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May 11, 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 the above-identified docket is an original and one copy of Idaho Power Company's Response to CUB and OICIP's Motion to Strike.

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,

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

Wendy McIndoo  
Office Manager

Enclosures

cc: Service List

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 **UE 233**

4  
5 In the Matter of  
6 IDAHO POWER COMPANY  
7 Request for General Rate Revision.

**IDAHO POWER COMPANY'S REPOSE  
TO CUB AND OICIP'S MOTION TO  
STRIKE**

8  
9 **I. INTRODUCTION**

10 Pursuant to the OAR 860-001-0420(5) Idaho Power Company ("Idaho Power" or  
11 "Company") submits this Response to CUB and OICIP's Motion to Strike ("Motion"). The  
12 Motion should be denied because CUB and OICIP's arguments are premised on a  
13 fundamental misunderstanding of the Public Utility Commission of Oregon's  
14 ("Commission") prudence standard. At its heart, CUB and OICIP argue that portions of  
15 Idaho Power's Rebuttal Testimony of John Carstensen should be struck because the  
16 testimony references studies that were performed by PacifiCorp and that Idaho Power did  
17 not specifically rely on these studies when the Company made the decision to invest in the  
18 scrubber upgrades at the Jim Bridger Unit 3. CUB and OICIP argue that the  
19 Commission's prudence standard is a subjective one that examines only what a utility  
20 actually relied on when making a decision. However, this is wrong—the prudence  
21 standard is an objective standard and therefore the evidence included in Idaho Power's  
22 Rebuttal Testimony ("Rebuttal Testimony") is relevant to the determination of Idaho  
23 Power's prudence.

24 **II. BACKGROUND**

25 This phase of UE 233 is intended to address the one remaining issue that was not  
26 resolved by the Partial Stipulation, which was filed on February 1, 2012, and approved by

1 the Commission on February 23, 2012.<sup>1</sup> Specifically, in this phase the Commission will  
2 determine the prudence of Idaho Power's decision to invest in the scrubber upgrades at  
3 Jim Bridger Unit 3.

4 In Idaho Power's Supplemental Testimony, filed on February 1, 2012, the Company  
5 described the scrubber upgrade, the applicable environmental regulations that required  
6 the scrubber upgrade, the process by which the decision to invest in the scrubber  
7 upgrades was made, and the economic and engineering analyses that supported the  
8 decision to invest in the scrubber upgrade.<sup>2</sup> In the Company's Rebuttal Testimony, filed  
9 on May 4, 2012, the Company responded to specific issues raised by CUB in its  
10 Supplemental Testimony filed on April 13, 2012. The Company discussed the decision-  
11 making process at the Jim Bridger plant, provided additional analyses of the kind that  
12 CUB's testimony requested, responded to CUB's comparison of the Jim Bridger plant to  
13 other coal plants operated by Oregon utilities (PacifiCorp's Naughton 3 and Portland  
14 General Electric's Boardman), and discussed additional regulations and investments  
15 raised by CUB in its testimony that were not addressed by the Company because they are  
16 not relevant to the prudence of the Company's scrubber upgrade investment.

17 In response to the filing of the Company's Rebuttal Testimony, CUB and OICIP ask  
18 that two sections be stricken. First, CUB and OICIP move to strike the testimony on page  
19 8, line 7 through page 9, line 26 that describes an analysis that was performed by  
20 PacifiCorp prior to the decision to invest in the scrubber upgrades (hereinafter referred to  
21 as the "CAI Capital Projects Study for Jim Bridger U3" or "Study"). That Study compared  
22 the costs of the scrubber upgrade, along with other reasonably known investments at Jim  
23 Bridger Unit 3, with the alternative cost of replacement power purchased at market rates.  
24 The results of the CAI Capital Projects Study for Jim Bridger U3 were referenced in

25 <sup>1</sup> *Re Idaho Power Company*, Docket UE 233, Order No. 12-055 (Feb. 23, 2012).

26 <sup>2</sup> See Idaho Power/1300.

