

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 233

In the Matter of)
) CITIZENS' UTILITY BOARD
) OF OREGON'S PREHEARING BRIEF
IDAHO POWER COMPANY Request for)
General Rate Revision PHASE II)
_____)

1 **I. IN THIS PREHEARING BRIEF CUB ADDRESSES THE REMAINING**
2 **CLEAN AIR INVESTMENT ISSUES FROM THE IDAHO POWER**
3 **COMPANY GENERAL RATE CASE PHASE II**

4 In compliance with the "Joint Pre-hearing Conference Memorandum" issued by ALJ
5 Grant on September 20, 2012, the Citizens' Utility Board of Oregon ("CUB") hereby submits its
6 Pre-hearing Brief related to the outstanding clean air investments in this docket.¹ CUB will use
7 this brief to both identify the settled issues and to frame the unsettled issues that may be raised in
8 cross-examination, in oral argument, or in post hearing briefs on the issue of Idaho Power
9 Company's ("Idaho Power," "IPCO," or "the Company") pollution control investments at the Jim
10 Bridger 3 Unit.

11 **II. INTRODUCTION—THE TORTURED PROCEDURAL SCHEDULE**

12 On July 29, 2011, Idaho Power filed a general rate case with the Public Utility
13 Commission of Oregon ("Commission") to revise its schedules of rates and charges for electric

¹ UE 233 Joint Prehearing Conference Memorandum, issued Sept. 20, 2012.

1 service in Oregon.² The Company requested a revision to customer rates that would increase the
2 Company's annual Oregon jurisdictional revenues by \$5.8 million, which represents a 14.7
3 percent increase in rates. The Company submitted its proposed tariffs with a rate effective date of
4 September 1, 2011, which, with the addition of the full nine-month statutory suspension period,
5 would result in the new rates becoming effective June 1, 2012. Idaho Power's filing was based on
6 a 2011 calendar year test period. In Order No. 11-308, issued August 15, 2011, the Commission
7 suspended the Company's filing for a period of nine months. On December 7, 2011 Staff and the
8 Intervenors filed Opening Testimony.³ Shortly thereafter, the docket was resolved for all but one
9 issue.

10 The unresolved issue—the sole subject of this Prehearing Brief—relates to the prudence
11 of the costs associated with pollution control investments at the Jim Bridger Coal Plant ("Bridger
12 Pollution Control Investments").⁴ The Company's filed rate case included \$8.2 million of gross
13 plant-in-service, on a total-system basis, associated with investments in pollution control
14 equipment at the Jim Bridger Plant Unit 3 ("Bridger 3"). The Company estimated that these
15 investments result in \$27,500 of Oregon jurisdictional revenue requirement.⁵

16 At the time of filing of the Partial Stipulation that resolved all of the other issues in this
17 docket, CUB believed that the Company had yet to demonstrate the prudence of incremental
18 Bridger 3 pollution control equipment installed in 2011, a clerical error in Idaho Power's Initial
19 Filing had indicated that the investments were made in the unit in 2008, not 2011.⁶ Because of
20 the clerical error CUB had been unable to conduct discovery and for that reason Idaho Power

² UE 233 – Idaho Power Initial Application, filed July 29, 2011.

³ UE 233/OICIP/100-101; UE 233/CUB/100-114; UE 233/Staff/100-906; UE 233/OIPA/100-200.

⁴ UE 233 Partial Stipulation/1 lines 13-16.

⁵ UE 233 Partial Stipulation, filed Feb 1, 2012, page 6.

⁶ See Idaho Power Errata to Exhibit 901, filed Dec 1, 2011.

1 agreed to respond to additional data requests and to provide additional testimony related to the
2 prudence of its investments.⁷ Idaho Power Company provided that testimony on February 1,
3 2012⁸—the same day that the Partial Stipulation resolving the other issues was filed with the
4 Commission.⁹ Under the Partial Stipulation CUB had the right to file reply testimony related to
5 the pollution control investment and to request a Commission ruling on that issue.¹⁰ Under the
6 Partial Stipulation the Parties also agreed that even if the issue of the prudence of the Bridger 3
7 investment was not resolved by March 1, 2012, the rates implemented on March 1, 2012, would
8 include the Company's Bridger 3 investment as filed; however, the Company would request to
9 defer the variance between revenues resulting from rates that include the Bridger 3 investment
10 and revenues resulting from rates without the investments. In return the Parties agreed to support
11 Idaho Power's request for deferral of this variance. And part of the agreement the Parties agreed
12 that if the Commission ultimately concluded that all or any portion of the incremental Bridger 3
13 investment was imprudent, Idaho Power would refund to customers any money collected from
14 ratepayers for the imprudent investment. Any such refund would be credited to customers'
15 benefit against the outstanding Power Cost Adjustment True-Up Balancing Account deferral
16 balance as reflected on Idaho Power's books.¹¹ The Parties agreed to submit the Partial
17 Stipulation to the Commission and request that the Commission approve the Partial Stipulation
18 as presented and reserve judgment on the deferral issue at that time until the Parties determined
19 whether the issue could be settled.¹² The Parties agreed that the rates resulting from this

⁷ See Idaho Power Errata to Exhibit 901, filed Dec 1, 2011.

⁸ See UE 233/Idaho Power/1300-1302/Carstensen.

⁹ UE 233 Partial Stipulation, filed Feb 1, 2012, page 6.

¹⁰ UE 233 Partial Stipulation, filed Feb 1, 2012, pages 6-7.

¹¹ UE 233 Partial Stipulation, filed Feb 1, 2012, page 7.

¹² UE 233 Partial Stipulation, filed Feb 1, 2012, page 8.

1 stipulated agreement were fair, just, and reasonable and constituted an appropriate resolution of
2 all but the Bridger 3 investment.¹³ The Partial Stipulation was filed on February 1, 2012, and was
3 adopted by the Commission on February 23, 2012, in Order No. 12-055.

4 On March 6, 2012, a Prehearing Conference was held to discuss Phase II of the UE 233
5 General Rate Case. A schedule was implemented under which Staff filed “Response Testimony”
6 and CUB filed “Supplemental Testimony” both on April 13, 2012. Thereafter, on April 19, 2012,
7 PacifiCorp filed a Petition to Intervene in this docket. The petition stated that PacifiCorp was the
8 joint owner of Jim Bridger Unit 3 and would be affected by the Commission's decision regarding
9 the prudence of the environmental control investments at issue in this docket. PacifiCorp also
10 stated that these proceedings therefore directly affected it, and that it therefore intended to file
11 briefs on the legal issues. PacifiCorp claimed that because its participation would be limited to
12 filing briefs on the legal issues, its participation in the docket would not unreasonably broaden
13 the issues, burden the record, or delay the proceedings.¹⁴ On April 24, 2012, CUB and OICIP
14 objected to PacifiCorp’s late notice of intervention, pointing out that:

15 The Parties could not have more clearly recorded and telegraphed, in the Partial
16 Stipulation, CUB’s intent to ensure that the Commission review IPCO’s pollution
17 control investments in Bridger 3 in accordance with the prudence standard. In
18 fact, the Stipulation laid out the entire process as to how the review would take
19 place, the inclusion up front of the costs in rates and the deferral that would be
20 required if it was later determined that the costs should not be included in rates.
21 And still PacifiCorp did not intervene in the UE 233 proceeding. As noted above,
22 other electric utilities were aware of the first phase of the docket. However, out of

¹³ UE 233 Testimony in Support of Partial Stipulation, filed Feb 1, 2012, page 13.

