

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 233

In the Matter of
IDAHO POWER COMPANY,
Request for a General Rate Revision.

RULING

DISPOSITION: MOTION TO AMEND PROCEDURAL SCHEDULE
GRANTED; MOTION TO STRIKE CONDITIONALLY
GRANTED IN PART

On May 9, 2012, the Citizens’ Utility Board (CUB) and the Oregon Industrial Customers of Idaho Power (OICIP) filed a motion to amend the procedural schedule and a motion to strike portions of the rebuttal testimony of Idaho Power witness John Carstensen. Idaho Power filed responses to the motions on May 11, 2012, and on May 14, 2012, CUB and OICIP filed a reply to Idaho Power’s response to the motion to strike. In this ruling, I grant the motion to amend the procedural schedule, and conditionally grant the motion to strike one portion of Mr. Carstensen’s testimony.

Motion to Amend the Procedural Schedule

CUB and OICIP

CUB and OICIP request additional time to engage in discovery, file surrebuttal testimony, and allow CUB and OICIP time to respond to intervenors’ legal briefs. CUB and OICIP note that Mr. Carstensen’s rebuttal testimony refers to confidential documents, but does not include unredacted versions of those documents as exhibits. CUB and OICIP also request the opportunity to conduct discovery regarding new information provided in Mr. Carstensen’s rebuttal testimony, including information regarding meetings between Idaho Power and PacifiCorp, dba Pacific Power.

Idaho Power

Idaho Power does not object to modifying the procedural schedule to allow additional discovery, but notes that if intervenors are granted the opportunity to file additional testimony, Idaho Power should have the opportunity to respond to that testimony.

Resolution

I grant CUB's and OICIP's unopposed request for additional time to engage in discovery. At the prehearing conference scheduled for May 24, 2012, I will discuss with the parties a proposed schedule.

Motion to Strike

CUB and OICIP

CUB and OICIP ask to strike two portions of the rebuttal testimony of Mr. Carstensen. The first portion involves Mr. Carstensen's testimony regarding an analysis Idaho Power received from Pacific Power in April or May of 2012. The analysis, which Pacific Power performed in 2008, considers the costs of either replacing or upgrading and continuing to operate Jim Bridger Unit 3, a coal-fired generating plant co-owned by Pacific Power and Idaho Power. The parties argue that Pacific Power seeks to bolster and subvert the record in this docket by passing information to Idaho Power, and that the information should be stricken because Idaho Power did not have the study at the time it made its decision to consent to investment in plant upgrades.

The second portion of Mr. Carstensen's testimony that the parties seek to strike cites to unredacted parts of a confidential appendix attached to Pacific Power's 2011 Integrated Resource Plan Update in docket LC 52. CUB and OICIP argue that parties who are not signatories to the protective order in LC 52 have no means to evaluate the credibility of Mr. Carstensen's reliance on the appendix, because they can see only the unredacted parts cited by Mr. Carstensen. The parties also argue, again, that evidence that did not exist at the time Idaho Power made its determination regarding the Jim Bridger plant cannot be admitted to demonstrate the prudence of that determination.

More generally, CUB and OICIP argue that both portions of Mr. Carstensen's rebuttal testimony take this docket beyond its original scope, by introducing documents and information recently provided by Pacific Power. The parties also note that Idaho Power failed to supplement its answers to the parties' data requests with the new information it received from Pacific Power, and argue the testimony based on that new information, as well as the new information itself, should be excluded. Finally, CUB and OICIP note that Pacific Power appears to have given Idaho Power unredacted versions of exhibits Pacific Power previously designated as confidential in another docket. CUB and OICIP argue strongly that both Pacific Power and Idaho Power should be bound by the protective orders in place in that docket and barred from using the exhibits here.

Idaho Power

Idaho Power first notes that this Commission's prudence standard is an objective one that considers not just what a utility relied on at the time of its decision, but also information that was available, even if the utility does not provide evidence that it actually consider that information in making its decision. Idaho Power argues that it properly included analysis from Pacific Power because it provided relevant evidence regarding the information that was available at the time the decision was made to move forward with plant upgrades.

With regard to the confidential appendix, Idaho Power argues its reference to the appendix was not directed toward the prudence of Idaho Power's decisions here, but rather was intended to rebut an implication in CUB's testimony that Pacific Power's decision to convert a different coal plant to gas was relevant to the prudence of the Jim Bridger plant. Idaho Power also notes that it cited to and relied on the redacted version of the 2011 IRP Update, which is publicly available.

Resolution

I conditionally grant CUB's and OICIP's motion to strike the second disputed portion of Mr. Carstensen's testimony. First, the parties argue that Idaho Power is barred from introducing evidence subsequently provided to it by another utility to demonstrate prudence. However, as Idaho Power notes, our prudence standard looks both to what a utility knew at the time it made its decision and to the objective reasonableness of the utility's decision, taking into account historical facts and circumstances. Striking studies that examine those facts and circumstances from the record because the utility does not prove that it relied on those studies in making its decision, or because the studies themselves were created after the utility's decision, would misapply our prudence standard.¹ I reject the parties' argument that studies provided to a utility after it acts are *per se* barred from a prudence analysis.

Second, the parties misapply the Commission's rules regarding protective orders. Our rules distinguish between signatories to a protective order, who are barred from using information obtained under that order in other dockets, and the designators of confidential information, who are the owners of that information and may, if they choose, use it elsewhere.² Pacific Power, as the owner of the information in question here, may choose to give that information to another utility. If it does so without requiring that utility to sign a confidentiality agreement, the utility may then use that information as it wishes.

¹ See, e.g., *In Re PacifiCorp, dba Pacific Power, Application for an Accounting Order Regarding Excess Net Power Costs*, Docket No. UM 995, Order NO. 02-469 at 4 (Jul 18, 2002) (in prudence analysis, Commission examines objective reasonableness of a company's actions).

² For example, our rules allow designating parties to give written consent to other parties' using their confidential information for purposes other than participating in the proceedings. See OAR 860-001-0080(3)(b) (noting that parties who sign the "consent to be bound" section of a protective order certify that they will not disclose the information unless the designating party gives written consent).

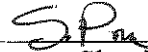
ISSUED: May 22, 2012

CUB's and OICIP's arguments regarding Idaho Power's failure to supplement its responses to the parties' data requests are resolved above; the parties will be granted additional time to conduct discovery regarding the new information provided by Idaho Power.

Finally, CUB and OICIP argue that parties who were not signatories to the LC 52 protective order have no means to evaluate Idaho Power's citation to an unredacted portion of that record, because they cannot review redacted portions of the exhibit for context. I agree. A protective order has been issued for this docket; Idaho Power should either remove the citation or find a means to introduce the confidential redacted portions of the exhibit into the record.

The motion to strike is conditionally granted in part. Idaho Power has ten days to introduce the confidential version of LC 52, 2011 Integrated Resource Plan Update at Appendix A pp. 86-90 into the record in this docket. Otherwise, I will strike Idaho Power/1400 Carstensen/12 lines 14-16 and fn. 10 from the rebuttal testimony of Mr. Carstensen.

Dated this 22nd of May, 2012, at Salem, Oregon.



Shani Pines

Administrative Law Judge