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November 5, 2012

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 five copies of Idaho Power Company's Reply in Support of Motion for Official Notice.

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 In the Matter of:

5 IDAHO POWER COMPANY

6 Request for a General Rate Revision
7

**IDAHO POWER COMPANY'S REPLY IN
SUPPORT OF MOTION FOR OFFICIAL
NOTICE**

8 **I. INTRODUCTION**

9 Pursuant to OAR 860-001-420(6) Idaho Power Company ("Idaho Power" or
10 "Company") files this reply to the Citizens' Utility Board of Oregon's ("CUB") Response to
11 Idaho Power's Company's Motion for Official Notice. As described below, the parties to UE
12 233 had always contemplated the incorporation of the relevant portions of the UE 246 record
13 into the UE 233 record, and Idaho Power informed CUB on more than one occasion that it
14 would be requesting that the testimonies of Cathy S. Woollums and Chad A. Teply be
15 included in the UE 233 record, as well as the supporting exhibits. Therefore, CUB's claim of
16 prejudice because it lacked notice of Idaho Power's intent is without merit. Moreover, CUB's
17 suggestion that Idaho Power's motion should be rejected because it requested official notice
18 of only those portions of the record supporting Idaho Power's case is without merit. CUB is
19 free to request official notice of any portion of the record on which it wishes to rely—a request
20 that Idaho Power would support. Indeed, consistent with the parties' agreement in this case
21 the Commission should incorporate all relevant portions of the UE 246 record, but must do so
22 in a way that preserves the confidential nature of PacifiCorp's UE 246 evidence.

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II. DISCUSSION

A. The Parties to UE 233 Had Agreed to the Incorporation of the UE 246 Record into this case.

CUB claims that Idaho Power's filing was "extremely prejudicial,"¹ suggesting that they were somehow surprised by the request. However, this position is contrary to the parties' conduct—including CUB. For months the Company has made clear that it intended to rely on PacifiCorp's UE 246 testimony in this case. Indeed, the Company's testimony filed on July 19, 2012, made explicit reference to PacifiCorp's UE 246 testimony and stated clearly that the Company intended to rely on that testimony.²

Moreover, the Company is not the only party that has relied on UE 246 testimony. Like Idaho Power, CUB's testimony also referred to and relied on testimony from UE 246.³ For example, CUB's testimony states:

As CUB has demonstrated in its UE 246 Rebuttal Testimony, if in 2009 PacifiCorp had reexamined its analysis it would have found that phasing out the plant sometime between 2020 and 2025 would have been the least cost/least risk option. Under the terms of its contract, PacifiCorp could have terminated the Scrubber Upgrade project and still saved customers 20 millions of dollars.

* * *

As CUB demonstrates in its UE 246 Rebuttal Testimony, the investment in Jim 19 Bridger 3 was imprudent.

* * *

The evidence presented in UE 246 shows that by the fall of 2009 the owners of Jim Bridger 3 should have garnered enough

¹ CUB's Response to Idaho Power Company's Motion for Official Notice at 2.

² Idaho Power/1500, Carstensen/5-6 ("Idaho Power relies on the testimony and analyses set forth in the direct and reply testimony of PacifiCorp witness Chad A. Teply, and the reply testimony of PacifiCorp witness Cathy S. Woollums to rebut CUB's criticisms.").

³ See e.g., CUB/300, Feighner-Jenks/7, 8, 10, 11, 13, and 14; CUB/400, Feighner-Jenks/3, 4, 5, 6, 9, and 10.

1 information to make them reverse course and instead pursue a
2 phase-out of the plant.⁴

3 Similarly, Staff's testimony in UE 233 referred to and relied on testimony from UE 246.⁵
4 Indeed, Staff explicitly testified that PacifiCorp's testimony (PAC/1500) was "incorporated into
5 this docket by reference in Idaho Power/1500."⁶

6 While CUB was critical of the Company for relying on PacifiCorp to defend PacifiCorp's
7 studies,⁷ neither CUB's testimony nor CUB's pleadings (until now) objected to the use of
8 evidence from UE 246 in UE 233.

9 In addition, the understanding among the parties that evidence from UE 246 would be
10 incorporated into the record in UE 233 was explicitly confirmed by email. On October 2, 2012,
11 counsel for Idaho Power, Staff, and CUB exchanged emails confirming the parties' agreement
12 that their briefs could cite to and rely on testimony filed in UE 246.⁸ CUB's counsel specifically
13 stated that "CUB has been and will continue to cite to UE 246 in this docket. If anyone intends
14 to make an issue out of this we had better take it up with the ALJ today." Based on this
15 agreement, the parties prehearing briefs relied extensively on UE 246 testimony. In fact, CUB
16 cited to UE 246 testimony at least 29 times in their brief⁹ and specifically did so because of the
17 October 2nd agreement.¹⁰ Implicit in this agreement was the understanding that the record
18 from UE 246 would be officially noticed or otherwise incorporated into the UE 233 record
19 because without doing so the citations in the prehearing briefs would be meaningless.