¹⁴ Nothing could have been further from the truth. PacifiCorp’s participation has completely upended the schedule in this docket, causing the UE 233 schedule to be amended to run parallel with the UE 246 schedule and making the UE 233 docket extremely hard for intervenors to prosecute. For every brief or other document the Company has due, intervenors now have to file two on the same day. The playing field in these dockets, which was uneven to begin with, has been tilted in favor of the utilities from the start.

1 all the electric utilities only PacifiCorp - the majority owner of Bridger 3 - chose
2 not to intervene.¹⁵

3 Of particular note is the fact that CUB and OICIP did not anticipate or propose a
4 process in the Partial Stipulation to determine PacifiCorp's prudence related to its
5 Bridger 3 investments. CUB and OICIP did not do this because PacifiCorp's share
6 of the plant is not relevant in relation to whether Idaho Power was prudent when it
7 agreed to pay its share of the Bridger 3 costs. If CUB and OICIP had thought they
8 were taking on the prudence of both utilities, they would have proposed a
9 different process and might not have agreed to allow the IPCO costs into rates. In
10 addition, if CUB and OICIP had thought that PacifiCorp's share of the plant was
11 at issue, they would have conducted discovery on PacifiCorp and addressed their
12 share of the Bridger 3 costs in their testimony.¹⁶

13 CUB and OICIP went on to explain how at first glance it might appear that PacifiCorp has a
14 sufficient interest in this docket—after all, PacifiCorp is the majority owner of the Bridger 3
15 plant, and a portion of that plant's total pollution control costs are at issue in this docket.

16 However, the Pollution control costs at issue in this docket are *not* PacifiCorp's Bridger 3
17 pollution control costs. Rather, they are IDAHO POWER's Bridger 3 pollution control costs, and
18 this docket is about what **IDAHO POWER** knew or should have known at the time that **IDAHO**
19 **POWER** invested money in pollution control at the Bridger 3 plant. This docket is not about
20 what PacifiCorp knew or should have known at the time that **IDAHO POWER** made
21 incremental investments in pollution control at the Bridger 3 plant.¹⁷ CUB also voiced concern
22 that PacifiCorp should not be permitted to turn this docket into a pre-determination of the
23 prudence of any pollution control investments made by PacifiCorp in the Bridger 3 unit.¹⁸

¹⁵ It seems PacifiCorp likes to stay aloof so it can later say "I didn't know..." See PacifiCorp testimony relating to the Boardman phase-out in UE 246.

¹⁶ UE 233 CUB and OICIP's Objections to PacifiCorp's Petition to Intervene and Request for Reconsideration. ALJ Arlow's Ruling Granting Intervention, pages 4-5.

¹⁷ UE 233 CUB and OICIP's Objections to PacifiCorp's Petition to Intervene and Request for Reconsideration Of ALJ Arlow's Ruling Granting Intervention, page 4.

¹⁸

UE 233 CUB and OICIP's Objections to PacifiCorp's Petition to Intervene and Request for Reconsideration Of ALJ, Arlow's Ruling Granting Intervention, page 15.

1 (Perhaps for that reason the idea of parallel scheduling was born, which we will elaborate on
2 later.)

3 On April 27, 2012, PacifiCorp filed its Response claiming that CUB was advocating for a
4 new interpretation of the prudence standard that would apply to all electric utilities and that
5 therefore it should be allowed to participate in this docket.¹⁹ On May 1, 2012, the ALJ affirmed
6 his granting of intervention to PacifiCorp, noting that Pacific Power “intends to submit briefs
7 relating to the interpretation of the prudence standard only.”²⁰ Also on May 4, 2012, Idaho
8 Power filed its Rebuttal Testimony.²¹ On May 9, 2012, CUB and OICIP filed both a Motion to
9 Strike portions of Idaho Power’s Rebuttal Testimony and also a Motion to Amend the Procedural
10 Schedule due to the large volume of new evidence entered by Idaho Power in its Rebuttal
11 Testimony, the impending Hearing date of May 16, 2012, the need for discovery, and the need
12 for supplemental testimony in response to the new evidence.²²

13 On May 10, 2012, the Hearing schedule for May 16 was cancelled.²³ And on May 11,
14 2012, Idaho Power Company responded to both motions.²⁴ CUB and OICIP replied on May 15,
15 2012,²⁵ and a Prehearing Conference for both the UE 233 and UE 246 dockets was scheduled for
16 May 24, 2012.²⁶ In the interim, the Motion to Amend the Procedural Schedule was granted,
17 allowing CUB and OICIP time to conduct discovery. The Motion to Strike was granted in part—
18 the ALJ permitted Idaho Power to seek to enter the redacted material in full or else have it

¹⁹ UE 233 PacifiCorp’s Response to Objections to Petition to Intervene, page 1.

²⁰ UE 233 Ruling issued May 1, 2012, page 2.

²¹ See UE 233/Idaho Power/1400-1403/Carstensen.

²² UE 233 CUB and OICIP’s Motion to Amend Procedural Schedule, filed May 9, 2012.

²³ UE 233 Ruling issued May 10, 2012.

²⁴ UE 233 Idaho Power Company’s Response to CUB and OICIP’s Motion to Amend Procedural Schedule, filed May 11, 2012.

²⁵ UE 233 CUB and OICIP’s Reply to Idaho Power Company’s Response to CUB and OICIP’s Motion to Strike

²⁶ UE 233 Notice of Telephone Conference, issued May 24, 2012.

1 stricken from the record. She also permitted entry of the later in time studies that had not
2 previously been available to Idaho Power. On May 24, 2012, Idaho Power filed the redacted
3 information in full in the UE 233 docket.²⁷

4 Then in a Law Judge Ruling issued May 30, 2012, the ALJ dropped a bombshell on the
5 intervenors: “At the conference, I reviewed the status of UE 233 and UE 246. The Commission
6 will adopt the same procedural schedule in both dockets, but will review and consider each
7 docket separately.” A schedule requiring parallel testimony and briefing was set. That schedule
8 has since been amended by the Commission. CUB hopes it never has to deal with scheduling like
9 this again.

10 Thereafter CUB issued Data Requests to Idaho Power and Idaho Power promptly refused
11 to respond to some of the requests. CUB was forced to file a Motion to Compel.²⁸ All three of
12 the Data Requests at issue in that motion, to which IDAHO POWER was objecting in whole or
13 in part, pertained, in whole or in part, to the same topic—the decision to obtain and install a
14 Selective Catalytic Reduction (“SCR”) at Jim Bridger 3 as part of the Regional Haze Rules
15 (RHR). IDAHO POWER objected to each of these three Data Requests because, in its words:
16 “[they] seek information that is irrelevant to the issue of the prudence of the scrubber upgrades at
17 Jim Bridger Unit 3. See ORCP 36B(1). The prudence of the SCR investment is not at issue in
18 this case.”

19 CUB argued, as it has done throughout this docket, that the sole remaining issue in this
20 docket—the prudence of the clean air investments made by Idaho Power at Bridger 3—required

²⁷ See UE 233/Idaho Power/1404/Carstensen.

²⁸ UE 233 CUB’s 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, filed June 12, 2012.