1 testimony filed on March 1, 2012, by PacifiCorp as part of its general rate case (Docket  
2 UE 246) filing in Oregon,<sup>3</sup> and the discussion in the Rebuttal Testimony of the CAI Capital  
3 Projects Study for Jim Bridger U3 was limited to the information that was publicly filed by  
4 PacifiCorp in UE 246 and available on the Commission's website, with the exception of the  
5 fact that Idaho Power's Rebuttal Testimony included the confidential numbers that were  
6 not publicly available through the Commission's website. Idaho Power/1403, which  
7 accompanied the Rebuttal Testimony, consisted of the confidential calculations that  
8 supported the CAI Capital Projects Study for Jim Bridger U3.<sup>4</sup>

9 The second portion of the Rebuttal Testimony CUB and OICIP have moved to strike  
10 is found on page 12, lines 14-16 and footnote 10, referencing PacifiCorp's 2011 Integrated  
11 Resource Plan Update ("PacifiCorp's 2011 IRP Update), which included a "Coal  
12 Replacement Study Update." Again, a redacted version of this document is publicly  
13 available on the Commission's website and, as set forth below, the Company can provide  
14 a confidential version if necessary.

15 **III. ARUGMENT**

16 **A. The Prudence Standard is an Objective One that Requires an Examination of**  
17 **what a Utility Knew or Should Have Known at the Time a Decision was Made.**

18 CUB and OICIP argue that two portions of Idaho Power's Rebuttal Testimony be  
19 struck from the record because the information cited by Idaho Power in the testimony is  
20 irrelevant because it was not actually relied upon by Idaho Power when it made its  
21 decision to invest in the scrubber upgrades.<sup>5</sup> With respect to the CAI Capital Projects  
22 Study for Jim Bridger U3, the Motion states that "Idaho Power did not previously have  
23 knowledge of, access to, or have in its records" the information that was received from

24 <sup>3</sup> See *Re PacifiCorp*, Docket UE 246, PAC/500, Tepy/84-85 (Mar. 1, 2012).

25 <sup>4</sup> CUB and OICIP have not moved to strike Idaho Power/1403.

26 <sup>5</sup> Motion at 5-9.

1 PacifiCorp and included in the Rebuttal Testimony.<sup>6</sup> Therefore, CUB and OICIP argue  
2 that Idaho Power “did not rely on that study at the time it made its decision to ‘consent’ to  
3 the upgrades.”<sup>7</sup> Similarly, with respect to PacifiCorp’s 2011 IRP Update, CUB and OICIP  
4 argue that this reference should be stricken from the record because the “document did  
5 not exist at the time that Idaho [Power] was required to make its decision to ‘consent’ or  
6 not consent to the upgrades and Idaho Power could not therefore have relied on this  
7 document.”<sup>8</sup> CUB and OICIP’s position is based entirely on their claim that the prudence  
8 standard is a *subjective* one that examines only the material information that a utility  
9 actually relied on when making a decision. This argument is based upon a  
10 misunderstanding of the prudence standard. Indeed, contrary to CUB’s arguments, the  
11 prudence standard is an *objective* standard that requires an examination not only of what  
12 a utility knew at the time it made a decision, but also the information that was available at  
13 the time.

14 In Order No. 02-469—the same order quoted by CUB and OICIP in their Motion—the  
15 Commission addressed an argument that was substantively the same as that made here  
16 by CUB and OICIP and in that order the Commission soundly rejected the theory that the  
17 prudence standard is subjective.<sup>9</sup> At issue in Order No. 02-469 was whether  
18 contemporary evidence was required in order to evaluate the prudence of a utility  
19 decision.<sup>10</sup> Intervenors in that case argued that to demonstrate prudence a utility must  
20 present evidence on what it actually knew and considered at the time the decision at issue  
21 was made.<sup>11</sup> The Commission rejected this argument, concluding: “We look at the

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22 <sup>6</sup> Motion at 5.

23 <sup>7</sup> Motion at 6.

24 <sup>8</sup> Motion at 7.

25 <sup>9</sup> *Re PacifiCorp*, Dockets UM 995/UE 121/UC 578, Order No. 02-469 at 4-5 (July 18, 2002).

25 <sup>10</sup> Order No. 02-469 at 5.

26 <sup>11</sup> Order No. 02-469 at 5.

1 objective reasonableness of a decision at the time the decision was made.”<sup>12</sup> When  
2 confirming the objective nature of the prudence standard, the Commission described it as  
3 follows:

4 . . . contemporaneous documentation is useful in a prudence  
5 review to show the nature of the information available at the  
6 time of the challenged transactions. It is, however, not a  
7 prerequisite to establishing the prudence of a utility’s actions,  
8 because prudence determinations are based on an objective  
9 standard of reasonableness . . . **the standard does not**  
10 **require [a utility] to prove the factors it actually**  
11 **considered with respect to the decision . . . .** Such a  
12 showing can help demonstrate what information was  
13 available at the time, **but evidence of subjective decision**  
14 **making is not otherwise a prerequisite to establishing**  
15 **prudence . . .** if the record demonstrates that a challenged  
16 business decision was objectively reasonable, taking into  
17 account established historical facts and circumstances, the  
18 utility’s decision must be upheld as prudent even if the  
19 record lacks detail on the utility’s actual subjective decision  
20 making process.<sup>13</sup>

