

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY,

Petition for Certificate of Public
Convenience and Necessity.

MEMORANDUM

This memorandum serves to clarify details regarding the remaining procedural schedule in this matter. The remaining procedural schedule is as follows:

Event	Deadline
All Party Motions to Admit Testimony and Exhibits and Declarations in Support Due	April 25, 2023, 3:00 p.m.
All Party Objections to Motions to Admit Testimony and Exhibits Due	May 2, 2023, 3:00 p.m.
All Party Opening Briefs	May 11, 2023, 3:00 p.m.
All Party Reply Briefs	May 25, 2023, 3:00 p.m.
Target Date for Commission Decision	June 30, 2023

The April 19, 2023, and April 20, 2023, Hearing

The video recordings for public sessions of the evidentiary hearings in this matter are available on the Commission’s website. They may be found by going to this [website](#)¹ and looking for the section labeled “Events Archive.” There, individuals can search for the relevant videos by date or by searching for the videos labeled: “Special Public Meeting PCN5 Idaho Power Certificate of Public Convenience and Necessity Evidentiary Hearing.” There are two videos related to the April 19, 2023, hearing and one video related to the April 20, 2023, hearing.

The video from the highly confidential session on April 20, 2023, will be provided to those parties authorized to view it upon receipt of a written request submitted to the Filing Center.

A transcript from the evidentiary hearing will be prepared and should be available for the parties to order directly from the transcriptionist no later than Friday, April 28, 2023. A docket entry

¹ <https://www.oregon.gov/puc/news-events/Pages/default.aspx>

will announce the availability of the transcript and contact information for ordering it directly from the transcriptionist.

Motions to Admit Testimony and Exhibits and Declarations in Support

The parties must file a motion to admit testimony and exhibits into the evidentiary record as well as declarations in support of any testimony or exhibits by 3:00 p.m. on April 25, 2023.

Although the parties have already filed extensive testimony and exhibits in this proceeding, parties must still officially move to admit testimony and exhibits into the evidentiary record for it to be considered by the Commission in resolving Idaho Power's petition. This includes any evidence a party intends to cite in its opening and reply briefs. I discussed these requirements in my April 6, 2023, April 14, 2023, and other memoranda. Chief Administrative Law Judge Nolan Moser discussed these requirements in the March 23, 2023, workshop. Some parties included such a list in their cross-examination statements, and I noted I would consider such lists as motions to admit testimony and exhibits. Parties need not refile such lists but may choose to do so by the April 25, 2023, deadline. Note that even if parties included such a list in their cross-examination statements, they still need to file declarations in support of such testimony and exhibits if they have not already done so.

A motion to admit testimony and exhibits need only state that the party moves to admit testimony and exhibits into the record and include a list of the specific exhibits the party seeks to have admitted. For example: "Party A moves for admission of the following pre-filed testimony and exhibits into the record in this proceeding: Party A/100 (Testimony of Witness 1); Party A/101 (Witness Qualification Statement); Party A/102 102 (Map)." Any exhibit not included in this list may not be admitted into the record and therefore cannot be relied upon in briefing. Parties may also request that the Commission take official notice of items listed under OAR 860-001-0460 as part of the April 25, 2023, filing.

Additionally, because the parties have filed extensive materials in different filings throughout this proceeding, the parties should identify the date such an exhibit was filed and the name of the corresponding docket entry. For example: "Party A/102 was attached to Party A's cross-examination statement filed on April 10, 2023." Parties should also indicate what documents, if any, are subject to this matter's modified protective order.

While not required, parties may elect to compile their exhibits and file them alongside their motion to admit ensuring the testimony and exhibits can be easily located by myself and the Commissioners. The parties are also reminded that because the Administrative Hearings Division and Commissioners do not have access to Huddle, parties should not state that materials are in Huddle. Rather, as I have mentioned several times orally and in written memoranda, parties must ensure their exhibits were filed in this docket.

In addition to the motion to admit testimony and exhibits, the parties also must file declarations in support of any testimony and exhibits. This declaration must be a signed statement from the witness stating that they declare under penalty of perjury under the laws of the State of Oregon that they prepared testimony and exhibits in this proceeding, including a list and citation of those

exhibits, and that to the best of their knowledge and belief, declare the statement to be true and that it was made for use by the Commission as evidence in this proceeding. For exhibits that were not prepared by the party (for example, a document from a government agency), the declarant should state where the document was obtained and a statement that it is a true and correct version of the document. Every exhibit included in the motion to admit testimony and exhibits must be included in the list in a supporting declaration.

Objections to Motions to Admit Testimony and Exhibits

The parties may file any objections to motions to admit testimony and exhibits in this matter by 3:00 p.m. on May 2, 2023. These objections may relate to any material listed in a motion to admit testimony and exhibits, or an equivalent motion contained in a cross-examination statement. Additionally, parties may object to and request that portions of the evidentiary hearing transcript be struck from the record in their objections due on May 2, 2023. No further briefing on the motions will be allowed unless requested by me.

As part of my review of any evidentiary disputes, I will be applying the Commission's standards for evidence found at OAR 860-001-0450. These rules contemplate that the Commission will consider relevant evidence that "make[s] the existence of any fact at issue in the proceedings more or less probable that it would be without the evidence" and "if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs."² Relevant evidence "[m]ay be excluded if the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or undue delay."³ The parties are advised that many evidentiary objections may go to the weight afforded to the evidence by the Commission and not its admissibility.

I will issue a ruling resolving any evidentiary disputes in advance of the parties' opening brief deadline. Given the size and complexity of the evidentiary record here, the parties should anticipate it will take at least one week to prepare a ruling on the evidentiary record. In their briefing, parties may only cite evidence that is admitted into the evidentiary record through that ruling.

Opening and Reply Briefs

The parties will file their opening briefs by May 11, 2023, at 3:00 p.m. The opening brief is the parties' opportunity to make their arguments for or against Idaho Power's petition based on the evidence included in the record. Parties may only cite evidence that is part of the evidentiary record and may not cite material, including portions of the hearing transcript, that have been excluded from the record. In framing their arguments, the parties should make their arguments in the context of the statutory and regulatory criteria for the Commission's review of petitions for a certificate of public convenience and necessity.⁴

² OAR 860-001-0450(1)(a)-(b).

³ OAR 860-001-0450(1)(c).

⁴ See ORS 758.015; OAR 860-025-0030; OAR 860-025-0035; OAR 860-025-0040.

The parties will then file reply briefs by May 25, 2023, at 3:00 p.m. responding to the other parties' arguments. Parties are not allowed to make new arguments in their reply briefs, however, they may reasonably respond to other parties' arguments. The parties are advised that they must comply with the terms of the modified protective order and protect any confidential or highly confidential information from public disclosure in preparing their briefing.

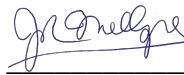
For ease, any party that intends to make any arguments that rely on highly confidential information may elect to include those arguments in a separate opening or reply brief limited to just the subject matter designated as highly confidential.

After considering the parties' briefing, the Commission will take the matter under advisement and issue a final order. The target date for a Commission decision is June 30, 2023.

Procedural Questions

As the parties prepare documents to meet the deadlines described above, the parties should direct all procedural questions to Chief Administrative Law Judge Moser. Additionally, parties may request examples of the documents discussed above by contacting Chief Administrative Law Judge Moser.

Dated this 21st day of April, 2023, at Salem, Oregon.



John Mellgren
Administrative Law Judge