1 a review of all of the investments that have been made, are being made, and will be made at
2 Bridger 3 in order to comply with clean air regulations. In order for any investment by Idaho
3 Power to be deemed prudent, the Commission must review what Idaho Power knew or should
4 have known when it made its decision to make each of the clean air investments in Bridger 3.²⁹

5 Counsel for CUB had to leave the country to attend her father's funeral so the ALJ
6 granted an extension of time for the filing of testimony and motion replies.³⁰ Staff and CUB filed
7 Testimony on June 20, 2012.³¹ The Company and CUB continued to argue over the motion to
8 compel. On July 18, 2012, the ALJ issued a ruling requiring Idaho Power Company to respond to
9 CUB's data requests and allowing CUB additional time to file responsive testimony.³²

10 On July 19, 2012, Idaho Power filed its Reply Testimony³³ and on August 13, 2012, CUB
11 and Staff filed their Rebuttal Testimony.³⁴ The final round of testimony was filed by the
12 Company on September 5, 2012.³⁵ On September 20, 2012, a Joint Prehearing Conference
13 Memorandum was issued which set the Hearing date for October 15 and 16, 2012, for both UE
14 233 and UE 246. This Prehearing Brief is being filed pursuant to that memorandum—and under
15 the shadow of the PacifiCorp UE 246 General Rate Case, which has been allowed to completely
16 overshadow the case against Idaho Power. But it is CUB's position that its own pollution control
17 investment issues, some of which also relate to Bridger 3. The Objectively Reasonable Prudence
18 Standard must be applied individually to each Company in its own docket regardless of the fact

²⁹ UE 233 CUB's 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, filed June 12, 2012.

³⁰ UE 233 Ruling, issued June 14, 2012.

³¹ See UE 233/CUB/300-303/Jenks-Feighner and Staff/1100-1101/Colville.

³² UE 233 Ruling, issued July 18, 2012.

³³ See UE 233 /Idaho Power/1500/Carstensen and IDAHO POWER/1600/Said.

³⁴ See UE 233/CUB/400/Jenks-Feighner and Staff/1200-1202/Colville.

³⁵ See UE 233/IDAHO POWER/1700/Carstensen.

1 that Idaho Power is claiming it is deferring to PacifiCorp’s management. If PacifiCorp is found
2 to be imprudent, it stands to reason that Idaho Power has been imprudent as well. But CUB
3 thinks that Idaho Power should be found imprudent regardless of what happens to PacifiCorp
4 simply for delegating to PacifiCorp in this matter, let alone for the reasons CUB sets out below.

5 CUB first filed testimony in regard to the pollution control investment issues in
6 December 2011.³⁶ At that time CUB was merely noting the need for discovery on an issue that
7 had just come to light. The pollution control investment issues were then set aside in the Partial
8 Stipulation for further review. On February 1, 2012, on the same day the Stipulation was filed,
9 John Carstensen filed what was essentially his opening testimony in regard to these issues. The
10 testimony was titled Idaho Power Company Supplemental Testimony of John Carstensen. In that
11 testimony John Carstensen stated that he is now responsible for the operations, maintenance, and
12 engineering for Idaho Power’s three co-owned coal-fired facilities (Jim Bridger, Boardman, and
13 North Valmy). Mr. Carstensen also stated that he is the representative on the Ownership and
14 Engineering committees for these facilities.³⁷ In other words, these plants are his responsibility³⁸.
15 CUB also learned that the project was a scrubber upgrade that was completed in the spring of
16 2011, with a cost to Idaho Power of \$8.2 million³⁹ and that it was constructed under an EPC
17 contract overseen by PacifiCorp.⁴⁰ The testimony was very short and cited only one possible
18 study⁴¹ as support for the decision to make the investment in pollution control. The testimony

³⁶ UE 233/CUB/100/Feighner-Jenks/16 lines 1-17.

³⁷ UE 233/Idaho Power/1300/Carstensen/1 lines 14-17.

³⁸ Given that Mr. Carstensen is the person who would have known most about the Boardman phase-out and would have been engaged in most of the discussions on these facilities with PacifiCorp, it has always seemed strange to CUB that we were unable to elicit more about the actual discussions that took place and about the actual documents that were reviewed at the time of Idaho Power’s decision making.

³⁹ UE 233/ Idaho Power/1300/Carstensen/2 lines 14-16.

⁴⁰ UE 233/ Idaho Power/1300/Carstensen/8 lines 21-25.

⁴¹ UE 233/ Idaho Power/1300/Carstensen/6 lines 18-20.

1 raised more questions than it provided answers. It is CUB's position that after five rounds of
2 testimony due to the historical facts unearthed in this case, Idaho Power has failed to meet the
3 burden of proof in this case to demonstrate that its investment in Bridger 3 was prudent.

4 **III. THE SETTLED ISSUES**

5 As noted in the Introduction, the Parties to UE 233 filed a Partial Stipulation on February
6 1, 2012, that resolved all issues in this case except the Company's clean air investment at Jim
7 Bridger 3.

8 **IV. THE UNSETTLED ISSUES**

9 As CUB stated in its June 12, 2012 testimony on this issue:

10 There are two critical issues remaining in this docket:

- 11 1) Should a prudence review of environmental controls examine the
12 environmental controls one by one – in a piecemeal fashion – as they are
13 added to rates?
- 14 2) Does a minority owner, in this case with a one-third interest in a power plant,
15 have the same due diligence obligation to ensure that decisions affecting that
16 plant are prudent and consistent with the least-cost principle?⁴²

17 In CUB's opinion, the answers to these questions are as follows:

- 18 1. No. A regulator should not conduct the prudence review of environmental controls
19 in a piecemeal fashion. The scrubber upgrade at issue in this case, if considered
20 with all of the other environmental controls required to make the plant compliant
21 with BART, is not a prudent investment on its own. It does not comply with BART,
22 and will not allow the plant to stay open past 2015. To stay open will require
23 additional investment in the plant, including an SCR. A prudence review should
24 consider the entirety of the costs that the Company is committing to invest in order
25 to be BART compliant.
26
- 27 2. Yes, a minority owner should have the same due diligence obligation as the
28 majority owner to ensure that decisions affecting the plant are prudent and
29 consistent with the least-cost principle. One-third of a coal plant is a significant

⁴² UE 233/CUB/300/Feighner-Jenks/1 lines 4-12.

1 investment and must be managed well. The minority owner has a responsibility to
2 ensure investment decisions that are made are cost effective and will benefit
3 customers.⁴³

4 With these questions and answers in mind, CUB will analyze the standard of review that the
5 Commission must apply in this docket to see if the Commission agrees with CUB.

6 **V. THE STANDARD OF REVIEW**

7 With the issues remaining to be addressed now identified, it is time to consider the
8 Standard of Review applicable to a General Rate Case filing.

9 **A. Idaho Power Company Bears the Burden to Show That Its Rates Are Fair, Just, and** 10 **Reasonable**

11 A review of ORS 756.040(1), ORS 757.210(1)(a) and UE 115, Order No. 01-777,⁴⁴
12 demonstrates that Idaho Power has the burden to show that its proposed rates are fair, just, and
13 reasonable.⁴⁵ That means that the utility must show that the components that make up the costs in
14 the proposed test year are reasonably certain to occur and are prudent.⁴⁶ “Just and reasonable
15 rates do not include costs that are imprudent, are not used and useful, or are not consistent with
16 sound and economical management of the utility.”⁴⁷

17 **B. Idaho Power Company Bears the Burden of Persuasion Throughout the Proceeding**

18 Idaho Power bears the burden of persuasion throughout this docket to show that its
19 requested rate increase is reasonable. The Commission has directly addressed this issue, by
20 stating:

⁴³ UE 233/CUB/300/Feighner-Jenks/2 lines 1-14.

⁴⁴ UE 115, Order No. 01-777 at 4- 6.