21 That the prudence standard is objective, not subjective, flows directly from how the  
22 Commission consistently states the standard—a decision is prudent if it is reasonable  
23 based on what a utility knew *or should have known at the time the decision was made*.<sup>14</sup>  
24 In other words, the Commission applies the “‘reasonable person’ standard to judge the  
25 prudence of a utility’s investment decision.”<sup>15</sup> And the Commission has made clear that  
26 the “reasonable person” standard is purely objective.<sup>16</sup>

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<sup>12</sup> Order No. 02-469 at 5.

<sup>13</sup> Order No. 02-469 at 5.

<sup>14</sup> See e.g., *Re Portland General Electric Co.*, Docket UE 196, Order No. 10-051 at 6 (Feb. 11, 2010) (“In a prudence review, the Commission examines the objective reasonableness of a utility’s actions at the time the utility acted: ‘Prudence is determined by the reasonableness of the actions ‘based on information that was available (or could reasonably have been available) at the time.’”).

<sup>15</sup> *Re Public Utility Commission of Oregon Investigation to consider adoption of new federal standards contained in the Energy Independence and Security Act of 2007*, Docket UM 1409, Order No. 09-501 at 5 (Dec. 18, 2009).

<sup>16</sup> Order No. 09-501 at 5.

1 Here, the Motion should be denied because CUB and OICIP's entire argument is  
2 based on their contention that the objectionable portions of the Company's Rebuttal  
3 Testimony were not actually considered by Idaho Power when making its decision and are  
4 therefore irrelevant to the question of the prudence of that decision. This argument is  
5 directly contrary to Commission precedent and should therefore be rejected.

6 **B. The CAI Capital Projects Study for Jim Bridger U3 is Relevant to the Prudence**  
7 **of Idaho Power's Decision to Invest in the Scrubber Upgrades.**

8 Similarly, CUB and OICIP claim that the CAI Capital Projects Study for Jim Bridger  
9 U3 is irrelevant because Idaho Power did not have in its possession or rely on the results  
10 of the study when making its decision to invest in the scrubber upgrades.<sup>17</sup> For the  
11 reasons discussed above, this argument should be rejected. In fact, the CAI Capital  
12 Projects Study for Jim Bridger U3 is directly relevant to the information that was available  
13 at the time the decision was made to move forward with the scrubber upgrade investment,  
14 even if Idaho Power did not actually rely on the CAI Capital Projects Study for Jim Bridger  
15 U3 at the time.

16 Moreover, CUB and OICIP argue that by referencing this material, Idaho Power and  
17 PacifiCorp are attempting to "subvert the record in this docket."<sup>18</sup> This claim is baseless.  
18 Indeed, the results of this study were filed by PacifiCorp as part of UE 246 on March 1,  
19 2012—a full month after Idaho Power filed its Supplemental Testimony in this docket.  
20 Idaho Power became aware of this study by examining this publicly available testimony  
21 obtained from the Commission's website. While it is true that Idaho Power subsequently  
22 obtained the confidential portions of the testimony, as well as, the confidential analysis  
23 supporting the testimony, there is nothing underhanded about this fact. CUB and OICIP  
24 cannot reasonably claim that there is something devious about Idaho Power becoming

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25 <sup>17</sup> Motion at 5-6.

26 <sup>18</sup> Motion at 5.

1 aware of publicly available information that is relevant to issues it is litigating and then  
2 using that publicly available information in Idaho Power's testimony. In fact, CUB did the  
3 exact same thing. In CUB's Supplemental Testimony in this docket, it quoted at length  
4 from PacifiCorp testimony filed in Wyoming.<sup>19</sup> Based on CUB's use of similar publicly filed  
5 PacifiCorp testimony, its suggestion that something untoward has occurred lacks  
6 credibility.

7 **C. CUB's Argument Regarding PacifiCorp's 2011 IRP Update is Misplaced.**

8 Like the CAI Capital Projects Study for Jim Bridger U3, CUB and OICIP cannot argue  
9 that the reference in the Rebuttal Testimony PacifiCorp's 2011 IRP Update is irrelevant  
10 simply because it was not actually relied on by Idaho Power at the time the Company  
11 made the decision to invest in the scrubber upgrades.<sup>20</sup> Moreover, what CUB and OICIP  
12 miss is that the Rebuttal Testimony makes reference to PacifiCorp's 2011 IRP Update for  
13 a very limited purpose—to rebut a point raised by CUB. Idaho Power does not rely on  
14 PacifiCorp's 2011 IRP Update to demonstrate the prudence of the scrubber upgrade  
15 project.