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⁴ CUB/400, Feighner-Jenks/5, 9, and 10.

21 ⁵ See e.g., Staff/1200, Colville/3.

22 ⁶ Staff/1200, Colville/3.

23 ⁷ See e.g., CUB/400, Feighner-Jenks/2.

24 ⁸ Attachment 1.

25 ⁹ See e.g., Citizens' Utility Board of Oregon's Prehearing Brief at n. 15, 47, 61, 62, 93, 97, 104,
105, 107, 111, 112, 117, 118, 119, 127, 129, 130, 131, 132, 133, 155, 156, 162, 163, 165, and 180.

26 ¹⁰ Citizens' Utility Board of Oregon's Prehearing Brief at n. 164.

1 **B. The Company Does Not Object to the Taking of Official Notice of other Portions**
2 **of the UE 246 Record.**

3 CUB criticizes the Company for requesting official notice of only those portions of the
4 UE 246 record upon which Idaho Power relied.¹¹ However, the Company is not obligated to
5 determine which portions of the record CUB used and request official notice on CUB's behalf.
6 CUB's conduct in this case makes clear that it intended to rely on portions of the record from
7 UE 246 and CUB has provided no explanation for why it has not sought official notice of the
8 portions of the UE 246 testimony it has relied on. It is no basis to deny the Company's motion
9 simply because CUB has yet to file a comparable motion.

10 It was Idaho Power's understanding, confirmed by the conduct of the parties up until
11 CUB's objections on November 2, 2012, that each of the parties to UE 233 would seek official
12 notice of the portions of the UE 246 record upon which that party relied (or seek some other
13 mechanism whereby the relied upon portions of the UE 246 record would be incorporated into
14 the UE 233 record). And Idaho Power has no objection to the inclusion of CUB's UE 246
15 testimony in the record in this case nor does the Company object to the inclusion of the entire
16 UE 246 record in this case. The Company's narrow request was designed to ensure that the
17 UE 233 record was not burdened with irrelevant evidence from UE 246 and was also intended
18 to address PacifiCorp's confidentiality concerns and ensure that only confidential information
19 from UE 246 upon which Idaho Power actually relied was included in the UE 233 record.

20 **C. PacifiCorp's Confidential information from UE 246 Must be Protected.**

21 Regardless of the mechanism used to incorporate the relevant materials from UE 246,
22 the use of PacifiCorp's confidential information must be protected. CUB claims that it would
23 be prejudicial for CUB to now have to negotiate with PacifiCorp over the use of confidential
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26 ¹¹ CUB's Response to Idaho Power Company's Motion for Official Notice at 4.

1 information from UE 246 in UE 233.¹² However, CUB's testimony in this case has already
2 referred to and relied on confidential PacifiCorp material from UE 246 to support CUB's
3 arguments.¹³ Indeed, CUB's testimony filed on August 13, 2012, stated that "[a]s CUB has
4 demonstrated in its UE 246 Rebuttal Testimony, if in 2009 PacifiCorp had reexamined its
5 analysis it would have found that phasing out the plant sometime between 2020 and 2025
6 would have been the least cost/least risk option."¹⁴ To support this statement (which CUB
7 also relied on in its briefing¹⁵), CUB referred to CUB/200, Jenks-Feighner/40-41 from UE 246.
8 A cursory examination of that CUB testimony from UE 246 indicates that those pages include
9 substantial confidential information from PacifiCorp. Thus, one of CUB's fundamental
10 arguments in UE 233 relies exclusively on confidential material from UE 246. For CUB to now
11 claim that it is prejudicial to require it to negotiate with PacifiCorp is disingenuous when CUB
12 has known for months that it intended to rely on PacifiCorp's confidential material and never
13 requested PacifiCorp's permission to do so.¹⁶

14 **D. Incorporating the Relied-Upon Portions of the UE 246 Record in this Case will**
15 **not Expand the Scope of the Docket.**

16 CUB also claims that granting Idaho Power's motion would greatly expand the scope
17 of UE 233.¹⁷ As demonstrated above, the parties to UE 233, including CUB, have been
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20 ¹² CUB's Response to Idaho Power Company's Motion for Official Notice at 4-5.

21 ¹³ See e.g., Citizens' Utility Board of Oregon's Prehearing Brief at n. 164 ("... CUB finds itself
22 forced to cite to [confidential] material.").

23 ¹⁴ CUB/400, Feighner-Jenks/5.

24 ¹⁵ Citizens' Utility Board of Oregon's Prehearing Brief at 30-31.

