUB and OICIP's objections<sup>10</sup> and on May  
4 1, 2012, ALJ Arlow affirmed his decision granting PacifiCorp's petition to intervene.<sup>11</sup>

5           Following the affirmation of PacifiCorp's petition to intervene, other parties from  
6 PacifiCorp's rate case, Docket UE 246, also sought to intervene in Docket UE 233.<sup>12</sup>

7           On May 4, 2012, Idaho Power filed its rebuttal testimony.<sup>13</sup> Following the publication  
8 of the Company's testimony, CUB and OICIP filed two motions—one to strike portions of  
9 the rebuttal testimony and one to amend the procedural schedule. The motion to amend  
10 the procedural schedule sought additional time for discovery, additional rounds of  
11 testimony, and additional time for legal briefing. The motion to strike sought to strike two  
12 portions of Idaho Power's rebuttal testimony that addressed analysis Idaho Power  
13 received from PacifiCorp, one of which related to the prudence of the Jim Bridger Unit 3  
14 Scrubber Upgrade Project and the other addressed an issue raised by CUB in its  
15 testimony but was not related to the prudence of the Jim Bridger Unit 3 Scrubber Upgrade  
16 Project.

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20 <sup>9</sup> *Re Idaho Power Company*, Docket UE 233, CUB and OICIP's Objections to PacifiCorp's Petition  
21 to Intervene and Request for Reconsideration of ALJ Arlow's Ruling Granting Intervention (Apr. 24,  
2012).

22 <sup>10</sup> *Re Idaho Power Company*, Docket UE 233, PacifiCorp's Response to CUB and OICIP's  
Objections to Petition to Intervene (Apr. 27, 2012).

23 <sup>11</sup> *Re Idaho Power Company*, Docket UE 233, Ruling (May 1, 2012).

24 <sup>12</sup> *See, Re Idaho Power Company*, Docket UE 233, Petition to Intervene of the Industrial Customers  
of Northwest Utilities (May 2, 2012); *Re Idaho Power Company*, Docket UE 233, Petition to  
25 Intervene of Renewable Northwest Project (May 9, 2012); *Re Idaho Power Company*, Docket UE  
233, Petition to Intervene of the NW Energy Coalition (May 15, 2012).

26 <sup>13</sup> Idaho Power/1400.

1 On May 11, 2012, the Company filed responses to both motions.<sup>14</sup> The Company  
2 did not object to the request to amend the procedural schedule, provided the amended  
3 schedule allowed Idaho Power to likewise file additional testimony. With respect to the  
4 motion to strike, the Company argued that CUB's motion was based on a  
5 misunderstanding of the Commission's prudence standard and the motion should  
6 therefore be denied. CUB and OICIP filed a reply on May 14, 2012.<sup>15</sup>

7 On May 22, 2012, ALJ Pines issued a Ruling that granted the motion to amend the  
8 procedural schedule and simultaneously scheduled a prehearing conference for May 24,  
9 2012, to discuss a proposed schedule. The Ruling also denied CUB's motion to strike so  
10 long as the Company made a supplemental filing that included the entirety of the analysis  
11 provided by PacifiCorp. The Company made this filing on May 24, 2012.<sup>16</sup>

12 As a result of the May 24 prehearing conference, on May 30, 2012, ALJ Pines issued  
13 a Prehearing Conference Memorandum that adopted the same procedural schedule for  
14 Dockets UE 233 and UE 246, PacifiCorp's rate case.

15 **B. The Jim Bridger Unit 3 Scrubber Upgrade Project.**

16 Jim Bridger Unit 3 is one of four pulverized coal units making up the Jim Bridger  
17 Station, located approximately 35 miles northeast of Rock Springs, Wyoming.<sup>17</sup> Jim  
18 Bridger Unit 3 is co-owned by Idaho Power and PacifiCorp, and is operated by  
19 PacifiCorp.<sup>18</sup>

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22 <sup>14</sup> *Re Idaho Power Company*, Docket UE 233, Idaho Power Company's Response to CUB and  
OICIP's Motion to Amend Procedural Schedule (May 11, 2012); *Re Idaho Power Company*, Docket  
UE 233, Idaho Power Company's Response to CUB and OICIP's Motion to Strike (May 11, 2012).

23 <sup>15</sup> *Re Idaho Power Company*, Docket UE 233, CUB and OICIP's Reply to Idaho Power Company's  
24 Response to CUB and OICIP's Motion to Strike (May 14, 2012).

<sup>16</sup> Idaho Power/1404.

25 <sup>17</sup> Idaho Power/1300, Carstensen/2, ll. 6-10.

26 <sup>18</sup> Idaho Power/1300, Carstensen/2, ll. 6-10.

1 The Jim Bridger Unit 3 Scrubber Upgrade Project upgraded the unit's existing  
2 scrubbers, which improved the removal of sulfur dioxide ("SO<sub>2</sub>") from the unit's  
3 emissions.<sup>19</sup> The decision to invest in the Jim Bridger Unit 3 Scrubber Upgrade Project  
4 was made in 2008, following consultation between Idaho Power, PacifiCorp, and the  
5 relevant regulatory authorities with jurisdiction over the unit's emissions.<sup>20</sup> Actual work  
6 related to the project was completed during a planned outage in 2011.<sup>21</sup>

7 The Company's share of the capital investment in the project is \$8.2 million during  
8 the test year.<sup>22</sup>

### 9 III. ARGUMENT

10 The only remaining issue in UE 233 is the question of the prudence of the Jim  
11 Bridger Unit 3 Scrubber Upgrade Project. Staff has concluded that Idaho Power acted  
12 prudently and that the costs associated with the project should be included in rates. The  
13 only party to challenge the prudence of the Company's investment is CUB. For the  
14 reasons set forth below, CUB's arguments are unpersuasive and should be rejected.

#### 15 A. The Commission's Prudence Standard is Objective.

16 A fundamental dispute in this case is whether the Commission's prudence standard  
17 is objective or subjective. In support of its decision to invest in the Jim Bridger Unit 3  
18 Scrubber Upgrade Project, the Company has provided certain analyses performed by  
19 PacifiCorp that were either performed or received by Idaho Power after the decision was  
20 made. In response, CUB has argued that these analyses are irrelevant to the question as  
21 to whether the Company's decision to invest was prudent because Idaho Power could not

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24 <sup>19</sup> Idaho Power/1300, Carstensen/2, ll. 11-16.

25 <sup>20</sup> Idaho Power/1400, Carstensen/2, l. 15 – 3, l. 7.

26 <sup>21</sup> Idaho Power/1400, Carstensen/3, ll. 6-7.

<sup>22</sup> Idaho Power/1300, Carstensen/2, ll. 15-16.

1 have actually relied on these analyses when making its decision.<sup>23</sup> In making this  
2 argument, CUB is taking the position that the Commission's prudence standard is a  
3 subjective one that examines what a utility actually relied upon when making a decision to  
4 determine whether that decision was prudent. CUB's position, however, is wrong.

5 In Order No. 02-469 the Commission addressed an argument that was substantively  
6 the same as that made here by CUB and in that order the Commission soundly rejected  
7 the theory that the prudence standard is subjective.<sup>24</sup> At issue in Order No. 02-469 was  
8 whether contemporary evidence was required in order to evaluate the prudence of a utility  
9 decision.<sup>25</sup> Intervenors in that case argued that to demonstrate prudence a utility must  
10 present evidence on what it actually knew and considered at the time the decision at issue  
11 was made.<sup>26</sup> The Commission rejected this argument, concluding: "We look at the  
12 objective reasonableness of a decision at the time the decision was made."<sup>27</sup> When  
13 confirming the objective nature of the prudence standard, the Commission described it as  
14 follows:

15 [C]ontemporaneous documentation is useful in a prudence  
16 review to show the nature of the information available at the  
17 time of the challenged transactions. It is, however, not a  
prerequisite to establishing the prudence of a utility's actions,

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18 <sup>23</sup> See e.g., CUB/200, Feighner-Jenks/6 (Staff/1001, which compares the pollution control  
19 investments at Bridger to the acquisition of an alternative resources, is an "after-the-fact study not  
20 relevant to what the Company actually knew at the time" it made the decision); CUB/200, Feighner-  
21 Jenks/13 (later analysis the Company will provide as part of its IRP update "will do nothing to  
22 change the fact that, prior to spending the currently requested \$8.2 million, Idaho Power acted  
23 imprudently by not conducting the necessary analysis"); *Re Idaho Power Company*, Docket UE  
233, CUB and OICIP's Motion to Strike at 5-6 (PacifiCorp study is irrelevant because Idaho Power  
"did not rely on that study at the time it made its decision to 'consent' to the upgrades"); *Re Idaho  
Power Company*, Docket UE 233, CUB and OICIP's Motion to Strike at 7 ("document did not exist  
at the time that Idaho [Power] was required to make its decision to 'consent' or not consent to the  
upgrades and Idaho Power could not therefore have relied on this document.")

