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August 25, 2008

VIA ELECTRONIC FILING

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

Re: Docket No. UE 195

Enclosed for filing in the above-referenced docket are an original and one copy of Idaho Power Company's Motion for Leave to File Reply and Idaho Power's Reply to Staff's Response to Motion for Clarification.

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

Very truly yours,

A handwritten signature in cursive script that reads "Wendy L. McIndoo".

Wendy L. McIndoo

cc: Service List

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in UE 195 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

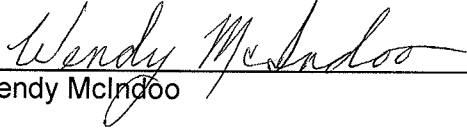
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DATED: August 25, 2008.



Wendy McIndoo
Legal Assistant

1 BEFORE THE PUBLIC UTILITY COMMISSION
2 OF OREGON

3 UE 195

4 In The Matter of the Application of IDAHO
5 POWER COMPANY for Authority to
6 Implement a Power Cost Adjustment
7 Mechanism for Electric Service to
8 Customers in the State of Oregon.

9 IDAHO POWER'S REPLY TO STAFF'S
10 RESPONSE TO MOTION FOR
11 CLARIFICATION

12 On April 28, 2008, the Public Utility Commission of Oregon ("Commission")
13 adopted a power cost adjustment mechanism for Idaho Power Company ("Idaho Power").
14 The mechanism—stipulated to by all parties to this docket—includes an Annual Power
15 Cost Update ("APCU") and a Power Cost Adjustment Mechanism ("PCAM"). The APCU
16 acts to reset base rates for the April through March APCU/PCAM Year, with an October
17 Update and a March Forecast. The PCAM operates to calculate deviations between
18 actual power cost expenses and those covered by the base rate, to be deferred for later
19 recovery in rates.¹

20 In a telephone conference in early July, Staff attorney Stephanie Andrus
21 mentioned that even with a PCAM, the Commission might require an additional annual
22 application for deferred accounting in order for the Company to be allowed to book the
23 PCAM variances for later inclusion in rates. At that point, the APCU/ PCAM year had
24 already begun. The Company subsequently filed its Motion for Clarification ("Motion"). In
25 its Motion, the Company proposed three alternative ways to address the application for
26 deferred accounting in the unique circumstances presented by the PCAM.

¹ The Parties did agree to numerous changes to the PCAM originally proposed in the Application. However, its basic characteristics, including an annual updating of base rates based upon fall and spring forecasts, and a deferral of variances between the forecast amounts and power costs actually incurred, were included in the stipulated mechanism.

1 First, the Company argued that the APCU/PCAM does not require deferred
2 accounting under ORS 757.259, and that therefore the Company was not required to
3 make a redundant filing in order to recover amounts deferred under the PCAM. Second,
4 the Company pointed out that virtually all of the information required by the Commission's
5 rules governing the approval of deferred accounting petitions was included in the
6 Company's March Forecast filing and therefore the Commission could reasonably
7 construe that filing as a petition for deferred accounting. Finally, the Company included in
8 its Motion all the information required under the Commission's rules for deferred
9 accounting petitions and noted that, if necessary, the Commission could treat the Motion
10 as a petition for deferred accounting.

11 In its response filed on August 14, 2008, ("Staff's Response") Staff argues that:
12 (1) the PCAM is subject to the deferred accounting statute, ORS 757.259, and that
13 therefore the Company must file an annual petition for deferred accounting if it wishes to
14 recover (or presumably, refund) variances under that mechanism; and (2) the Commission
15 should reject the Company's request that its March tariff filing be treated as a deferral
16 petition because such a construction would not provide the Commission or other
17 stakeholders notice that a deferral petition had been filed.²

18 For the purposes of this Reply, Idaho Power will *assume* that the PCAM portion of
19 APCU/PCAM is subject to the deferred accounting statute, and offers the following
20 response to Staff's second argument.

21 ***First, the requirements of the deferral statute are satisfied by the***
22 ***APCU/PCAM proceedings and the required tariff filings.*** The requirements for a
23 petition for a deferral are laid out in ORS 757.259 as follows:

24

25 ² Staff does not oppose the Company's request that the Motion itself be allowed as a deferral
26 petition.

1 Upon application of a utility or ratepayer or upon the commission's own
2 motion and after public notice, opportunity for comment and a hearing if
3 any party requests a hearing, the commission by order may authorize
4 deferral of the following amounts into rates: . . . Identifiable utility
5 expenses or revenues, the recovery or refund of which the commission
6 finds should be deferred in order to minimize the frequency of rate
7 changes or the fluctuation of rate levels or to match appropriately the
8 costs borne by and benefits received by ratepayers.³

6 In addition, the statute states that a deferral may be authorized for a period not to exceed
7 12 months beginning on or after the date of application.⁴

8 Thus, the statute requires that an application be filed, that interested parties be
9 provided with notice of the application and an opportunity for a hearing, and that the
10 duration of the deferral will be measured from when the application was filed. All of these
11 requirements were fulfilled by the Application the Company filed in which it requested
12 implementation of a power cost adjustment mechanism, including a true-up mechanism
13 ("Application"), the Settlement Stipulation filed in March of 2008, and the testimony,
14 exhibits, and tariffs filed in March of 2008. In the Application, the Company provided all
15 interested parties with ample notice of and an opportunity to be heard with respect to its
16 proposed PCAM. On this point, it is worth emphasizing that the Company's original
17 proposal described in its Application included a true-up component, and thus, to the extent
18 this true-up component constitutes a deferral under the statute, all interested parties were
19 notified of the potential deferral from the beginning. Interested parties had a second and
20 third opportunity to comment on the true-up methodology (deferral) when the Company
21 filed the Stipulation and when it filed its supplemental testimony, exhibits, and tariffs in
22 March. *Finally*, the filings made pursuant to the Idaho Power's APCU/PCAM are all
23 annual filings, thereby limiting the Company's ability to begin booking deferred amounts on
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25 ³ ORS 757.259(2)(e).