⁴⁵ ORS 757.210(1); *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or. App. 200,213-214 (1975). “Any increase in rates must be preceded by the submission of ‘revised schedules,’ and is dependent upon a showing by the utility that the proposed rates are ‘just and reasonable.’ *citing to* ORS 757.210.

⁴⁶ UT 125/UT 80 Order No. 00-191 at 9 (quoting Order No. 97-171).

⁴⁷ UE 246/Sierra Club/200/Steinhurst/7 lines 24-26.

1 We . . . affirm that, under ORS 757.210, the burden of showing that the proposed
2 rate is just and reasonable is borne by the utility throughout the proceeding. Thus,
3 if PGE makes a proposed change that is disputed by another party, PGE still has
4 the burden to show, by a preponderance of the evidence, that the change is just
5 and reasonable. If it fails to meet that burden, either because the opposing party
6 presented compelling evidence in opposition to the proposal, or because PGE
7 failed to present compelling information in the first place, then PGE does not
8 prevail.⁴⁸

9 In OPUC Order No. 09-046, the Commission clarified that there are two aspects to the burden of
10 proof—the burden of persuasion and the burden of production.⁴⁹ Those aspects are distributed
11 amongst the parties as follows:

12 The burden of *persuasion* in a deferral amortization case is always with the utility.
13 The ultimate burden of *producing* enough evidence to support its claims is also
14 with the utility. Other parties in the case, however, have the burden of *producing*
15 evidence to support their argument in opposition to the utility’s position.⁵⁰

16 This application of the standard was further clarified in UE 228, when the Commission advised:

17 To reach a determination on whether proposed rates are just and reasonable, we
18 look at the record as a whole and make a determination based on the
19 preponderance of the evidence. Once a utility has met the initial burden of
20 presenting evidence to support its request, “the burden of going forward then
21 shifts to the party or parties who oppose including the costs in the utility’s
22 revenue requirement.” Although the burden of *production* shifts, the burden of
23 *persuasion* is always on the utility.⁵¹

24 Given the above, it is clear that it is not CUB’s role to prove that the proposed cost is
25 unreasonable or imprudent. Rather, it is Idaho Power’s role to prove that the proposed cost
26 increase is reasonable and prudent. Bob Jenks and Gordon Feighner’s testimony, on behalf of
27 CUB, addresses the issues in Phase II of this docket and demonstrates why Idaho Power has not

⁴⁸ UE 115 Order No. 01-777 at 6 (Aug. 31, 2001)

⁴⁹ UE 196 Order No. 09-046 at 7.

⁵⁰ UE 196 Order No. 09-046 at 7-8 (*emphasis added*).

⁵¹ UE 228 Order No. 11-432 (Nov 2, 2011)(*emphasis added*). See also *In Re Northwest Natural Gas Company*, Docket No. UG 132, Order No. 99-697 at 3 (Nov 12 1999) *In Re PGE, Application to Amortize the Boardman Deferral*, Docket No. UE 196, Order No. 09-046 at 7-8. Although the burden of production shifts, the burden of persuasion is always with the utility.

1 met its burden of proof with regard to the outstanding issues. While the Commission may take
2 CUB’s testimony and weigh it against the testimony presented by Idaho Power, ultimately the
3 Commission must be convinced that Idaho Power has carried the burden of persuasion.
4 Imprudent costs should never be included in rates.

5 **C. The Used and Useful Standard**

6 **757.355 Costs of property not presently providing utility service excluded**
7 **from rate base; exception.** (1) Except as provided in subsection (2) of this
8 section, a public utility may not, directly or indirectly, by any device, charge,
9 demand, collect or receive from any customer rates that include the costs of
10 construction, building, installation or real or personal property not presently used
11 for providing utility service to the customer.

12 The “used and useful” requirement articulated in ORS 757.355 has been discussed and applied in
13 countless dockets and in several court cases. The Oregon Supreme Court has interpreted the
14 “used and useful” requirement, explaining that “a utility should be permitted to earn a return only
15 on property that is reasonably necessary to and actually providing utility service.”⁵² Therefore,
16 whenever a utility constructs a new facility, such as a transmission line, this property is excluded
17 from rate base “until it actually is placed in service and, even then, the regulators may not allow
18 it in the rate base until the utility establishes that the property is reasonably necessary to
19 provision of electrical service.”⁵³

20 In *Citizens’ Utility Board v. PUC*, the Oregon Court of Appeals held that the language of
21 ORS 757.355 is clear, and does not allow for the recovery of “...costs of construction, building,
22 installation or real or personal property not presently used for providing utility service to the
23 customer.”⁵⁴ The Court also stated that the Commission is not empowered “to approve rates of a

⁵² *Pacific Power & Light Co. v. Department of Revenue*, 308 Or. 49, 53-54 (1989)(emphasis added).

⁵³ *Id.* at 53-54.

⁵⁴ *Citizens’ Utility Board v. PUC*, 154 Or App 702, 711 (1998).

1 kind that are specifically contrary to the limitations in ORS 757.355.”⁵⁵

2 **D. Reasonableness Is Based on Overall Rates, Not Each Adjustment**

3 The Commission is responsible for ensuring that Idaho Power’s customers are charged
4 just and reasonable rates.⁵⁶ As the PUC has noted previously:

5 [T]he validity of the determined rates rests on the reasonableness of the overall
6 rates, not the theories or methodologies used or individual decisions made. As the
7 United States Supreme Court explained in *Hope*, if the total effect of the rate
8 order is not unjust and unreasonable, “[t]he fact that the method employed to
9 reach that result may contain infirmities is not then important.”⁵⁷

10 In short, as the courts have previously noted, ratemaking is, and should be, a holistic process.⁵⁸

11 **E. Objective Reasonableness Does Not Require the Commission to Dispense With the**
12 **Application of Common Sense**

13 CUB anticipates that the Company will commence its brief with a dissertation on the
14 “objective reasonableness standard”:

15 [I]f the record demonstrates that a challenged business decision was objectively
16 reasonable, taking into account established historical facts and circumstances, the
17 utility's decision must be upheld as prudent even if the record lacks detail on the
18 utility's actual subjective decision making process.⁵⁹

19 CUB has no quibble with the Objective Reasonableness standard itself. CUB’s only objection
20 relates to how the Company and Staff would have the Commission apply the standard in these
21 dockets. As stated in CUB’s “Response Testimony” filed June 20, 2012, in the UE 246 docket:

22 [P]rudent and imprudent actions can have a variety of consequences. In retrospect
23 an action can be good, bad, or indeterminate. The results of a prudent decision by
24 a utility can be good, bad or indeterminate. The Commissions (sic) does not judge

⁵⁵ *Id.* at 716-717; *Util. Reform Project v. Pub. Util. Comm’n of Or.*, 215 Or. App. 360, 365-66, 376 (2007).

⁵⁶ ORS 756.040(1); *Pacific Northwest Bell Tel. Co.*, 21 Or. App. At 213.

⁵⁷ DR 10. UE 88 & UM 989 at p. 7-8 citing to *Hope*, 320 US at 602. *See also Morgan Stanley Capital Group, Inc. v. Public Util. Dst. No. 1 of Snohomish County*, 554 US ___, 128 S Ct 2733, 2738, 171 L.Ed 2d 607 (2008)(“We have repeatedly emphasized that the Commission is not bound to any one ratemaking formula.”).

⁵⁸ DR 10. UE 88 & 989 at p. 64.

⁵⁹ Order No. 09 -501 at 5.

1 prudence by its results, but instead recognize (sic) that the results of all kinds of
2 actions can vary.