24 <sup>24</sup> *Re PacifiCorp*, Dockets UM 995/UE 121/UC 578, Order No. 02-469 at 4-5 (July 18, 2002).

25 <sup>25</sup> *Id.* at 5.

26 <sup>26</sup> *Id.*

<sup>27</sup> *Id.*

1 because prudence determinations are based on an objective  
2 standard of reasonableness . . . **the standard does not**  
3 **require [a utility] to prove the factors it actually**  
4 **considered with respect to the decision . . . .** Such a  
5 showing can help demonstrate what information was  
6 available at the time, **but evidence of subjective decision**  
7 **making is not otherwise a prerequisite to establishing**  
8 **prudence . . .** if the record demonstrates that a challenged  
9 business decision was objectively reasonable, taking into  
10 account established historical facts and circumstances, the  
11 utility’s decision must be upheld as prudent even if the  
12 record lacks detail on the utility’s actual subjective decision  
13 making process.<sup>28</sup>

14 That the prudence standard is objective, not subjective, flows directly from the  
15 Commission’s consistent articulation of the standard—a decision is prudent if it is  
16 reasonable based on what a utility knew *or should have known at the time the decision*  
17 *was made.*<sup>29</sup> In other words, the Commission applies the “‘reasonable person’ standard to  
18 judge the prudence of a utility’s investment decision.”<sup>30</sup> The Commission has made clear  
19 that the “reasonable person” standard is purely objective.<sup>31</sup> Notably, reasonableness does  
20 not require perfection.<sup>32</sup>

21 More specifically, with respect to pollution control investments, the Commission has  
22 observed that:

23 In judging prudence, we would consider whether the  
24 utility’s decision was a reasonable response to the  
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<sup>28</sup> *Id.*

<sup>29</sup> See e.g., *Re Portland General Electric Co.*, Docket UE 196, Order No. 10-051 at 6 (Feb. 11, 2010) (“In a prudence review, the Commission examines the objective reasonableness of a utility’s actions at the time the utility acted: ‘Prudence is determined by the reasonableness of the actions ‘based on information that was available (or could reasonably have been available) at the time.’”).

<sup>30</sup> *Re Public Utility Commission of Oregon Investigation to consider adoption of new federal standards contained in the Energy Independence and Security Act of 2007*, Docket UM 1409, Order No. 09-501 at 5 (Dec. 18, 2009).

<sup>31</sup> *Id.*

<sup>32</sup> Order No. 10-051 at 10.

1 possibility that external environmental costs would be  
2 internalized.<sup>33</sup>

3 Thus, the focus of the prudence review in this case is on the reasonableness of Idaho  
4 Power's decision to invest in the scrubber upgrades based on what the utility knew or  
5 should have known at the time it made the decision.<sup>34</sup>

6 **B. The Objective Evidence Here Demonstrates the Company's Prudence.**

7 **1. The Jim Bridger Unit 3 Scrubber Upgrade Project was the Least Cost**  
8 **Alternative that would allow Continued Operation of Unit 3 in**  
9 **Compliance with Federal and State Regulations and Permits.**

10 The purpose of the Jim Bridger Unit 3 Scrubber Upgrade Project is to reduce the  
11 unit's SO<sub>2</sub> emissions, as required by the Clean Air Act's Regional Haze Rules, National  
12 Ambient Air Quality Standards, the Regional SO<sub>2</sub> Milestone and Backstop Trading  
13 Program (developed in alignment with existing federal regulations and administered in  
14 Wyoming), state-issued construction and operating permits, and state implementation  
15 plans.<sup>35</sup> These investments were required for the Company to continue compliant  
16 operation of Jim Bridger Unit 3.<sup>36</sup>

17 The determination of the pollution controls necessary to comply with the applicable  
18 legal requirements began in 2003. Between 2003 and 2008, Wyoming state agencies  
19 required PacifiCorp (as the operator of the plant) to conduct detailed Best Available

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20 <sup>33</sup> *Re Guidelines for the Treatment of External Environmental Costs*, Docket UM 424, Order No. 93-  
21 695, 142 P.U.R.4th 465, 470 (May 17, 1993).

22 <sup>34</sup> Because this issue was raised by CUB's motion to strike, ALJ Pines has already made a ruling  
23 confirming the objective nature of the prudence standard. *Re Idaho Power Company*, Docket UE  
24 233, Ruling at 3 (May 22, 2012) ("as Idaho Power notes, our prudence standard looks both to what  
25 a utility knew at the time it made its decision and to the objective reasonableness of the utility's  
26 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.").

27 <sup>35</sup> Idaho Power/1300, Carstensen/2, ll. 19-24.

28 <sup>36</sup> Staff/1100, Colville/4, ll. 1-12; Docket UE 246, PAC/1400, Woollums/38, ll. 14-15; Docket UE  
29 246, PAC/1900, Woollums/2, ll. 10-11.

1 Retrofit Technology (“BART”) reviews.<sup>37</sup> The expectation was that necessary controls  
2 would be in place by 2013.<sup>38</sup>

3 To determine the least cost technology that would allow Jim Bridger Unit 3 to  
4 continue operating in compliance with applicable regulations, PacifiCorp commissioned  
5 CH2M Hill to perform a study to evaluate the emission control technology alternatives.<sup>39</sup>  
6 Using the Environmental Protection Agency’s (“EPA”) preferred methodology, this study  
7 modeled each alternative to determine the costs of implementation and the expected  
8 reduction in emissions resulting from implementation.<sup>40</sup> The Jim Bridger Unit 3 Scrubber  
9 Upgrade Project was “determined by CH2M Hill to be the only technically feasible retrofit  
10 technology to meet the regulatory presumptive [emissions limits]. Therefore, the scrubber  
11 upgrade project was ultimately included as part of CH2M Hill’s recommended least-cost  
12 pollution control investment scenarios.”<sup>41</sup>

13 In response to the CH2M Hill study, the Wyoming Department of Environmental  
14 Quality issued a Regional Haze (“RH”) BART permit for the Jim Bridger power plant  
15 indicating that implementation of the recommendations in the CH2M Hill study—including  
16 the Jim Bridger Unit 3 Scrubber Upgrade Project—would ensure compliance with the  
17 provisions of the Regional SO<sub>2</sub> Milestone and Backstop Trading Program and was  
18 consistent with the RH BART Analysis and the presumptive BART emissions limits.<sup>42</sup>

19 In its evaluation of the Company’s decision, Staff’s testimony noted that the CH2M  
20 Hill study provided a “detailed analysis of the appropriate technology to be applied to [Jim  
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22 <sup>37</sup> Docket UE 246, PAC/1400, Woollums/9, ll. 3-5.

23 <sup>38</sup> Docket UE 246, PAC/1400, Woollums/9, 5-8.

24 <sup>39</sup> Idaho Power/1300, Carstensen/6, ll. 18-25. The actual study is included in the record as Idaho  
25 Power/1301.

26 <sup>40</sup> Idaho Power/1300, Carstensen/6, l. 23 – 7, l. 10; Idaho Power/1300, Carstensen/7, ll. 19-21.

<sup>41</sup> Idaho Power/1300, Carstensen/7, ll. 12-16.

<sup>42</sup> Idaho Power/1300, Carstensen/8, ll. 11-19.