16 The discussion on page 11, line 22 to page 12, line 16, was relied on by Idaho Power  
17 simply to rebut an implication made by CUB in its Supplemental Testimony that  
18 PacifiCorp's decision to convert to gas one of its other coal plants, Naughton 3, is  
19 somehow relevant to the prudence of the scrubber upgrade projects. Reviewing this  
20 section of Idaho Power's Rebuttal Testimony in its entirety makes this clear:

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25 <sup>19</sup> CUB/200, Feighner-Jenks/5.

26 <sup>20</sup> Motion at 7.



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**Q. CUB’s testimony also discusses PacifiCorp’s decision to convert its Naughton 3 unit to gas to imply that the same type of analysis that was done relative to that plant should have been done for Jim Bridger Unit 3. Is the decision to convert Naughton 3 relevant to whether the pollution control investments at Jim Bridger Unit 3 were prudent?**

A. No. CUB’s testimony on this point relied entirely on excerpts of testimony filed by PacifiCorp in a case before the Wyoming Public Service Commission. However, in portions of that testimony not included in CUB’s testimony, PacifiCorp testified to the following:

**Q. Should the Company’s alternative decision regarding Naughton Unit 3 be considered indicative of the Company’s other near-term major investment decisions regarding its other operating coal fueled units?**

A. No. The economic analysis for Naughton Unit 3 is case specific and the results of which should not be considered to be representative of anticipated results for other near-term major investments decisions for the Company’s other operating coal fueled units [including Jim Bridger Unit 3].

Notably, while the results of the economic analysis were specific to Naughton Unit 3, the same methodology used to reach the decision to convert Naughton Unit 3 supports the continued utilization of Jim Bridger Unit 3.<sup>21</sup>

As referenced in Idaho Power’s Rebuttal Testimony, CUB’s testimony quotes at length from testimony filed by PacifiCorp in Wyoming in April 2012 that stated that PacifiCorp had decided to convert its Naughton 3 coal unit to gas.<sup>22</sup> Although CUB’s testimony discusses only a small portion of that PacifiCorp testimony, that Wyoming testimony also includes several pages that discuss the alternatives analysis undertaken by PacifiCorp prior to the decision to convert Naughton 3.<sup>23</sup> And other testimony filed by PacifiCorp in that Wyoming

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<sup>21</sup> Idaho Power/1400, Carestensen/11, l. 22 to /12, l. 16 (citations omitted).  
<sup>22</sup> CUB/200, Feighner-Jenks/5.  
<sup>23</sup> See page 15 and 16 of the Rebuttal Testimony of Chad Teply, which is available at the following: [http://www.rockymountainpower.net/content/dam/rocky\\_mountain\\_power/doc/About\\_Us/Rates\\_and\\_Regulation/Wyoming/Regulatory\\_Filings/Docket\\_20000\\_400\\_EA\\_11/04-09-12\\_Rebuttal\\_Testimony\\_and\\_Exhibits/Chad\\_A\\_Teply/2\\_Chad\\_A\\_Teply.pdf](http://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/About_Us/Rates_and_Regulation/Wyoming/Regulatory_Filings/Docket_20000_400_EA_11/04-09-12_Rebuttal_Testimony_and_Exhibits/Chad_A_Teply/2_Chad_A_Teply.pdf)

1 case makes clear that the underlying analysis PacifiCorp used to reach the decision to  
2 convert Naughton 3 is substantively the same analysis that was used in PacifiCorp's 2011  
3 IRP Update.<sup>24</sup> In other words, CUB's testimony states a conclusion reached by PacifiCorp  
4 and now CUB claims that the underlying analysis that supports that conclusion is  
5 irrelevant and should be stricken from the record. If CUB's testimony is relevant, then  
6 Idaho Power's testimony is relevant to rebut CUB's claims. And again, as the Rebuttal  
7 Testimony makes clear Idaho Power is not relying on PacifiCorp's 2011 IRP Update to  
8 demonstrate the prudence of the scrubber upgrades.