3 When a utility makes a prudent investment decision, the utility is generally able to
4 recover its prudently incurred investment costs even if its decision turns out to be
5 harmful in hindsight—assuming that the investment is used and useful. But what
6 are the consequences of an imprudent decision, if upon review it is found that the
7 decision was actually beneficial to customers? Do customers pay for the
8 imprudence?

9 **Table 2: Potential Outcomes of Prudence Decisions**

Type of Decision	Review Findings	Regulatory Consequences
Prudent	Beneficial	Rate recovery
Prudent	Harmful	Rate recovery
Prudent	Indeterminate	Rate recovery
Imprudent	Harmful	No Rate Recovery
Imprudent	Beneficial	?
Imprudent	Indeterminate	?

10 In theory, the regulatory consequences of prudent and imprudent decisions by a
11 utility should be parallel. If a prudent decision allows rate recovery for an
12 investment regardless of whether the investment is beneficial, or harmful, then an
13 imprudent decision should lead to no rate recovery regardless of whether the
14 consequences are beneficial or harmful.

15 While CUB believes that such a parallel construction of prudence and imprudence
16 makes sense and seems fair, we recognize that a large prudence disallowance,⁶⁰
17 when there is no financial harm to customers, may be a stretch for many
18 regulators. At the same time, CUB feels strongly that imprudent actions by
19 utilities should lead to some consequences. If a utility is generally allowed to
20 recover its prudently incurred costs regardless of whether its actions are
21 beneficial, then the utility should face consequences for imprudent acts regardless
22 of whether those acts are harmful.

23 In this case, CUB is not arguing that PacifiCorp was imprudent with regards to
24 actions that have created benefits. CUB is arguing that PacifiCorp was imprudent
25 with regards to actions that have harmed customers. The exact level of harm is,
26 however, difficult to quantify.⁶¹

27 CUB believes that the Bridger 3 investment is imprudent and that the consequence of

⁶⁰ In Idaho Power's case, the disallowance would be small—\$27,500 on an annual basis. UE 233 CUB/200 Feighner-Jenks/15. It is the principle/precedent that is important.

⁶¹ UE 246/CUB/100/Jenks-Feighner/14 lines 16 – 17 and Jenks-Feighner/15 lines 1-21 and Jenks-Feighner/16 lines 1-4.

1 imprudence can be demonstrated.⁶²

2 **VI. APPLICATION OF THE STANDARD OF REVIEW TO THE**
3 **UNSETTLED ISSUES IN THIS DOCKET**

4 CUB is challenging the prudence of the clean air investments Idaho Power permitted to
5 be made at Bridger 3 for a cost of \$8.2 million. But it is important to note that the \$8.2 million in
6 costs sought in this docket does not cover the full cost of clean air investment in Bridger 3; it is
7 not even the full cost of BART-related clean air investments in Bridger 3.⁶³ All the \$8.2 million
8 represents is the incremental investment in BART controls that may qualify—although CUB
9 does not think that it does—as used and useful in this docket.⁶⁴ Idaho Power Exhibit 1302
10 demonstrates that the total investment cost related to BART requires a minimum investment of
11 \$40.5 million, plus millions of dollars in increased operating costs. But the expected investment
12 in BART is significantly greater than \$40.5 million.⁶⁵ CUB Confidential Exhibit 201 sets forth
13 the total new investment and additional O&M costs in the unit since 2005 and the total new
14 investment and O&M costs expected before 2022. Idaho Power has stated that it did not conduct
15 an analysis to determine whether those costs were prudent when compared to alternative
16 generation investments.⁶⁶ So, Idaho Power is making investments on an incremental basis—a
17 few million in 2011, a few million in 2012—and has yet to evaluate the investment costs to
18 ensure that they are prudent in comparison to possible investment in alternative resources. The
19 CH2M HILL study commissioned by PacifiCorp, and touted by Idaho Power, was limited to
20 evaluating the least-cost pollution control; it did not consider whether the overall least-cost for

⁶² CUB notes that Staff has also provided a “thinking tool”— see UE 246/Staff/1500/Colville/3.

⁶³ UE 233/CUB/200/Feighner-Jenks/6.

⁶⁴ UE 233/CUB/200/Feighner-Jenks/7.

⁶⁵ UE 233/CUB/200/Feighner-Jenks/7.

⁶⁶ UE 233 CUB/200 Feighner-Jenks/8; *See also* CUB Exhibit 20.

1 customer would be an investment in alternative energy resources.⁶⁷ The Company also failed to
2 analyze whether a change in the closure date would lead to a lower cost investment.⁶⁸ So, the big
3 picture issue here is not whether the \$8.2 million requested in this docket is reasonable and
4 prudent—that investment assumes that all other investments necessary to keep the plant running
5 will also be made—but rather whether the entire scheme of proposed investments is reasonable
6 and prudent when taken as a whole.⁶⁹

7 Based upon the above, and also what follows below, CUB thinks Idaho Power was
8 imprudent and that its imprudence stems from three separate acts. First, Idaho Power is
9 imprudent because it delegated its management of the plant to another utility and allowed that
10 utility to make all the decisions regarding the scrubber clean air investment being made at the
11 Bridger 3.

12 Second, Idaho Power is imprudent because it allowed clean air investments to continue to
13 be made at that unit without consideration of the least-cost/least-risk strategies known to Idaho
14 Power through its experience with the Boardman plant. In other words, the Company has failed,
15 and is failing, to properly manage a rate-based asset. The Company has been imprudent in the
16 making of investments at Jim Bridger 3.⁷⁰

17 And third, the Company is further imprudent because it has delegated defense of this
18 matter to the entity that itself failed to make prudent decisions at the unit, and those decision now
19 form the basis of the disallowance that CUB is seeking in this matter.

⁶⁷ UE 233/CUB/200/Feighner-Jenks/9.

⁶⁸ UE 233/CUB/200/Feighner-Jenks/9.

⁶⁹ UE 233/CUB/200/Feighner-Jenks/8.

⁷⁰ UE 233/CUB/400/Feighner-Jenks/3 line 19 to Feighner-Jenks/4 line 2.

1 **A. Idaho Power Has Delegated Much More Than Day-to-Day Operation of the Plant to**
2 **PacifiCorp**

3 As CUB has previously argued, Bridger 3 is a rate-based asset belonging to both Idaho
4 Power and PacifiCorp. As a co-owner of the unit, Idaho Power is responsible to ensure that the
5 unit is managed in a least-cost/least-risk manner. Idaho Power has the burden of proof, and Idaho
6 Power alone must demonstrate that the clean air investments made at Bridger 3 were prudent.⁷¹
7 But, as set forth in CUB’s August 13, 2012 Rebuttal testimony, the heart of Idaho Power’s
8 argument for the prudence of the clean air investments at Bridger 3 is:

9 Idaho Power relied on PacifiCorp, as the plant operator, to prepare these studies.
10 As such, Idaho Power relies on the testimony and analysis set forth in the direct
11 and reply testimony of PacifiCorp witness Chad A. Teply, and the reply testimony
12 of PacifiCorp witness Cathy S. Woollums to rebut CUB’s criticism.⁷²

13 This is very telling. Idaho Power has the burden of proof in this case and has tried to delegate
14 that burden to PacifiCorp through PacifiCorp’s testimony in another docket.⁷³ Idaho Power
15 explains this choice by stating that PacifiCorp, as the “designated plant operator,” is responsible
16 for the day-to-day activities of the plant.⁷⁴ CUB agrees that PacifiCorp is the day-to-day operator
17 at Bridger 3, but CUB does not agree that Idaho Power can delegate away its responsibility for
18 the making of the clean air investments at Bridger 3 to PacifiCorp.⁷⁵ As a result of CUB’s
19 testimony on this point, Idaho Power now claims that it did not delegate away its responsibility

⁷¹ UE 233/CUB/400/Feighner-Jenks/2 line 19 -23.