1 Bridger Unit 3] to achieve established emissions control objectives.”<sup>43</sup> Staff concluded that  
2 the Jim Bridger Unit 3 Scrubber Upgrade Project was “required for the Unit to continue  
3 operation.”<sup>44</sup> Staff also concluded that the “scrubber upgrade appears to be the most cost  
4 effective alternative for compliance until 2018.”<sup>45</sup>

5 **2. PacifiCorp’s Present Value Revenue Requirement Differential Study**  
6 **Further Demonstrates the Prudence of the Company’s Decision.**

7 In December 2008 PacifiCorp performed an analysis entitled the “CAI Capital  
8 Projects Study for Jim Bridger UE – Dec. 2008” (hereinafter “PacifiCorp Study”).<sup>46</sup> To  
9 determine whether the Jim Bridger Unit 3 Scrubber Upgrade Project was the least cost  
10 alternative, PacifiCorp, based on its own two-thirds share of the unit, calculated a present  
11 value revenue requirement differential (“PVR(d)”) between two options—idling the plant  
12 versus installing the scrubber upgrade.<sup>47</sup> In this analysis, PacifiCorp subtracted from  
13 revenue the fuel, operations and maintenance (“O&M”), and environmental emissions  
14 costs, as well as the on-going and pollution control capital revenue requirement costs,  
15 through the end of the unit’s depreciable life.<sup>48</sup> The revenue from which these expenses  
16 were subtracted was derived using the September 30, 2008, PacifiCorp official forward  
17 price curve at a corresponding CO<sub>2</sub> price of \$8 per ton beginning in 2013.<sup>49</sup> The  
18 PacifiCorp Study demonstrated by a wide margin that it was beneficial to customers to  
19 invest in emissions control equipment for Jim Bridger Unit 3 in lieu of idling the unit and

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<sup>43</sup> Staff/1000, Colville/4, ll. 20-22.

21 <sup>44</sup> Staff/1000, Colville/5, ll. 17-22.

22 <sup>45</sup> Staff/1000, Colville/6, ll. 4-11.

23 <sup>46</sup> Idaho Power/1400, Carstensen/8, ll. 7-16. The study itself is Idaho Power/1403. In addition, the  
24 study was discussed in the direct testimony of Chad Teply that was filed in UE 246. See, Docket  
UE 246, PAC/500, Teply/84-85.

25 <sup>47</sup> Idaho Power/1400, Carstensen/9, ll. 2-14.

26 <sup>48</sup> Idaho Power/1400, Carstensen/9, ll. 4-7.

<sup>49</sup> Idaho Power/1400, Carstensen/9, ll. 8-10.

1 replacing the generation with market power purchases.<sup>50</sup> Importantly Staff analyzed the  
2 PacifiCorp Study and concluded that the study demonstrated the “magnitude of the benefit  
3 associated with the Scrubber Upgrade Project is such that had Idaho Power performed the  
4 analysis as described by CUB, its decision to go forward with the Scrubber Upgrade  
5 Project would not have been different.”<sup>51</sup>

6 CUB is highly critical of the PacifiCorp Study; however, each criticism presented by  
7 CUB is without merit. Indeed, even if the PacifiCorp Study is “corrected” to account for  
8 each of CUB’s claims, the outcome remains the same—the PVR(d) is positive, which  
9 means that the decision to invest in the Jim Bridger Unit 3 Scrubber Upgrade Project was  
10 prudent.<sup>52</sup>

11 **a. Changing the Modeled Shutdown Date does not Change the**  
12 **Results of the Analysis.**

13 CUB argues first that the PacifiCorp Study assumed the alternative to the scrubber  
14 upgrade was the idling of Jim Bridger Unit 3 in 2008, which CUB claims “makes no  
15 sense.”<sup>53</sup> CUB claims that the appropriate closure date for this analysis should be 2015,  
16 which CUB understands is the deadline for compliance with the emissions limitations.<sup>54</sup> It  
17 is important to first clarify that CUB’s understanding of the compliance deadline is  
18 incorrect.<sup>55</sup> In fact, “at the time of decision-making for the [Jim Bridger Unit 3 Scrubber

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19 <sup>50</sup> Idaho Power/1400, Carstensen/9, ll. 10-14; Idaho Power/1403.

20 <sup>51</sup> Staff/1100, Colville/9, l. 22 – 10, l. 3.

21 <sup>52</sup> Staff/1200, Colville/3, ll. 10-13 (“This benefit is so large that correcting all the decision-infirmities  
22 identified by CUB and me would not have led Idaho Power to choose to not make the investments  
at issue.”).

23 <sup>53</sup> CUB/300, Feighner-Jenks/12, ll. 2-3.

24 <sup>54</sup> CUB/300, Feighner-Jenks/12, ll. 9-11.

25 <sup>55</sup> CUB relies on its experience in Oregon as the basis for its understanding of the compliance  
26 deadline. CUB/300, Feighner-Jenks/12, ll. 9-10. However, the Oregon BART process has no  
bearing on Wyoming’s BART determination and the associated compliance deadlines. Docket UE  
246, PAC/1500, Tepy/29, ll. 3-7. It is the Wyoming compliance deadlines that are applicable to Jim  
Bridger Unit 3. Docket UE 246, PAC/1500, Tepy/29, ll. 3-7.

1 Upgrade Project], the primary environmental compliance planning deadline was 2013  
2 under the [Wyoming] SIP.”<sup>56</sup> However, even if the 2013 compliance date is used, meaning  
3 that the shutdown would occur on January 1, 2014, the PacifiCorp Study still indicates that  
4 scrubber upgrade was the least cost option by a substantial margin.<sup>57</sup>

5                   **b.       Updating the Market Prices used in the PacifiCorp Study does**  
6                   **not Change the Results.**

7           CUB next claims that the forward price curve used in the PacifiCorp Study was  
8 prepared “just before the US went into a deep recession” and that “[i]f PacifiCorp had  
9 updated its study at the end of 2008, or anytime in 2009, the change in forward prices  
10 would have had a significant effect on the 2008 study results.”<sup>58</sup> Although CUB failed to  
11 quantify the “significant effect” it claimed existed, PacifiCorp’s analysis demonstrates that  
12 *had* the forward price curve been updated as CUB claimed, the decision to invest in the  
13 Jim Bridger Unit 3 Scrubber Upgrade Project would have been the same.<sup>59</sup> Indeed, the  
14 decrease in forecast market prices was not even outside PacifiCorp’s “market price  
15 sensitivity range of 80 percent of forecasted values.”<sup>60</sup> Because the PacifiCorp Study’s  
16 PVRR(d) was so substantial, changing forward market prices decreased the value of the  
17 PVRR(d) but did not make it anywhere near negative.<sup>61</sup>

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20 <sup>56</sup> Docket UE 246, PAC/1500, Teply/11, ll. 3-6.

21 <sup>57</sup> Docket UE 246, PAC/1500, Teply/24, l. 18 – 25, l. 2.

22 <sup>58</sup> CUB/300, Feighner-Jenks/12, ll. 18-20.

23 <sup>59</sup> Docket UE 246, PAC/1500, Teply/26, l. 6 – 27, l. 1.

24 <sup>60</sup> Docket UE 246, PAC/1500, Teply/26, ll. 14-17.

25 <sup>61</sup> It is also important to note that marginally positive or negative PVRR(d) results “do not  
26 necessarily indicate that shutting down a particular unit is the best outcome for customers. To rely  
solely on the PVRR(d) results to determine prudence is overly simplistic.” Docket UE 246,  
PAC/2000, Teply/4, ll. 16-19. The PacifiCorp Study was only one piece of a complex decision-  
making process. Docket UE 246, PAC/2000, Teply/4, ll. 3-13.

1                   **c.     The PacifiCorp Study Considered All Reasonably Known**  
2                   **Pollution Control Investments.**

3           CUB is also critical of the PacifiCorp Study because CUB claims that it failed to  
4 consider the entire suite of pollution control investments over and above the Jim Bridger  
5 Unit 3 Scrubber Upgrade Project that will be required to ensure future compliance with  
6 applicable regulations.<sup>62</sup> The specific pollution control equipment CUB regularly claims  
7 was not included in the analysis is the anticipated selective catalytic reduction (“SCR”)  
8 investment. CUB claims that failure to account for the SCR investment renders the  
9 analysis supporting the scrubber upgrade deficient.<sup>63</sup> This criticism of the PacifiCorp  
10 Study is entirely without merit because the PacifiCorp Study did, in fact, consider the SCR  
11 investment in the PVRR(d) analysis and the results still indicated that undertaking the  
12 scrubber upgrade project was prudent.<sup>64</sup> After reviewing the PacifiCorp Study, Staff  
13 agreed that “the cost for SCR was included in the decision making analysis.”<sup>65</sup> Indeed,  
14 even CUB has acknowledged in filings in this case that the PacifiCorp Study considered  
15 the SCR investment.<sup>66</sup> Specifically, CUB relied on the fact that the PacifiCorp Study  
16 included the SCR as a basis for CUB’s claim that SCR-related discovery was relevant to  
17 this case—a mere eight days before filing testimony claiming that the PacifiCorp Study

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20 <sup>62</sup> CUB/300, Feighner-Jenks/13, ll. 2-19.

