

# McDowell Rackner & Gibson PC



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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 Amend Procedural Schedule

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**

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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  
AMEND PROCEDURAL SCHEDULE**

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9 Pursuant to the OAR 860-001-0420(5) Idaho Power Company ("Idaho Power" or  
10 "Company") submits this Response to CUB and OICIP's Motion to Amend Procedural  
11 Schedule ("Motion"). CUB and OICIP argue that they require additional time to conduct  
12 discovery, file additional testimony, and brief the legal issues presented in this phase of  
13 the docket.<sup>1</sup> This request is driven largely by CUB and OICIP's claim that Idaho Power's  
14 Rebuttal Testimony of John Carstensen (Idaho Power/1400) contains "new evidence"<sup>2</sup> that  
15 was provided only eleven days before the hearing.<sup>3</sup> As a preliminary matter, the Company  
16 does not agree with Motion's implication that the inclusion of "new evidence" is somehow  
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18 <sup>1</sup> Motion at 1-2.

19 <sup>2</sup> See e.g., Motion at 1 ("... large amounts of new evidence not previously disclosed"); 5 ("This is  
20 new evidence to this record, received at the last minute and not previously relied on by Idaho  
21 Power."); 6 ("Mr. Carstensen's Rebuttal Testimony also includes new information about competitive  
22 bidding processes . . ."); 6 ("... new information about the time period during which the contract  
23 work was commenced and completed."); 7 ("This is new information in this docket . . ."); 8 ("Exhibit  
1401 is new evidence produced for the first time in the Rebuttal Testimony of John Carstensen and  
has not previously been disclosed or made available for discovery."); 8 ("This too is new evidence .  
. . ."); and 9 ("Again, this is new information . . .").

24 <sup>3</sup> CUB and OICIP also claim that "CUB has yet to receive the mailed confidential information," that  
25 was included as part of Idaho Power's Rebuttal Testimony. Motion at 2, n. 1. CUB has since  
26 informed Idaho Power's counsel that it believes it received the confidential materials on  
Wednesday, May 9 (the same day that the Motion was filed) and that the mailing was post-marked  
Friday, May 4 (the day the Rebuttal Testimony was filed and the confidential materials were mailed  
to the parties).

1 improper for rebuttal testimony or “trial by ambush.” There is no prohibition on the  
2 presentation of “new evidence” during rebuttal, so long as that evidence is necessary to  
3 respond to the other party’s evidence.<sup>4</sup> Because the new evidence is clearly responsive to  
4 issues raised by CUB in its Supplemental Testimony, (e.g., the evidence describes the  
5 analysis Idaho Power performed, the information available at the time the decision to  
6 invest in the scrubber upgrades was made, and responds to additional regulations and  
7 investments raised by CUB), its inclusion is proper and does not constitute a basis for a  
8 continuance.

9 Idaho Power does *not* object to modifying the procedural schedule to allow CUB to  
10 pursue additional discovery if it deems it necessary. However, the Company does not  
11 agree to the specific proposed schedule set forth in the Motion. In particular, the  
12 Company would point out that CUB has provided no explanation as to why CUB requires  
13 an opportunity to submit additional testimony, or why, if it is allowed to do so, the  
14 Company, as the party that bears the burden in this case,<sup>5</sup> should not be allowed to  
15 respond. For these reason, the Company requests that if the schedule is continued,  
16 Administrative Law Judge Allan Arlow convene a prehearing conference to establish the  
17 schedule for the remainder of the docket. Moreover, the Company suggests that the  
18 prehearing conference be set for after CUB completes its discovery, so that it will be able  
19 to better establish any purported need for additional testimony.

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24 <sup>4</sup> See *State v. McDonnell*, 343 Or. 557, 579 (2007) (“Rebuttal evidence generally is limited to that  
25 necessary to answer the opponent’s evidence. The trial court has broad discretion to allow rebuttal  
evidence when such evidence becomes relevant on rebuttal even if it could have been used in the  
case-in-chief.”) (internal citations omitted).

26 <sup>5</sup> See ORS 757.210.

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

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**MCDOWELL RACKNER & GIBSON PC**

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Lisa F. Rackner  
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**IDAHO POWER COMPANY**

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**CERTIFICATE OF SERVICE**

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

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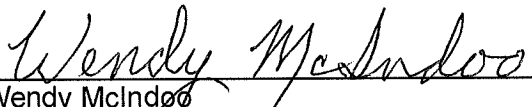
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