⁷² UE 233/CUB/400/Feighner-Jenks/2 lines 6-10 citing to UE 233/IDAHO POWER/1500/Carstensen/5 line 25 to Carstensen/6 line 2.

⁷³ The Reply Testimony of Mr. Teply is UE 246/1500 and the Reply Testimony of Ms. Woollums is UE 246/1400.

⁷⁴ UE 233/IDAHO POWER/1500/Carstensen/1 line 24 to Carstensen/2 line 13.

⁷⁵ UE 233/CUB/400/Feighner-Jenks/2 lines 16-18; See also UE 233/Idaho Power/1500/Carstensen/2 line 26 to Carstensen/3 line 1, where the Company appears to contradict its prior statement on management by stating, “Idaho Power does oversee and review all major decision made by PacifiCorp in the operation of the plant.” For CUB, this simply means that Idaho Power’s imprudence is even pronounced because it should have made sure that it told PacifiCorp about what was happening at Boardman.

1 to engage with PacifiCorp in the decision to invest in the Scrubber Upgrade at Bridger 3.⁷⁶ But
2 the historical facts simply do not support Idaho Power's new position.

3 As a co-owner, Idaho Power has to agree in writing to all significant capital investments
4 in the plant.⁷⁷ By minimizing its engagement in the least-cost/least-risk planning for the clean air
5 investments being made in the unit, CUB believes the Company has taken a significant risk.⁷⁸
6 Idaho Power states that, "CUB's portrayal of the Company as either passive or uninvolved is
7 simply wrong."⁷⁹ While CUB sincerely hopes that its portrayal is wrong for today and going
8 forward in time,⁸⁰ CUB does not think it was wrong about the Company's position at the time the
9 pollution control investments at issue in this docket were made. CUB bases its belief on the
10 following. Idaho Power admits that, "[i]n this case, the Company did rely on PacifiCorp to
11 perform the cost-effectiveness studies." But it then says: "[h]owever, once completed, the
12 Company carefully reviewed the analyses and ultimately agreed that they correctly concluded
13 that moving forward with the Scrubber Upgrade was the least cost option and therefore the best

⁷⁶ UE 233/Idaho Power/1700/Carstensen/1 line 23 to Carstensen/2 line 2. And as for all the communication that Idaho Power now claims occurs between the companies, that just makes it all the stranger that Idaho Power would not have informed PacifiCorp about the route being taken at Boardman. UE 233/Idaho Power/1500/Carstensen/3 lines 17-25.

⁷⁶ UE 233/Idaho Power/1700/Carstensen/1 line 23 to Carstensen/2 line 2.

⁷⁷ UE 233/CUB/300/Feighner-Jenks/3 lines 1-2 citing to UE 233/IDAHO POWER/1400/Carstensen/2, lines 10-12.

⁷⁸ UE 233/CUB/300/Feighner-Jenks/3 lines 2-4.

⁷⁹ UE 233/Idaho Power/1700/ Carstensen/1 lines 22-23.

⁸⁰ CUB is delighted to hear all the great things the Company says it is doing going forward – CUB hopes it learned from its last IRP process and that these statements are not just lip service:

"The Company has and will carefully consider the criticisms expressed by Staff with regard to the Company's decision-making process. Consequently, the Company has been proactive in its efforts to improve the process going forward and is currently involved preparing an update to the 2011 IRP. This update will include an evaluation of the cost-effectiveness of investments in additional emissions control equipment at the Jim Bridger and North Valmy power plants. This evaluation will look at investments such as the SCR and compare them to an early retirement of the unit and replacement with alternate generation capacity. The purpose of this study is to ensure that these investments are prudent investments for the Company and its customers."

UE 233/Idaho Power/1700/Carstensen/5.

1 decision for customers.”⁸¹ But from what CUB has been able to ascertain, the Company did not
2 know about the studies and had not read them—the only study that evaluated the cost-
3 effectiveness of this investment before the investment was made is the PVRR analysis that
4 PacifiCorp is relying on in UE 246 to argue that the investment is prudent. That study was
5 received by Idaho Power -- for the first time -- during the litigation of this case. To the degree
6 that IDAHO POWER “carefully reviewed” this analysis, it did so 4 years after the analysis was
7 conducted and years after it provided approval for the investment:

8 The primary study that PacifiCorp claims was done before the investment to
9 determine whether the scrubber upgrade was cost effective was the 2008 study. . . .
10 we note that Idaho Power received the study on April 26, 2012. At the time of
11 receipt of this study, Idaho Power was not attempting to meet its due diligence
12 obligation and incur investment costs that were least-cost to its customers, but
13 rather was defending its shareholders from a prudence disallowance requested by
14 CUB.⁸²

15 CUB also points out that Idaho Power is happy to rely on studies that it has not read or that were
16 not conducted⁸³ at the time of the decision that it made, but only so long as they support its
17 position. Idaho Power does not, therefore, want the Commission to consider the findings of the
18 LC 48 Spring 2012 IRP Update,⁸⁴ which showed that in 3 of the 6 studied scenarios, additional
19 clean air investment in Bridger 3 is not cost effective.⁸⁵

20 Because it is so important, CUB sets forth verbatim the next part of CUB’s findings from
21 its June 20, 2012 Testimony.

22 CUB Exhibit 301 shows the data responses CUB has received in this docket
23 related to due diligence, or the lack thereof, by the Company in regard to
24 compliance with clean air regulations. These data responses reveal that Idaho

⁸¹ UE 233/Idaho Power/1700/Carstensen/2 lines 4-8.

⁸² UE 233/CUB/300/Feighner-Jenks/5 line 22 to Feighner-Jenks/6 line 5; *See also* CUB Exhibit 301, IDAHO POWER Data Response to CUB DR 48.

⁸³ UE 233/Staff/1100/Colville/24 lines 1-9 citing to Idaho Power/1402/Carstensen.

⁸⁴ UE 233/Idaho Power/1500/Carstensen/5 lines 4-8.

⁸⁵ UE 233/CUB/300/Feighner-Jenks/9.

1 Power was not engaged in active management of the Bridger Unit 3 plant. Idaho
2 Power, for example, cannot tell us “the exact dates of the planned outage during
3 which the work was completed nor the exact date that the work was completed.”⁸⁶
4 Idaho Power never reviewed the contractor’s work.⁸⁷ Idaho Power does not know
5 when the actual work on the project began⁸⁸ or the dates of the competitive
6 bidding process relating to the scrubber upgrade.⁸⁹

7 Before work on the project began, it seems as if the only study IPCO reviewed
8 was the CH2M Hill study discussed in earlier testimony. That study was not an
9 attempt to determine if the BART projects were cost effective, but instead was an
10 attempt to determine the least-cost option for complying with BART. Based on
11 that study, the current BART investment, which includes an SCR, is not the least
12 cost.⁹⁰

13 It is CUB’s position that, regardless of whether Idaho Power in fact engaged in a
14 due diligence review of the clean air compliance regulations and the technological
15 fixes required to come into compliance with the regulations, IPCO is none-the-
16 less responsible for its clean air compliance investments in the plant and the
17 Commission must determine whether those investments were prudent and least
18 cost.⁹¹

19 CUB believes that it is for this reason that Idaho Power’s whole argument advocates for a
20 standard of objective reasonableness based on what the Company knew or should have known.
21 The Company is relying on the “should have known” part because it cannot rely on what it did
22 know about this investment. If there were other facts available at the time that the Company
23 supposedly made its decision then the Company knew nothing about them because it had done
24 no research to find them. CUB thinks the Company should be punished for this complete lack of
25 due diligence regardless of the size of the harm it caused. CUB does not think that taking your
26 hand off the wheel while driving is good, whether the wheel is in a car or at a coal plant. And
27 CUB does not believe that application of the objectively reasonable standard helps Idaho Power

⁸⁶ CUB Exhibit 301, IDAHO POWER Data Response to CUB DR 46.