21 <sup>63</sup> See e.g., CUB/200, Feighner-Jenks/7 (CH2M Hill study didn’t examine SCR); CUB/300,  
22 Feighner-Jenks/2, ll. 18-19 (without the SCR the scrubber upgrade is not used and useful);  
23 CUB/300, Feighner-Jenks/3, ll. 2-3 (studies failed to consider costs of SCR); CUB/400, Feighner-  
24 Jenks/7, ll. 13-16 (prudence review should include SCR investments).

25 <sup>64</sup> Docket UE 246, PAC/1500, Teply/28, ll. 1-5; Docket UE 246, PAC/2000, Teply/21, ll. 1-5.

26 <sup>65</sup> Staff/1201, Colville/3.

<sup>66</sup> *Re Idaho Power Company*, Docket UE 233, 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 (June 12, 2012)  
(referencing that Idaho Power’s response to CUB data request 48 stated that the SCR investment  
was included in the PacifiCorp study).

1 was deficient for failing to account for the costs of the SCR investment.<sup>67</sup> Moreover,  
2 PacifiCorp's updated SCR analysis continues to demonstrate that the SCR investment is  
3 the least cost/least risk alternative for compliance with applicable clean air regulations.<sup>68</sup>

4 While CUB's testimony criticizing the PacifiCorp Study specifically references only  
5 the SCR investment, elsewhere CUB is critical of the Company's failure to consider both  
6 carbon regulation and MATS.<sup>69</sup> These are the only other regulations that CUB specifically  
7 claims should have been considered.

8 With respect to carbon regulation, CUB's criticisms are unpersuasive because the  
9 PacifiCorp Study did include potential carbon regulation in its analysis.<sup>70</sup> The study's  
10 modeling of future carbon regulation is reasonable because modeling this type of  
11 regulation is highly uncertain. Indeed, the uncertainty related to future carbon regulation  
12 can be seen in the Company's last two acknowledged IRPs, which both include different  
13 assumed types of carbon regulation, different assumed costs associated with compliance,  
14 and different assumed effective dates.<sup>71</sup>

15 With respect to MATS, CUB's own testimony makes clear that these costs should not  
16 have been considered because the MATS regulations were not reasonably known at the  
17 time the decision to invest in the scrubber upgrade was made. CUB testifies that the  
18 MATS standard was approved by the EPA in the fall of 2011—after the scrubber upgrade  
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20 <sup>67</sup> In CUB's motion to compel it argued that discovery related to the SCR investment was relevant  
21 because it was included in the PacifiCorp Study. This motion was filed on June 12, 2012. Then, in  
22 testimony filed on June 20, 2012, CUB criticized the PacifiCorp Study for failing to account for the  
23 costs of the SCR investment. CUB/300, Feighner-Jenks/13, ll. 1-5. CUB repeated its criticisms of  
24 the Company's analysis for failing to consider the SCR investment in later testimony. CUB/400,  
25 Feighner-Jenks/7, ll. 13-15.

26 <sup>68</sup> Docket UE 246, PAC/1500, Teply/28, ll. 6-14.

<sup>69</sup> CUB/200, Feighner-Jenks/6; CUB/200, Feighner-Jenks/11.

<sup>70</sup> Idaho Power/1400, Carstensen/9, ll. 8-10 (assumed a CO<sub>2</sub> price of \$8 per ton beginning in 2013).

<sup>71</sup> Idaho Power/1400, Carstensen/4, ll. 4-26; *see also*, Docket UE 246, PAC/1400, Woollums/22, ll.  
19 – 23, l. 8.

1 was completed.<sup>72</sup> Consistent with the fact that the prudence standard is based on what a  
2 utility knew or should have known at the time the investment was made, CUB cannot  
3 reasonably claim that the failure to consider the MATS regulations was improper or  
4 somehow renders the prudence analysis deficient.

5 In summary, CUB criticizes the PacifiCorp Study for failing to consider all pollution  
6 control investments that were reasonably known at the time the decision to invest in the  
7 scrubber upgrade was made. Specifically, CUB claims that the analysis was deficient for  
8 failing to consider the SCR investment, MATS compliance, and carbon regulation. In fact,  
9 the PacifiCorp Study did include the SCR investment and carbon regulation. Moreover,  
10 even CUB admits that the MATS regulations were not finalized when the Company made  
11 the decision. So CUB is left claiming that the PacifiCorp Study is fatally deficient because  
12 it failed to consider some unnamed regulations and unidentified investments, and that if  
13 the analysis had included these unnamed regulations and unidentified investments, the  
14 results would have been different.

15 **d. Using Market Purchases for Comparison is Reasonable.**

16 CUB also criticizes the PacifiCorp Study for comparing the ongoing operation of Jim  
17 Bridger Unit 3 to only market purchases rather than including in the analysis alternate  
18 resources or conversion of Unit 3 to gas.<sup>73</sup> However, PacifiCorp's decision to use market  
19 purchases as the alternate resource was a reasonable one, considering the circumstances  
20 at the time. As Idaho Power witness Carstensen testified, Idaho Power was aware of the  
21 costs associated with alternate resources and "based upon that knowledge, [Idaho Power]  
22 had no reason to believe that it would be cheaper to shut Jim Bridger Unit 3 down and  
23 purchase a different resource."<sup>74</sup> Indeed, Staff concluded that using only market prices as

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<sup>72</sup> CUB/200, Feighner-Jenks/8.

25 <sup>73</sup> CUB/300, Feighner-Jenks/13, ll. 21-22.

26 <sup>74</sup> Idaho Power/1400, Carstensen/4, ll. 7-10.

1 the comparator was a conservative approach because the alternative, whether it be a  
2 combined cycle combustion turbine plant (“CCCT”) or gas conversion of the unit, may well  
3 have resulted in higher alternative costs, which would have actually increased the  
4 PVRR(d).<sup>75</sup>

5 Moreover, Staff’s analysis in this case, discussed below, did focus on a non-market  
6 alternative. Staff compared the price of the pollution control investments to the acquisition  
7 of a replacement resource—a CCCT. Analyzing this alternative, Staff concluded that the  
8 cost of the alternative resource was substantially greater than the cost of compliance and  
9 therefore “Idaho Power reasonably invested in the Jim Bridger Unit 3 Scrubber Upgrade  
10 Project.”<sup>76</sup>

11 **e. Relying on EPA Guidance with respect to Alternative Shutdown**  
12 **Dates was Reasonable.**

13 Finally, CUB claims that the PacifiCorp Study should have considered alternative  
14 shutdown dates.<sup>77</sup> The “remaining useful life” of a resource is a BART factor that must be  
15 accounted for in the BART analysis.<sup>78</sup> However, the EPA requires the use of a default 20-  
16 year amortization period for the remaining useful life of facilities for purposes of the BART  
17 analysis.<sup>79</sup> “Without commitments for an early shut down of an electric generating unit,  
18 EPA does not consider it to be appropriate to shorten the amortization period in a BART  
19 analysis.”<sup>80</sup>

20 Moreover, even though EPA guidance does not call for treating the remaining useful  
21 life as a variable, the BART discussions with the Wyoming DEQ did include consideration

22 <sup>75</sup> Staff/1200, Colville/7, ll. 1-12; Docket UE 246, PAC/2000, Teply/4, l. 22 – 5, l. 7.

23 <sup>76</sup> Staff/1000, Colville/6, ll. 13-23; Staff/1001; Staff/1100, Colville/16, ll. 10-16.

24 <sup>77</sup> CUB/300, Feighner-Jenks/14, ll. 6-7; CUB/200, Feighner-Jenks/9-11.

25 <sup>78</sup> Staff/1100, Colville/26, ll. 2-6; *see also*, Docket UE 246, PAC/1400, Woollums/16, l. 8 – 17, l. 1.

26 <sup>79</sup> Docket UE 246, PAC/1400, Woollums/16, ll. 15-18; Staff/1100, Colville/26, ll. 2-6.

<sup>80</sup> Docket UE 246, PAC/1400, Woollums/16, l. 18 – 17, l. 1.

1 of additional potential regulations, like carbon regulation, that may impact the remaining  
2 useful life of the plant.<sup>81</sup> So this factor was not entirely disregarded as CUB suggests.

