

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 233

In the Matter of

IDAHO POWER COMPANY

Request for General Rate Revision.

RULING

DISPOSITION: MOTION TO COMPEL GRANTED

On June 12, 2012, the Citizens' Utility Board of Oregon filed a 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. Idaho Power filed a response to the motion to compel on June 27, 2012, and CUB filed a reply on July 11, 2012.¹ In this ruling, I grant CUB's motion.

Parties' Positions

CUB asks that the Commission compel Idaho Power to respond to three data requests addressing the decision to invest in a Selective Catalytic Reducer (SCR) at Unit 3 of the Jim Bridger Power Plant, and cost estimates for capital investments related to the Regional Haze Rules (RHR).² CUB argues that analyzing the prudence of clean air investments made by Idaho Power at the Jim Bridger Unit 3 plant requires a review of "all investments that have been made, are being made, and will be made at Bridger 3 in order to comply with clean air regulations."³ CUB argues that Idaho Power is attempting to place each clean air investment it makes before the Commission separately, to avoid a comprehensive review of the overall prudence of its investment strategy. CUB notes that the investment at issue in this docket is not sufficient to comply with Wyoming's State Implementation Plan (SIP) without the SCR, and that a review of the prudence of the investments in Jim Bridger without a larger review of all clean air investments being considered would be incomplete.

Idaho Power responds that the sole remaining issue in this docket is the prudence of incremental pollution control investments, consisting only of the scrubber upgrades that were installed at Jim Bridger Unit 3 during the 2011 test year.⁴ Idaho Power states that it intends to demonstrate

¹ In a ruling dated June 14, 2012, I granted CUB additional time to file its reply.

² The data requests ask when Idaho Power became aware that a SCR would be required at Jim Bridger Unit 3, whether and when Idaho Power consented to the SCR investment, and whether Idaho Power had certain estimates prepared in relation to the SCR investment and any additional capital investments related to the RHR.

³ CUB Motion to Compel at 4.

⁴ Idaho Power Response at 2.

the prudence of its decision to invest in scrubber upgrades with evidence that the decision was objectively prudent, rather than relying on evidence of what Idaho Power actually knew when it made the decision.


Resolution

Idaho Power first argues that it should not have to respond to data requests regarding its subjective decision-making because it intends to demonstrate prudence by showing the objective reasonableness of its investment strategy. While Idaho Power is correct that a utility may demonstrate prudence with objective evidence, Idaho Power's testimony in this docket does contain references to the company's subjective analysis of its investment strategy.⁵ Idaho Power may not refer to what it knew and the evidence on which it relied in making contemporaneous decisions and then foreclose other parties from seeking information regarding its subjective decision-making. Based on Idaho Power's testimony, I find that questions regarding Idaho Power's subjective decision-making are permissible in discovery.

Idaho Power next argues that CUB's data requests are irrelevant because they exceed the scope of this docket. Idaho Power argues that only the prudence of the scrubber upgrade investment made in 2011 is relevant. In the alternative, Idaho Power argues that if the Commission finds the Company's reliance on PacifiCorp's Capital Projects Study for Bridger Unit 3 makes SCR-related data requests relevant, we should still exclude more general requests regarding capital investment estimates related to the RHR. Under ORCP 36(B), "parties may inquire regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any other party." Here, CUB argues the discovery requests are relevant to determine the contextual prudence of Idaho Power's investment decision. At this stage in the proceeding, I will not foreclose a party from investigating pollution control investments that Idaho Power made, or could have made, based on the available information.

CUB's motion is granted. Idaho Power's data responses are due July 30, 2012. CUB may address information contained in Idaho Power's data responses in its rebuttal testimony, currently scheduled for August 13, 2012.

Dated this 18th day of July 2012, at Salem, Oregon.



Shani M. Pines
Administrative Law Judge

⁵ See, e.g., Idaho Power/1400 at 3-4 (Idaho Power's approval of project "was based on an implicit assumption that it would be more cost effective to make the required upgrades than to idle the plant and procure a replacement resource. For this reason, the Company focused on the least cost option that would allow the plant to continue operating in compliance with the applicable and anticipated environmental regulations.").