⁸⁷ CUB Exhibit 301, IDAHO POWER Data Response to CUB DR 45.

⁸⁸ CUB Exhibit 301, IDAHO POWER Data Response to CUB DR 44.

⁸⁹ CUB Exhibit 301, IDAHO POWER Data Response to CUB DRs 42 and 43.

⁹⁰ UE 233/CUB/200/Feighner-Jenks/7.

⁹¹ UE 233/CUB/300/Feighner-Jenks/6 lines 6-18.

1 when all of the historic facts show that Idaho Power was in fact imprudent. Regardless of
2 whether Idaho Power itself engaged in a due diligence review of the clean air compliance
3 regulations and the technological fixes required to come into compliance with the regulations,
4 IDAHO POWER is nonetheless responsible for the clean air compliance investments made at
5 Bridger 3. And these are the investments that the Commission must review for prudence and
6 least cost/least risk.

7 **B. The Studies**

8 *1. Idaho Power's Tipping Point Analysis*

9 As CUB stated in its UE 233 June 20, 2012 Testimony, the Tipping Point Analysis (TPA)
10 included by Idaho Power is not sufficient to support a finding of prudence. The study was not an
11 attempt to look at Bridger 3 and whether the investment required under the Wyoming Regional
12 Haze Rules was cost-effective. Instead, the TPA was a combined look at both the Bridger and
13 Valmy plants.⁹² This is very concerning to CUB, because it is not clear whether PGE would have
14 agreed to close Boardman early if it had been permitted to average the emissions from Boardman
15 with Colstrip. It is also not clear that PacifiCorp would have agreed to close Carbon 1 and 2 early
16 and to convert Naughton 3 to gas if it had been permitted to average those three plants across its
17 fleet of 26 units. Averages tell us very little about the whole story.

18 PacifiCorp's IRP Update demonstrates that Bridger 3 is on the edge between continuing
19 to operate and being converted to natural gas. This is because three of the six Bridger scenarios
20 reviewed showed the plant should be converted to gas.⁹³ Thus, while IDAHO POWER believes
21 that the \$120 million difference from its TPA demonstrates that there is no need to look more

⁹² UE 233/Idaho Power/1400/Carstensen/6.

⁹³ UE 246/CUB/100/Feighner-Jenks/36.

1 closely at closure of that plant, CUB thinks that there definitely is.⁹⁴ Furthermore, the TPA does
2 not consider options regarding closure dates or replacement resources, and the TPA study was
3 conducted after the investment was made.⁹⁵

4 2. *PacifiCorp's 2012 IRP Update*

5 PacifiCorp's 2012 IRP Update is part of the record in this case.⁹⁶ As previously
6 mentioned, the PacifiCorp IRP Update analyzed six scenarios for Bridger 3 and concluded that
7 in three of those scenarios—low gas, high CO₂, or both—it would be cost effective to convert the
8 plant to natural gas.⁹⁷ PacifiCorp has now committed to updating its analysis before making
9 further investments.⁹⁸ Of note is the fact that the gas forward price curve contained in the 2012
10 IRP Update is dated from August 2011, but gas prices have continued to fall. If PacifiCorp
11 updated the forward price curve contained in the Oregon Gas Update Report, it could find that
12 Bridger 3 should be converted to gas.⁹⁹ Special note should be taken of the fact that the scrubber
13 upgrade costs that are included in the current UE 246 GRC were considered sunk; they could
14 not be avoided¹⁰⁰. And finally, the PacifiCorp IRP Update was the first study that robustly
15 considered more options than just market purchases. But the IRP Update study came midway
16 into the process to make the plant compliant with Regional Haze Rules.¹⁰¹

17 The PacifiCorp IRP Update no longer considers some of the costs as unavoidable. If all
18 costs associated with meeting the Regional Haze Rules were in fact still avoidable, the
19 additional costs being contemplated would make continuing to burn coal at Bridger 3 less

⁹⁴ UE 233/CUB/300/Feighner-Jenks/7 lines 5-21 and Feighner-Jenks/8 lines 1-3.

⁹⁵ UE 233/CUB/300/Feighner-Jenks/8 lines 4-16.

⁹⁶ See UE 233/Idaho Power/1404/Carstensen.

⁹⁷ UE 246/CUB/100/Feighner-Jenks/36.

⁹⁸ UE 233/Idaho Power/1404/Carstensen/95.

⁹⁹ UE 233/CUB/300/Feighner-Jenks/8 line 17 to Feighner-Jenks/10 line 3.

¹⁰⁰ UE 233/CUB/300/Feighner-Jenks/23 lines 4-13.

¹⁰¹ UE 233/CUB/300/Feighner-Jenks/10 lines 8-9.

1 appealing. But, the Company has never conducted a robust study including all of the RHR costs
2 and considered multiple replacement options.

3 It is CUB's position that if Bridger 3 were scheduled to close in 2018, 2020, or 2022, for
4 example, it is doubtful that an SCR would have been considered cost-effective pollution control
5 for meeting the RHR. Instead, running a coal plant without as much pollution control for an
6 additional three to five years would have reduced the costs and made closure cost-effective, since
7 the plant would produce power more cheaply than either a coal plant repowered for gas or a coal
8 plant with significantly higher capital investment.¹⁰²

9 3. *The 2008 Study*

10 As noted above, Idaho Power received this study in April, 2012¹⁰³ so it is not something
11 the Company knew about when it made the decision to invest in the plant. CUB has analyzed
12 PacifiCorp's 2008 study already in the PacifiCorp rate case, UE 246. Essentially, PacifiCorp
13 signed a contract for work on the scrubber in 2008,¹⁰⁴ but construction did not commence until
14 July 6, 2010, and the scrubber update was installed during a plant outage between April 30,
15 2011, and June 30, 2011.¹⁰⁵

16 In 2008 PacifiCorp conducted its PVRR analysis comparing its then-expected cost for
17 clean air investments to immediately closing the plant and relying on market purchases. There
18 are several serious flaws with the analysis in this study¹⁰⁶—primarily, the alternative closure date
19 had no relationship to the completion date of the project, the deadline for pollution control, or
20 even the date that the state required an upgrade in the future. PacifiCorp is now claiming that the

¹⁰² UE 233/CUB/300/Feighner-Jenks/10 line 4 to Feighner-Jenks/11 line 5.

¹⁰³ CUB Exhibit 301—IDAHO POWER Response to CUB DR 48.

¹⁰⁴ UE 246/PAC/500/Tepley/84.

¹⁰⁵ UE 246/PAC/500/Tepley/84-85.

¹⁰⁶ UE 233/CUB/300/Feighner-Jenks/11 lines 7-19.