3 **f. It was Reasonable to Continue to Rely on the 2008 PacifiCorp**  
4 **Study.**

5 CUB claims that “because the scrubber upgrade was not sufficient to meet the BART  
6 requirements and a SCR and other investment was required, Idaho Power and PacifiCorp  
7 should have been updating PacifiCorp’s analysis on a regular basis to ensure that the  
8 overall project (defined as compliance with RHR) was still cost effective.”<sup>82</sup> However,  
9 updating the analysis would not have changed the ultimate conclusion that the Jim Bridger  
10 Unit 3 Scrubber Upgrade Project was prudent. As noted above, updating the forward  
11 price curve does not change the results of the study.<sup>83</sup> Similarly, Staff concluded that  
12 updating the capital costs included in the PacifiCorp Study “would not have changed the  
13 business decision.”<sup>84</sup> And PacifiCorp concluded that even if the Company had treated the  
14 Jim Bridger Unit 3 Scrubber Upgrade Project as an avoidable cost in its recent  
15 assessment of future Jim Bridger Unit 3 SCR project costs, the costs associated with the  
16 scrubber upgrade “do not materially change the financial assessment as CUB purports.”<sup>85</sup>

17 Moreover, CUB’s criticism reflects an oversimplification of the “processes required to  
18 manage the multiple parallel path activities and overlapping timelines to effectuate  
19 successful and timely evaluation, development, permitting and completion of these types  
20 of upgrades.”<sup>86</sup> The process cannot be broken down into a “series of simple project  
21 implementation milestones and re-evaluation opportunities without any reference to the

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22 <sup>81</sup> Docket UE 246, PAC/1400, Woollums/16, ll. 4-7.

23 <sup>82</sup> CUB/300, Feighner-Jenks/13, ll. 2-5.

24 <sup>83</sup> Docket UE 246, PAC/1500, Teply/26, l. 6 – 27, l. 1.

25 <sup>84</sup> Staff/1201, Colville/ 3-4.

26 <sup>85</sup> Docket UE 246, PAC/2000, Teply/19, l. 20 – 20, l. 6.

<sup>86</sup> Docket UE 246, PAC/1500, Teply/10, ll. 14-17.

1 underlying regulatory framework, agency requirements and expectations, resulting legal  
2 obligations, the realities of cost and schedule management of these major projects, or the  
3 Company's obligation to reliably serve its customers."<sup>87</sup>

4 Indeed, even though Staff concluded that the decision-making process here should  
5 have included updated analysis at significant project milestones; Staff nonetheless rejects  
6 CUB's position. Staff testifies that "CUB advocates for what could result in decision  
7 making paralysis in response to unpredictable electricity markets and a fluid environmental  
8 regulatory situation. Paralyzed decision making would not be prudent."<sup>88</sup>

9 **3. Staff's Net Present Value Analysis Demonstrates Prudence.**

10 Similar to the PacifiCorp Study, Staff performed a net present value ("NPV") analysis  
11 that examined the "continuing operation of the Jim Bridger Unit 3 until 2018 compared with  
12 replacing it with a [CCCT] fueled with natural gas."<sup>89</sup> Staff concluded that "Idaho Power's  
13 share of the NPV benefit of continuing operation of the Jim Bridger Unit 3 compared to  
14 replacing it with a CCCT is more than \$200 million."<sup>90</sup>

15 CUB is critical of Staff's analysis because it is an "after-the-fact study and not  
16 relevant to what the Company actually knew at the time" it made the decision to invest in  
17 the Jim Bridger Unit 3 Scrubber Upgrade Project.<sup>91</sup> As discussed above, however, this  
18 criticism is based on a misunderstanding of the Commission's prudence standard. As ALJ  
19 Pines ruled when deciding CUB's motion to strike: "Striking studies that examine those  
20 facts and circumstances from the record because the utility does not prove that it relied on  
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23 <sup>87</sup> Idaho Power/1700, Carstensen/4, I. 23 – 5, I. 5.

24 <sup>88</sup> Staff/1201, Colville/2 – 3.

25 <sup>89</sup> Staff/1000, Colville/6, I. 13 – 7, I. 3; Staff/1001.

26 <sup>90</sup> Staff/1000, Colville/6, II. 16-19.

26 <sup>91</sup> CUB/200, Feighner-Jenks/6.

1 those studies in making its decision, or because the studies themselves were created after  
2 the utility's decision, would misapply our prudence standard."<sup>92</sup>

3 **4. CUB's Claim that the Company is Requesting Piecemeal Review is**  
4 **Wrong.**

5 CUB claims repeatedly that the Company is attempting to have the Commission  
6 review each of its pollution control investments in isolation, with no consideration of  
7 whether the expected investments, taken as a whole, are cost effective.<sup>93</sup> To the contrary,  
8 the Company has not only repeatedly stated that does not take a piecemeal approach, but  
9 also the analysis relied on by the Company did not take a piecemeal approach.

10 The Company does maintain that the only investments that are at issue in this case  
11 are the Jim Bridger Unit 3 Scrubber Upgrade Project.<sup>94</sup> The Company is not seeking pre-  
12 approval of any pollution control investments that may be made in the future (like SCR)  
13 nor is the Company requesting a prudence review of investments that are already included  
14 in rates. This does not mean, however, that the Company is requesting that the prudence  
15 review of the Jim Bridger Unit 3 Scrubber Upgrade Project be made in isolation with no  
16 consideration of the related pollution control investments that will be required to ensure  
17 continued operation of the unit in full compliance with applicable state and federal  
18 regulatory requirements.<sup>95</sup>

19 The Company testified that the analysis underlying the decision to invest in the Jim  
20 Bridger Unit 3 Scrubber Upgrade Project considered additional investments that were  
21 reasonably likely to occur based on information that was available at the time.<sup>96</sup> And as  
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23 <sup>92</sup> *Re Idaho Power Company*, Docket UE 233, Ruling (May 22, 2012).

24 <sup>93</sup> See *e.g.*, CUB/300, Feighner-Jenks/2, ll. 1-8.

25 <sup>94</sup> Idaho Power/1400, Carstensen/13, ll. 16-19.

26 <sup>95</sup> Idaho Power/1500, Carstensen/5, ll. 13-21.

<sup>96</sup> See, Idaho Power/1500, Carstensen/5, ll. 13-21; Idaho Power/1400, Carstensen/5, ll. 1-11.

1 discussed in more detail above, the PacifiCorp Study analyzed the scrubber upgrade in  
2 the context of all the pollution control investments that were reasonably expected to be  
3 required—including the SCR investment that CUB repeatedly references as the most  
4 significant additional pollution control investment that will be required at Jim Bridger Unit  
5 3.<sup>97</sup> Despite CUB’s repeated claims that the Company wants this case to involve  
6 piecemeal review of its investment decisions, the record in this case demonstrates  
7 otherwise.<sup>98</sup>

8 **5. The Jim Bridger Unit 3 Scrubber Upgrade Project was Part of a**  
9 **Comprehensive Pollution Control Investment Strategy.**

10 CUB also claims that the Jim Bridger Unit 3 Scrubber Upgrade Project must be  
11 evaluated as part of a “comprehensive strategy that included the scrubber, SCR, and all  
12 associated and subsequent investments that are necessary to bring the plant into  
13 compliance with state and federal clean air regulations.”<sup>99</sup> This is precisely what the  
14 Company did when it relied on PacifiCorp’s expertise.<sup>100</sup>

15 Idaho Power relies heavily on planning and analysis prepared by PacifiCorp as the  
16 operator of the Jim Bridger plant, as well as numerous other coal plants throughout the  
17 West, pursuant to PacifiCorp’s contractual obligation to operate the plant in a prudent  
18 manner.<sup>101</sup> To this end, PacifiCorp has developed a comprehensive strategy for  
19 assessing potentially applicable environmental regulations, involving itself in the regulatory  
20 process associated with potential regulations, and developing long-term environmental  
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22 <sup>97</sup> Docket UE 246, PAC/1500, Teply/28, ll. 1-5.  
23 <sup>98</sup> Staff has concluded that even though the Idaho Power decision making analyses had infirmities,  
24 the Company is not advocating for “piecemeal” approach as CUB claims. Staff/1201, Colville/2  
25 <sup>99</sup> CUB/400, Feighner-Jenks/7, ll. 13-16.  
26 <sup>100</sup> See, Idaho Power/1500, Carstensen/2, l. 16 – 3, l. 4.  
<sup>101</sup> Idaho Power/1500, Carstensen/2, l. 16 – 3, l. 4.

1 assumptions.<sup>102</sup> Based on the assessed environmental obligations, PacifiCorp then  
2 studied compliance alternatives to determine the cost effectiveness of identified pollution  
3 controls.<sup>103</sup> This analysis is performed on both an economic and operational basis to  
4 ensure the feasibility of potential controls.<sup>104</sup> This analysis considered reliability, capital  
5 costs, O&M costs, the life of the controls, the life of the unit itself, cost of replacement  
6 generation, and other factors.<sup>105</sup> The PacifiCorp Study, discussed above, was a part of  
7 this comprehensive planning process and addressed the specific criticisms leveled by  
8 CUB.