26 ⁴ ORS 757.259(4).

1 an annual basis only. Thus, for all of these reasons an additional, stand-alone deferral
2 application is not needed to satisfy the statute.

3 **Second, the Commission's rules governing deferral applications were also**
4 **substantially satisfied by the filings already made by the Company in applying for its**
5 **PCAM, and by its subsequent tariff filings.**

6 As discussed in the Motion, the Company's Application that initiated this docket,
7 together with the March Forecast tariff filings, contain virtually all of the information required
8 by OAR 860-013-0036. Thus, the Commission has the authority to construe the Company's
9 Application and the other subsequent filings to accept them in satisfaction of its rules
10 governing deferral petitions. This is precisely the approach the Commission took in
11 UM 1224/1225 when Utility Reform Project ("URP") filed a "procedurally insufficient" deferral
12 petition that "provided little information about why a deferral [was] justified." Instead of
13 requiring URP to refile the deferral application, the Commission stated that it would "liberally
14 construe URP's deferral application as a stand-alone filing, using its complaint to provide the
15 needed context."⁵

16 Moreover, OAR 860-013-0036 states that "[d]ocuments required to be filed with the
17 Commission within a specified time but which fail to substantially comply with these rules,
18 the Commission's orders, or statutes may be accepted as conditionally received to satisfy
19 the filing date." Thus, to the extent the Company omitted any information in its Application
20 or in its follow-up March Forecast that is required for deferral petitions, the Commission can
21 accept the information filed with its Motion to satisfy a March filing deadline.

22 **Third, as a practical matter, a separate deferral application would not provide**
23 **Staff, the Commission or any interested party with any valuable information**
24 **whatsoever.**

25 _____
26 ⁵ Re Utility Reform Project and Ken Lewis, Order No. 07-351, p. 6.

1 Idaho Power's APCU/PCAM is structured so that each spring, at the beginning of the
2 APCU/PCAM year, the Company makes a forecast for the upcoming year that is based on
3 the most current data available. That March forecast—together with the October Update—
4 will serve as the basis for the new rates that will go into effect the following June and
5 represents the Commission approved method to estimate power supply expenses for the
6 coming year. At the time of the March forecast, the Company will have no basis on which to
7 inform the Commission that it believes that there will be amounts to be deferred the
8 following year, let alone any basis to predict the direction or magnitude of such variances.
9 And yet, if Staff's position is adopted, March is precisely when the Company will, out of
10 necessity, make an annual deferral filing. Accordingly, Staff is advocating that the Company
11 should be required to make a duplicative filing at the beginning of each APCU/PCAM year in
12 which it will provide the Commission with no additional, useful information beyond that
13 contained in the APCU/PCAM. The Commission's rules should not be construed to require
14 such an "empty" exercise.

15 **Finally, even if the Commission concludes that in the future the Company**
16 **should make a separate deferral filing each March, the Commission should exercise**
17 **its discretion to construe the 2008 March Forecast as a deferral application.**

18 While the Company does not believe that Oregon law requires it to file a separate
19 deferral application each March, in addition to its March Forecast. However, the Company
20 understands that the Commission may disagree. In that case, for the following reasons, the
21 Commission should impose this requirement on a prospective basis only and exercise its
22 discretion to construe the 2008 March Forecast as a deferral application:

23 1. As explained above, as a practical matter, all interested parties were on notice
24 that the APCU/PCAM adopted by the Commission would contain a true-up
25 mechanism that would allow the Company to defer amounts for later inclusion in
26

1 rates. All parties to this docket *assumed* that Idaho Power would begin deferring
2 amounts for the 2008-2009 APCU/PCAM year, beginning in May of 2008;
3 2. For this reason, no party was prejudiced by the Company's failure to file a stand-
4 alone deferral application in March;
5 3. Upon notice by Staff that the Company might be required to file a separate
6 deferral application, the Company acted promptly to file its Motion;
7 4. The Company will be substantially harmed if the Commission refuses to exercise
8 its discretion to treat the March Forecast as a deferral application. Assuming that
9 the Commission accepts Staff's recommendation and rejects the March tariff
10 filing as compliance with the deferral statute, but does accept the Company's
11 Motion as a deferral application, the Company will be unable to recover its
12 excess power costs for May, June, and half of July of 2008. The Company
13 estimates that the excess costs incurred in those months that would otherwise be
14 allowed to be deferred under the PCAM would be approximately \$2 million
15 dollars.

16 Thus, even if in general, the Commission decides to require the Company to make
17 an annual deferral application for the deferral balances under the PCAM, it would be

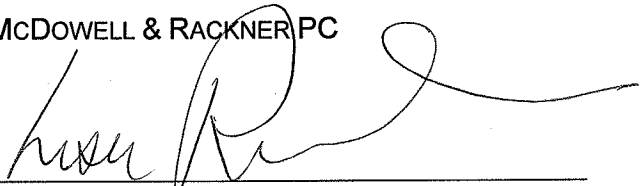
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1 appropriate for the Commission to exercise its discretion in this case to accept prior filings
2 as sufficient for the April 2008 through March 2009 APCU/PCAM year.

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DATED: August 25, 2008.

MCDOWELL & RACKNER PC



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