25 ¹⁶ See also, Citizens' Utility Board of Oregon's Prehearing Brief at 30. In CUB's prehearing
26 brief CUB actually included confidential information that was provided by PacifiCorp to CUB in UE 246
on a confidential basis. Although CUB designated the material confidential in its UE 233 brief, this is
further evidence that CUB has been using PacifiCorp's confidential information in UE 233.

¹⁷ CUB's Response to Idaho Power Company's Motion for Official Notice at 5.

1 consistently relying on the evidence from UE 246 for months and formally incorporating the
2 UE 246 record in no way expands the scope of the docket or otherwise prejudices CUB.

3 CUB claims that it “has already formed its theory of each case based on the facts in
4 the current record of each case.”¹⁸ However, CUB’s testimony, briefing, and “theory” of this
5 case are all based in substantial part on CUB’s reliance on facts included in the UE 246
6 record. It is simply untrue for CUB to claim otherwise. Therefore, there is no prejudice in
7 formally incorporating the UE 246 record into the UE 233 record.

8 **III. CONCLUSION**

9 The Commission should take official notice of the requested portions of the UE 246
10 record and include those materials in the record in this case. This is a reasonable approach
11 to affecting the intent of the parties, which was to rely on the evidence from UE 246 in UE 233.
12 Moreover, taking official notice of the UE 246 record is reasonable because of the identical
13 issues in UE 246 and UE 233, *i.e.*, the prudence of the emission control investments at Jim
14 Bridger Unit 3. Taking official notice is also consistent with the Commission’s procedural
15 approach to these dockets, which recognized that both UE 233 and UE 246 are addressing
16 the identical emission control investment at Jim Bridger Unit 3.

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¹⁸ CUB’s Response to Idaho Power Company’s Motion for Official Notice at 6.

1 In taking official notice, however, the Commission should also make clear that the
2 confidential portions of the UE 246 testimony that are included in the record in UE 233 are
3 subject to the protective order in UE 233 and that the inclusion of these materials in this case
4 does not constitute a waiver of their confidentiality.

5
6 DATED: November 5, 2012.

7
8 MCDOWELL RACKNER & GIBSON PC

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11 Lisa F. Rackner
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13 Of Attorneys for Idaho Power
14 Company

15
16 IDAHO POWER COMPANY

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Docket UE 233

Attachment 1

to

Idaho Power Company's

Reply in Support of Motion for Official Notice

Wendy McIndoo

From: Adam Lowney
Sent: October 02, 2012 11:30 AM
To: Andrus Stephanie; 'Catriona McCracken'; Lisa Rackner
Cc: Bob Jenks
Subject: RE: Brief cites in Docket No. UE 233

Idaho Power is also citing and relying on UE 246 testimony.

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From: Andrus Stephanie [<mailto:stephanie.andrus@doj.state.or.us>]
Sent: Tuesday, October 02, 2012 11:18 AM
To: 'Catriona McCracken'; Lisa Rackner; Adam Lowney
Cc: Bob Jenks
Subject: RE: Brief cites in Docket No. UE 233

Thanks for reminding me we (staff) already cited to the testimony. I'm glad we're on the same page.

From: Catriona McCracken [<mailto:Catriona@oregoncub.org>]
Sent: Tuesday, October 02, 2012 11:13 AM
To: Andrus Stephanie; Lisa Rackner (lisa@mcd-law.com); Adam Lowney (adam@mcd-law.com)
Cc: Bob Jenks
Subject: RE: Brief cites in Docket No. UE 233

Stephanie and Lisa:

Given that Idaho Power is relying on the Testimony of Mr. Teply and others to support its position, that Staff has also cited to UE 246 in its testimony – Stephanie you might want to look for example at Staff/1200 Colville/3, CUB has been and will continue to cite to UE 246 in this docket. If anyone intends to make an issue out of this we had better take it up with the ALJ today.

Catriona



G. Catriona McCracken
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From: Andrus Stephanie [<mailto:stephanie.andrus@doj.state.or.us>]
Sent: Tuesday, October 02, 2012 11:06 AM
To: Catriona McCracken; Lisa Rackner (lisa@mcd-law.com); Adam Lowney (adam@mcd-law.com)
Subject: Brief cites in Docket No. UE 233

Hello,

I am including citations to some PacifiCorp testimony in my brief in Docket No. UE 233. In large part, the use of testimony in UE 246 is necessary to address some of CUB's testimony that refers to or incorporates by reference testimony in UE 246.

I am e-mailing now to make sure that citations to testimony presented in UE 246 are not objectionable to you.

Thanks,

Stephanie

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in
3 UE 233 on the following named person(s) on the date indicated below by email addressed
4 to said person(s) at his or her last-known address(es) indicated below.

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DATED: November 5, 2012



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