9 **6. Idaho Power was Actively Engaged in the Decision-making Process.**

10 CUB claims that Idaho Power has “delegate[d] away its responsibility for the making  
11 of the clean air investments at Jim Bridger 3 to PacifiCorp.”<sup>106</sup> CUB claims that this is a  
12 contributing factor to CUB’s conclusion that Idaho Power was imprudent.<sup>107</sup> CUB’s  
13 criticisms are without merit.<sup>108</sup>

14 Idaho Power owns a one-third interest in the Jim Bridger plant.<sup>109</sup> PacifiCorp owns  
15 the remaining two-thirds interest.<sup>110</sup> As co-owners of the plant, Idaho Power and  
16 PacifiCorp have designated PacifiCorp to be the plant operator.<sup>111</sup> As the operator,  
17 PacifiCorp is responsible for making all decisions required to run the plant on a day-to-day  
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19 <sup>102</sup> Docket UE 246, PAC/1400, Woollums/6, I. 3 – 7, I. 2.

20 <sup>103</sup> Docket UE 246, PAC/1400, Woollums/7, II. 3-16.

21 <sup>104</sup> Docket UE 246, PAC/1400, Woollums/7, II. 3-16.

22 <sup>105</sup> Docket UE 246, PAC/1400, Woollums/7, II. 3-16.

23 <sup>106</sup> CUB/400, Feighner-Jenks/2, II. 17-18.

24 <sup>107</sup> CUB/400, Feighner-Jenks/3, I. 19 – 4, I. 3.

25 <sup>108</sup> See, Idaho Power/1700, Carstensen/1, I. 16 – 2, I. 10.

26 <sup>109</sup> Idaho Power/1400, Carstensen/1, II. 25-26.

<sup>110</sup> Idaho Power/1400, Carstensen/1, I. 26 – 2, I. 1.

<sup>111</sup> Idaho Power/1400, Carstensen/1, I. 26 – 2, I. 1.

1 basis.<sup>112</sup> This means that PacifiCorp is contractually obligated to plan for the scope and  
2 scheduling of planned outages, plan for and undertake routine maintenance, coordinate  
3 and oversee capital projects, prepare the capital and O&M budgets, develop  
4 environmental compliance strategies, ensure system protection and compliance, and  
5 ensure fueling for the plant.<sup>113</sup> According to the agreement between Idaho Power and  
6 PacifiCorp, PacifiCorp is also responsible for ensuring that the plant is run in a prudent  
7 and skillful manner consistent with prevailing utility industry standards and in accordance  
8 with all applicable laws and regulations, including all relevant environmental regulations.<sup>114</sup>  
9 Although Idaho Power is not the plant operator, Company personnel meet regularly with  
10 PacifiCorp personnel and the Company is in nearly daily contact with the plant  
11 operators.<sup>115</sup>

12 With respect to capital projects, PacifiCorp is required to consult with Idaho Power  
13 and obtain Idaho Power's consent prior to moving forward with the investment.<sup>116</sup> For the  
14 Jim Bridger Unit 3 Scrubber Upgrade Project, Idaho Power met regularly with PacifiCorp  
15 beginning in 2006 to evaluate an environmental compliance strategy.<sup>117</sup> Idaho Power also  
16 participated in discussions with the Wyoming Division of Air Quality regarding the  
17 proposed BART requirements.<sup>118</sup> And Idaho Power consented fully to the Jim Bridger Unit  
18 3 Scrubber Upgrade Project.<sup>119</sup>

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21 <sup>112</sup> Idaho Power/1400, Carstensen/2, ll. 9-12.

22 <sup>113</sup> Idaho Power/1500, Carstensen/2, ll. 2-7.

23 <sup>114</sup> Idaho Power/1400, Carstensen/2, ll. 1-6.

24 <sup>115</sup> Idaho Power/1500, Carstensen/3, ll. 17-15.

25 <sup>116</sup> Idaho Power/1400, Carstensen/2, ll. 9-12.

26 <sup>117</sup> Idaho Power/1400, Carstensen/2, ll. 15-22.

<sup>118</sup> Idaho Power/1400, Carstensen/2, ll. 22-25.

<sup>119</sup> Idaho Power/1400, Carstensen/2, l. 25 – 3, l. 1.

1 Idaho Power's reliance on PacifiCorp was reasonable in light of PacifiCorp's  
2 extensive experience operating coal plants in the Western United States, the fact that  
3 PacifiCorp is subject to the same regulatory requirements as Idaho Power, PacifiCorp's  
4 contractual obligation to operate the plant prudently, and the fact that Idaho Power does  
5 review all major decisions made by PacifiCorp in the operation of the plant.<sup>120</sup>

6 Contrary to CUB's claims, the arrangement between Idaho Power and PacifiCorp is  
7 neither unreasonable nor imprudent. Indeed, this type of arrangement is typical for the  
8 industry.<sup>121</sup> Moreover, this type of arrangement provides for efficiencies that result in a  
9 prudently run plant at the least cost for customers.<sup>122</sup> Staff concluded that the approach  
10 taken in this case was "commonly used to implement capital projects, and therefore was  
11 reasonable."<sup>123</sup>

12 Finally, even though CUB claims that delegation to PacifiCorp was imprudent, as  
13 outlined above, all of CUB's criticisms of PacifiCorp's analysis are unpersuasive. Thus,  
14 without demonstrating that PacifiCorp acted imprudently, CUB's criticisms of Idaho  
15 Power's reliance on PacifiCorp have no evidentiary basis.

16 **7. The Construction Costs were Prudently Managed.**

17 The Jim Bridger Unit 3 Scrubber Upgrade Project was contracted via a competitive  
18 bidding process.<sup>124</sup> PacifiCorp, as the plant operator, oversaw the project and prudently  
19 managed all costs associated with the upgrade.<sup>125</sup>

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22 <sup>120</sup> Idaho Power/1500, Carstensen/2, I. 18 – 3, I. 4; see, Order No. 10-051 at 10 (PGE was prudent  
to rely on manufacturer of turbine for installation).

23 <sup>121</sup> Idaho Power/1500, Carstensen/3, II. 11-14.

24 <sup>122</sup> Idaho Power/1500, Carstensen/3, II. 5-10.

25 <sup>123</sup> Staff/1100, Colville/9, II. 1-2.

26 <sup>124</sup> Idaho Power/1300, Carstensen/8, II. 21-23.

<sup>125</sup> Idaho Power/1300, Carstensen/8, II. 23-25.

1 Staff agrees that the implementation costs were prudently managed by PacifiCorp,  
2 as the plant's operator.<sup>126</sup> Staff testifies that, "Idaho Power's effort, through PacifiCorp, to  
3 balance cost/risk in its implementation of the Scrubber Upgrade Project was primarily  
4 through lump-sum, turnkey, EPC contracts, with performance guarantees, resulting from  
5 competitive bidding processes."<sup>127</sup> Staff concludes that this was reasonable.<sup>128</sup> Staff also  
6 analyzed the construction costs and process used to manage those costs and concluded  
7 that Idaho Power was reasonable.<sup>129</sup>

8 Although CUB claims that the decision to move forward with the Jim Bridger Unit 3  
9 Scrubber Upgrade Project was imprudent, CUB has not criticized the management of the  
10 construction costs incurred to facilitate the upgrade.

11 **8. CUB Erroneously Claims that the Evidence Supports a Phase Out of**  
12 **Unit 3 between 2020 and 2025.**

13 CUB claims that had PacifiCorp updated its analysis in 2009, it would have  
14 concluded that the least cost/least risk alternative would be to phase out Jim Bridger Unit  
15 3 between 2020 and 2025.<sup>130</sup> Based on this claim, CUB proposes that for ratemaking  
16 purposes, the modeling of Jim Bridger Unit 3 should be based on a 2022 phase-out  
17 date.<sup>131</sup> There are several problems with CUB's claim. *First*, as discussed above,  
18 updating the analysis would not, in fact, result in a different decision. PacifiCorp  
19 concluded that the costs associated with the scrubber upgrade "do not materially change  
20 the financial assessment as CUB purports."<sup>132</sup>

21 \_\_\_\_\_  
<sup>126</sup> Staff/1100, Colville/8, ll. 13-15.

22 <sup>127</sup> Staff/1100, Colville/8, ll. 7-11.

23 <sup>128</sup> Staff/1100, Colville/19, ll. 22-23.