9 CUB also raises a concern because CUB and OICIP claim that Idaho Power is  
10 improperly relying on confidential material filed in another docket.<sup>25</sup> To support this claim,  
11 CUB and OICIP compare this case to Docket UE 214, Idaho Power's 2010 Annual Power  
12 Cost Update, where Idaho Power objected to the use by another party of confidential  
13 information received by that party in a different docket.<sup>26</sup> This comparison is completely  
14 inapt. *First*, in UE 214 Staff's testimony had relied on confidential information it had  
15 received in a PacifiCorp docket, UE 207. The receipt of that confidential information by  
16 Staff was subject to the UE 207 protective order, which specifically prohibited the use of  
17 the confidential information in other docket.<sup>27</sup> Here, none of the confidential information  
18 relied on by Idaho Power was received by Idaho Power in another docket pursuant to a  
19 protective order in that docket. Because Idaho Power did not participate in LC 52, Idaho  
20 Power did not sign and is not bound by the terms of a protective order to not use the

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22 <sup>24</sup> See Redacted Rebuttal Testimony of Richard T. Link, which is available at the following:  
23 [http://www.rockymountainpower.net/content/dam/rocky\\_mountain\\_power/doc/About\\_Us/Rates\\_and\\_Regulation/Wyoming/Regulatory\\_Filings/Docket\\_20000\\_400\\_EA\\_11/04-09-12\\_Rebuttal\\_Testimony\\_and\\_Exhibits/Rick\\_T\\_Link/3\\_Rick\\_T\\_Link\\_REDACT.pdf](http://www.rockymountainpower.net/content/dam/rocky_mountain_power/doc/About_Us/Rates_and_Regulation/Wyoming/Regulatory_Filings/Docket_20000_400_EA_11/04-09-12_Rebuttal_Testimony_and_Exhibits/Rick_T_Link/3_Rick_T_Link_REDACT.pdf)

24 <sup>25</sup> Motion at 7-8.

25 <sup>26</sup> Motion at 8.

26 <sup>27</sup> See *Re Idaho Power Company*, Docket UE 214, Idaho Power Company's Motion to Strike Testimony; or in the Alternative, For Leave to File Rebuttal Testimony at 5 (Mar. 23, 2010).

1 information in this docket. *Second*, Idaho Power cited to and relied on the redacted  
2 version of PacifiCorp's 2011 IRP Update.<sup>28</sup> If CUB and OICIP believe that they must  
3 review the full confidential version of the 2011 IRP Update in order to rebut the Company's  
4 claim that the Naughton 3 decision is not relevant to the scrubber upgrade decision then  
5 the Company can provide confidential pages as necessary to remedy this concern.

6 **D. CUB's Claims that Idaho Power's Rebuttal Testimony Expands the Scope of**  
7 **the Docket are Unpersuasive.**

8 CUB and OICIP also argue that portions of the Rebuttal Testimony should be  
9 stricken because the use of PacifiCorp materials "takes this docket far outside its original  
10 scope."<sup>29</sup> This claim is unpersuasive. As discussed above, PacifiCorp's CAI Capital  
11 Projects Study for Jim Bridger U3 is clearly relevant if it indicates information that was  
12 available at the time Idaho Power made its decision to invest in the pollution control  
13 equipment at Jim Bridger Unit 3. Therefore, the inclusion of relevant information in Idaho  
14 Power's Rebuttal Testimony is not outside the scope of this docket.

15 **E. To Eliminate the Risk of Prejudice the Company Supports Amending the**  
16 **Procedural Schedule.**

17 Concurrent with its Motion to Strike, CUB and OICIP also filed a Motion to Amend  
18 the Procedural Schedule. The Company will be filing a separate response to that motion.  
19 However, for purposes of the Motion to Strike, the Company does not object to a  
20 modification of the procedural schedule to allow CUB and OICIP to conduct additional  
21 discovery related to the Company's Rebuttal Testimony.

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24 <sup>28</sup> Because the Company relied on PacifiCorp's 2011 IRP Update for such limited purposes, the  
25 Company cited to the redacted version because that version was sufficient to distinguish Jim  
Bridger Unit 3 from Naughton 3.

26 <sup>29</sup> Motion at 8.

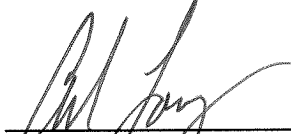
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**IV. CONCLUSION**

The Commission should deny CUB and OICIP's Motion because it is based on a flawed application of the prudence standard. Both portions of Idaho Power's Rebuttal Testimony are relevant to the issue of the prudence of the Company's decision to invest in the scrubber upgrades and responsive to issues raised by CUB in its testimony. For these reasons, the Motion should be denied.

Respectfully submitted this 11<sup>th</sup> day of May, 2012.

**MCDOWELL RACKNER & GIBSON PC**



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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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