24 <sup>129</sup> Staff/1100, Colville/20, ll. 3-8.

25 <sup>130</sup> CUB/400, Feighner-Jenks/5, ll. 16-19.

26 <sup>131</sup> CUB/400, Feighner-Jenks/11, ll. 1-2.

<sup>132</sup> Docket UE 246, PAC/2000, Teply/19, l. 20 – 20, l. 6.

1           *Second*, CUB is incorrect to assume that if the scrubber upgrade had not occurred,  
2 the Company could have continued operating the unit until 2020 or 2025. Without the Jim  
3 Bridger Unit 3 Scrubber Upgrade Project, Jim Bridger Unit 3 would be non-compliant today  
4 and “without the environmental controls at issue in this case, [Jim Bridger Unit 3] could not  
5 continue to operate.”<sup>133</sup> CUB’s claims rely on entirely unsupported assumptions regarding  
6 the Company’s ability to successfully negotiate an agreement with state and federal  
7 regulators that would allow continued operation without the scrubber upgrade.<sup>134</sup>

8           *Third*, CUB’s analysis fails to consider the replacement costs of retiring the unit and  
9 fails to consider alternative compliance costs that the Company would likely incur to  
10 continue operate until 2020 to 2025.<sup>135</sup>

11           **9. CUB’s Reliance on the Boardman Closure is Misplaced.**

12           CUB frequently compares the treatment of pollution control investments at Jim  
13 Bridger Unit 3 to the Boardman coal plant.<sup>136</sup> However, comparing these two plants is  
14 inapt and the fact that Portland General Electric Company (“PGE”) chose to close  
15 Boardman in lieu of making necessary pollution control investments does not mean that it  
16 is prudent to make the same decision with respect to Jim Bridger Unit 3.<sup>137</sup>

17           *First*, the plants themselves are different. Boardman is a single unit plant; the Jim  
18 Bridger plant has four units.<sup>138</sup> Boardman had little pollution control equipment in place  
19 before PGE chose to shut it down.<sup>139</sup> Unit 3, on the other hand, had in place extensive  
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21           <sup>133</sup> Docket UE 246, PAC/1900, Woollums/2, ll. 8-11.

22           <sup>134</sup> Docket UE 246, PAC/2000, Teply/21, ll. 10-14.

23           <sup>135</sup> Docket UE 246, PAC/2000, Teply/21, ll. 14-17..

24           <sup>136</sup> See e.g., CUB/200, Feighner-Jenks/4, 12, 15; CUB/300, Feighner-Jenks/7-8; CUB/300,  
25           Feighner-Jenks/3-5.

26           <sup>137</sup> Idaho Power/1700, Carstensen/3, ll. 6-13; Docket UE 246, PAC/2000, Teply/3, ll. 5-8.

<sup>138</sup> Idaho Power/1400, Carstensen/11, ll. 11-13.

<sup>139</sup> Idaho Power/1400, Carstensen/11, ll. 11-13; Docket UE 246, PAC/1400, Woollums/38, ll. 4-7.

1 pollution control equipment before the decision was made to invest in the Jim Bridger Unit  
2 3 Pollution Control Project.<sup>140</sup> *Second*, the plants are operating in different states and are  
3 therefore subject to different requirements.<sup>141</sup> *Third*, the costs to comply with applicable  
4 regulations were substantially greater at Boardman.<sup>142</sup> *Fourth*, the decision to close  
5 Boardman occurred in 2010, well after the decision was made to invest in the Jim Bridger  
6 Unit 3 Scrubber Upgrade Project.<sup>143</sup> Thus, while CUB draws numerous comparisons  
7 between Unit 3 and Boardman, this comparison is flawed.

8 **C. The Scrubber Upgrades are Used and Useful.**

9 In its June 20, 2012, testimony, CUB argued for the first time that the Jim Bridger  
10 Unit 3 Scrubber Upgrade Project is not used and useful under ORS 757.355.<sup>144</sup> CUB  
11 claims that the scrubber upgrade, “[b]y itself, does not allow the plant to meet the Regional  
12 Haze Rules. Therefore, by itself it is not ‘useful.’”<sup>145</sup> Rather, CUB claims that the  
13 “scrubber upgrade is only useful if, when paired with other controls, the set of controls  
14 collectively allow the plant to meet the Regional Haze Rules.”<sup>146</sup> CUB proposes that “if the  
15 compliance deadline is 2015, then the elements required to meet that deadline would be  
16 considered a single project—nothing would be used and useful until the entire project was  
17 completed.”<sup>147</sup> In its August 13, 2012, testimony CUB clarified that its used and useful  
18 claim proposes that the Company should have evaluated a “comprehensive strategy that  
19 included the scrubber, SCR, and all associated and subsequent investments that are

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21 <sup>140</sup> Idaho Power/1400, Carstensen/11, ll. 13-15; Docket UE 246, PAC/1400, Woollums/38, ll. 7-8.

22 <sup>141</sup> Idaho Power/1700, Carstensen/3, ll. 9-10; Docket UE 246, PAC/1500, Teply/29, ll. 3-7.

23 <sup>142</sup> Idaho Power/1400, Carstensen/11, ll. 15-16; Docket UE 246, PAC/1400, Woollums/38, ll. 8-11.

24 <sup>143</sup> Docket UE 246, PAC/2000, Teply/3, ll. 8-10.

25 <sup>144</sup> CUB/300, Feighner-Jenks/3, l. 4 – 5, l. 20.

26 <sup>145</sup> CUB/300, Feighner-Jenks/3, ll. 8-9.

<sup>146</sup> CUB/300, Feighner-Jenks/3, ll. 9-11.

<sup>147</sup> CUB/300, Feighner-Jenks/5, ll. 1-3.

1 necessary to bring the plant into compliance with the state and federal clean air  
2 regulations.”<sup>148</sup>

3 CUB’s used and useful argument is without merit because it relies on a fundamental  
4 misunderstanding of how the Commission applies the used and useful standard and as a  
5 factual matter it is based on a flawed understanding of pollution control regulations and  
6 investments.

7 **1. The Used and Useful Standard is Distinct from the Prudence Standard.**

8 It appears that CUB’s used and useful claim is not a distinct argument from its  
9 prudence claim. CUB has apparently conflated the “useful” concept from ORS 757.355  
10 with the prudence determination to reach a conclusion that imprudent investments are not  
11 “useful.”<sup>149</sup> Thus, in order to refute CUB’s claims, it becomes necessary to first clarify the  
12 distinct legal principles underlying the Commission’s prudence standard and the ORS  
13 757.355 use and useful standard.

14 In Order No. 87-1017, the Commission acknowledged that “[s]ome of the PUC’s prior  
15 decisions appear to make the prudence of a decision to build a facility or to continue  
16 construction a criterion for determining whether the facility should be included in rate  
17 base.”<sup>150</sup> However, the Commission made clear that while prudence is relevant to the  
18 determination of the value of a facility once it is in rate base, the “prudence of a utility’s  
19 decision is not relevant to the issue of *whether* to include a facility in rate base.”<sup>151</sup> Rather,  
20 ORS 757.355 is the sole basis for determining whether to include a resource in rate base.  
21 Indeed, “the use of prudence as a separate ‘test’ for determining whether to include a  
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23 <sup>148</sup> CUB/400, Feighner-Jenks/7, ll. 13-16.

24 <sup>149</sup> CUB/400, Feighner-Jenks/7, l. 18 – 8, l. 4.

25 <sup>150</sup> *Re Portland General Electric Company*, Dockets UE 47/UE 48, Order No. 87-1017, 86 P.U.R.4th  
463, 472 (1987).

26 <sup>151</sup> *Id.*

1 plant in rate base does not have a basis in Oregon law.”<sup>152</sup> Thus, prudence is applicable  
2 to a determination of the amount of cost recovery; it does not go to the question of  
3 whether recovery can occur. That question is governed exclusively by ORS 757.355.

4 The Commission reiterated this analysis in Order No. 89-507, which governs least-  
5 cost planning.<sup>153</sup> When discussing the ratemaking impact of least-cost plans, the  
6 Commission noted that once a resource is used and useful it must be included in rate  
7 base.<sup>154</sup> The full cost of the resource, however, “is not necessarily includable in rate  
8 base.”<sup>155</sup> Reiterating the conclusion reached in Order No. 87-1017, the Commission  
9 stated: “the prudence of a utility’s decisions regarding a resource are not relevant to the  
10 question of inclusion in rate base, but are relevant in determining the valuation of the  
11 facility to be placed in rate base.”<sup>156</sup>

12 CUB’s conflation of these two concepts can be seen in the example provided in its  
13 testimony related to a hypothetical carbon sequestration project.<sup>157</sup> CUB claims that such  
14 an investment “would be used the minute the project became functional, but would not be  
15 a useful least cost/least risk investment without a carbon regulatory regime and a great  
16 deal of technical and economic analysis.”<sup>158</sup> CUB’s testimony reveals the error in its  
17 argument—the used and useful standard has no requirement that a particular investment  
18 be the “least cost/least risk investment.” Rather, in this example, the carbon sequestration  
19 investment is both used and useful immediately upon being placed into service. The  
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21 <sup>152</sup> *Id.*

22 <sup>153</sup> *Re Least-Cost Planning for Resource Acquisitions*, Docket UM 180, Order No. 89-507, 102  
P.U.R.4th 301, 1989 WL 418453 (1989).

23 <sup>154</sup> *Id.* at 7

24 <sup>155</sup> *Id.*

25 <sup>156</sup> *Id.*

26 <sup>157</sup> CUB/400, Feighner-Jenks/7, l. 18 – 8, l. 4.

<sup>158</sup> CUB/400, Feighner-Jenks/7, l. 18 – 8, l. 4.

1 question of whether the investment was reasonable goes to the prudence of the  
2 investment and the amount that is allowed into rates.

3 **2. The Jim Bridger Unit 3 Scrubber Upgrade Project is Used and Useful.**

4 The ORS 757.355 used and useful standard has two requirements. Costs  
5 associated with utility plant can be included in rates only after (1) the property is in  
6 service—or “used”; and (2) the property is reasonably necessary to the provision of  
7 electrical service—or “useful.”

8 The demonstration that a utility plant is “used” is generally straightforward. Thus, an  
9 electric plant is “used” when it is transmitting power into the grid.<sup>159</sup> In another case, to  
10 demonstrate that its new Port Westward generating facility was “used,” the Commission  
11 required PGE to demonstrate that the operational testing was complete and the plant had  
12 been released to the system dispatcher for full communal operation.<sup>160</sup>

13 To meet the second, “useful” prong of the standard, the resource must provide a  
14 benefit to utility customers. However, that benefit need not be substantial. On the  
15 contrary, the Commission has found that a “modicum of usefulness” will suffice.<sup>161</sup> Thus,  
16 an electric generator was useful when its expected output would be necessary within a  
17 reasonable period of time and it provided benefits to ratepayers.<sup>162</sup> Similarly, a generating  
18 facility is useful even when it is brought on-line during a period of energy surplus.<sup>163</sup>

19 Here, CUB does not dispute that the Jim Bridger Unit 3 Scrubber Upgrade Project is  
20 “used.”<sup>164</sup> Thus, the only dispute is whether the scrubber upgrade is “useful.” CUB claims

21 <sup>159</sup> *Re Portland Gen. Elec. Co.*, Docket UE 21, Order No. 84-898, 63 P.U.R.4th 642, 645 (1984).

22 <sup>160</sup> *Re Portland Gen. Elec. Co.*, Dockets UE 180/181/184, Order No. 07-015 at 55 (Jan. 12, 2007).

23 <sup>161</sup> Order No. 87-1017, 86 P.U.R.4th at 471 (output necessary within six years was sufficient to  
demonstrate usefulness).

24 <sup>162</sup> *Id.*

25 <sup>163</sup> Order No. 84-898, 63 P.U.R.4th at 645 (plant provided, *inter alia*, greater reliability and dispatch  
flexibility and was therefore useful).

26 <sup>164</sup> CUB/300, Feighner-Jenks/3, ll. 7-8.

1 that because the scrubber upgrade is insufficient, by itself, to meet the BART  
2 requirements, it should not be considered “useful” until all other BART-related pollution  
3 control investments have been made.<sup>165</sup> To support this claim, CUB contends that the  
4 “argument that the scrubber is currently used and useful because it is removing pollution  
5 from the plant’s emissions is specious.”<sup>166</sup> As a factual matter, this claim misunderstands  
6 how the state of Wyoming has evaluated BART compliance, which was undertaken for  
7 SO<sub>2</sub>, NO<sub>x</sub>, and PM on a pollutant-specific basis for each unit.<sup>167</sup> In other words, while  
8 CUB would like to believe that BART compliance is binary—the Company is either in full  
9 compliance or it is not—the state of Wyoming views each pollutant distinctly. Wyoming  
10 “required stand-alone installation timelines for the emission control equipment included in  
11 the state’s BART determination.”<sup>168</sup> So the Jim Bridger Unit 3 Scrubber Upgrade Project  
12 “meet[s] the BART requirement as it pertains to SO<sub>2</sub> for that equipment as established by  
13 the state of Wyoming.”<sup>169</sup> Contrary to CUB’s claims that all BART investments must be  
14 lumped together, the “Jim Bridger Unit 3 SCR is a separate and distinct project that when  
15 installed will meet the BART requirement established for that equipment as it pertains to  
16 NO<sub>x</sub>.”<sup>170</sup> In this case, the scrubber upgrade project clearly provides the modicum of  
17 usefulness required to satisfy the ORS 757.355 standard.

18 Moreover, if the Commission were adopt some form of CUB’s understanding of the  
19 used and useful standard, it would be potentially harmful to customers. Underlying CUB’s  
20 argument is the belief that utilities will be able to postpone pollution control investments  
21 until the applicable regulations are finalized and the compliance deadline is looming. This

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22 <sup>165</sup> CUB/300, Feighner-Jenks/3, ll. 9-13.

23 <sup>166</sup> CUB/400, Feighner-Jenks/7, ll. 17-18.

24 <sup>167</sup> Docket UE 246, PAC/1500, Teply/29, ll. 19-20.

25 <sup>168</sup> Docket UE 246, PAC/1500, Teply/29, ll. 20-22.

26 <sup>169</sup> Docket UE 246, PAC/1500, Teply/29, l. 22 – 30, l. 1.

<sup>170</sup> Docket UE 246, PAC/1500, Teply/30, ll. 1-3.

1 is untrue. Indeed, if the co-owners of Jim Bridger Unit 3 waited until all applicable  
2 regulations were final and well-defined, there would be “no choice but to shut down units  
3 because it would not be able to achieve compliance in a timely manner, and operating out  
4 of compliance is not an option.”<sup>171</sup> Staff concluded that “postponing action while awaiting  
5 a clear regulatory path” is unreasonable (and imprudent) “given what information the  
6 Company had or reasonably could have had.”<sup>172</sup>

7 CUB proposal also assumes the compliance deadlines are fixed, which is incorrect  
8 and ignores the reality of pollution control regulations. Multiple regulations overlap with  
9 one another and drive the decision to invest in pollution controls.<sup>173</sup> Indeed, even CUB’s  
10 own testimony recognizes that the Jim Bridger Unit 3 Scrubber Upgrade Project will  
11 ensure compliance with several different regulations that all have different compliance  
12 deadlines.<sup>174</sup> So using one particular regulation to define a compliance deadline is simply  
13 unrealistic.

#### 14 IV. CONCLUSION

15 For the reasons set forth above, the Commission should conclude that Idaho  
16 Power’s investment in the Jim Bridger Unit 3 Scrubber Upgrade Project was prudent  
17 because it ensures that the unit is operating in compliance with all applicable  
18 environmental regulations and was the least cost, adjusted for risk, alternative for  
19 customers. In addition, the Commission should find that the scrubber upgrade is used and  
20 useful as required by ORS 757.355.

21 \_\_\_\_\_  
22 <sup>171</sup> Docket UE 246, PAC/1400, Woollums/24, ll. 17-19.

23 <sup>172</sup> Staff/1201, Colville/2 (“With state permit compliance deadlines and impending federal  
24 compliance deadlines, I would not consider postponing action while awaiting a clear regulatory path  
to be reasonable given what information the Company had or reasonably could have had. As a  
result, such a postponement would not be prudent.”).

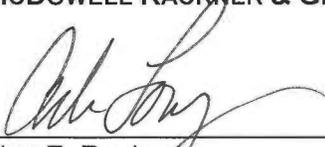
25 <sup>173</sup> Docket UE 246, PAC/1400, Woollums/24, l. 22 – 25, l. 2.

26 <sup>174</sup> See e.g., CUB/200, Feighner-Jenks/8 (acknowledging that scrubber upgrade will support  
compliance with RHR and MATS).

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**MCDOWELL RACKNER & GIBSON PC**



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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document in UE 233 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.

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