1 date it should have used for plant closure in its PVRR studies was the expected compliance date
2 of 1/1/14.¹⁰⁷ This means that PacifiCorp’s model closed the plant 6 years early. A significant
3 amount of the savings identified in this study comes from these 6 years of uneconomic closure of
4 the plant.¹⁰⁸

5 Another flaw stems from the failure to update the plan as evidenced by the fact that the
6 price of wholesale electricity decreased significantly from 2008 to 2010, when construction on
7 the upgrade began¹⁰⁹ but even that did not change PacifiCorp’s thinking. If PacifiCorp had
8 updated its study at the end of 2008, or in 2009, the change in forward prices would have had a
9 significant effect on the 2008 study results. In addition, because the scrubber upgrade was not
10 sufficient to meet the BART requirements, a SCR and other investment was required. Clearly the
11 Company could have updated the study, since construction did not begin until 2010, and clearly
12 because the Company knew additional investment was required, it should have been monitoring
13 and updating its clean air analysis on Bridger 3. By not updating the study before making the
14 scrubber upgrade investment, PacifiCorp was taking a risk that future costs related to meeting the
15 Regional Haze Rules would cause the plant to stop burning coal and the cost of the scrubber
16 update would be stranded.¹¹⁰

17 An additional flaw in the 2008 study was that PacifiCorp limited itself to market
18 purchases to replace the plant, making the study very dependent on its forward price curve. But
19 in the 2012 PacifiCorp IRP Update, the Company found that converting a plant to gas is the best

¹⁰⁷ UE 246/PAC/1500/Teply/18, lines 1-5.

¹⁰⁸ UE 233/CUB/300/Feighner-Jenks/12 lines 2-12.

¹⁰⁹ CUB Exhibit 303—NPPC’s 6th Power Plan

¹¹⁰ UE 233/CUB/300/Feighner-Jenks/12 lines 14 to Feighner-Jenks/13 line 15.

1 alternative in three of the six scenarios considered.¹¹¹ Unfortunately, the investment in Bridger 3
2 was never compared to the costs of switching the plant to gas or, for that matter, any other
3 replacement power option other than PacifiCorp's forward price curve. In closing, we note that
4 PacifiCorp also did not consider any alternatives other than to run the plant indefinitely or shut it
5 down in 2008. For a plant like Bridger 3 that is, in CUB's opinion, now on the very edge of
6 viable economic operation—three scenarios advocate ceasing to burn coal, and three scenarios
7 advocate continuing to burn coal¹¹²—reconsidering the plant's useful life would likely have led,
8 and would lead, to a better alternative. Operating the unit on coal for a few years, rather than
9 converting it to gas next year, would reduce the cost of operation during those years and lead to a
10 lower total cost for customers.¹¹³ The lack of interest the Company has shown in even
11 considering alternative shutdown dates is troubling, because it suggests IDAHO POWER is not
12 being diligent in looking for the least-cost options for generation. The EPA's proposed partial
13 rejection of the Wyoming SIP should give the Company a chance to rethink this.¹¹⁴

14 **C. What Are the Required Steps In A Bart Analysis?**

15 Staff asks this question in its Staff/1100 Colville testimony.¹¹⁵ Staff then sets out the six-
16 part BART analysis test. The most relevant part for our discussion is part 4. Part 4 requires the
17 utility to consider the remaining useful life of the facility. What Staff does not set forth is the
18 interpretation that has been given to that section by the EPA, which states that:

19 4. Remaining Useful Life of the Source. The remaining useful life of the source is
20 usually considered as a quantitative factor in estimating the cost of compliance.
21 With the exception of Apache Generating Station Unit 1, ADEQ used the default

¹¹¹ UE 246/CUB/100/Feighner-Jenks/36.

¹¹² UE 246/CUB/100/Feighner-Jenks/36.

¹¹³ UE 233/CUB/300/Feighner-Jenks/26

¹¹⁴ UE 233/CUB/300/Feighner-Jenks/13 line 21 to Feighner-Jenks/14 line 16.

¹¹⁵ UE 233/Staff/1100/Colville/24 line 15 to Colville/25 line 4.

1 20-year amortization period in the EPA Cost Control Manual as the remaining
2 useful life of the facilities in its RH SIP. *Without commitments for an early shut*
3 *down of an EGU, it is not appropriate to consider a shorter amortization period*
4 *in a BART analysis.*¹¹⁶

5 Thus, contrary to what Staff and the utility would have the Commission believe, there is
6 flexibility within the BART rule. CUB discusses this issue at length in its UE 246 Prehearing
7 Brief.¹¹⁷ State implementation of the Federal Clean Air Act also recognizes this flexibility in
8 regard to the life of the plant,¹¹⁸ as evidenced by comments submitted in the PGE case in
9 Oregon.¹¹⁹ But as Staff points out in its testimony, the Bridger 3 BART Analysis Step 4 did not
10 consider early retirement of unit 3.¹²⁰ Staff went on to say that: “[t]here is no indication in the
11 guidelines that the date is considered to be variable. However, there also is no restriction on
12 considering it to be variable. [Staff] conclude[s] that prior to the advancement in thinking
13 brought about by the 2010 Boardman Coal Plant BART analyses, considering the remaining
14 useful life was fixed was a reasonable action.”¹²¹ Staff’s conclusions in its UE 233 Staff/1000
15 testimony were based upon an incomplete analysis conducted by CH2M HILL on behalf of
16 PacifiCorp.¹²² CH2M HILL did not provide any analysis of how the useful life would influence
17 the cost effectiveness of various pollution control options. Instead, it simply assigned a 20 year
18 useful life to all measures.¹²³ As will be seen in the following section, Staff’s thinking on this
19 issue is misguided at best.

¹¹⁶ <http://www.gpo.gov/fdsys/pkg/FR-2012-07-20/pdf/2012-17659.pdf> (emphasis added)

¹¹⁷ UE 246 CUB’s Pre-hearing Brief at 9-12.

¹¹⁸ UE 246/CUB/200/Jenks-Feighner/14 lines 12-14 and lines 15-25; Jenks-Feighner/15 lines 1-7.

¹¹⁹ UE 246/CUB/200/Jenks-Feighner/15 lines 8 – 31 through Jenks-Feighner 22 line 13.

¹²⁰ UE 233/Staff/1100/Colville/25 lines 5-7.

¹²¹ UE 233/Staff/1000/Colville/26 lines 2-6.

¹²² UE 233/CUB/200/Feighner-Jenks/6.

¹²³ UE 233/CUB/200/Feighner-Jenks/10.

1 **D. Idaho Power Has Known About BART Flexibility Since 2008**

2 Idaho Power tries to downplay its own expertise and responsibility for the running of the
3 coal plants in which it has an interest. The Company states that PacifiCorp, not Idaho Power, is
4 the expert in coal plants because PacifiCorp owns and operates more of them.¹²⁴ It also states that
5 Idaho Power only has a minority interest in two plants and a 50 percent share in a third.¹²⁵ What
6 the Company ignores is that one of the two plants in which it has a minority ownership interest is
7 Boardman. While the OPUC Staff may argue that PacifiCorp did not know about the option
8 under Regional Haze Rules of reducing pollution control costs by phasing out a plant before
9 2010, the same argument definitely cannot be made for Idaho Power.¹²⁶

10 As a co-owner of the Boardman plant, Idaho Power should have been informed of the
11 December 17, 2008 Comments PGE submitted to DEQ that contained the following statement:

12 As noted above, the Clean Air Act requires consideration of the remaining useful
13 life of the plant. EPA’s rules recognize that if the remaining useful life is limited
14 by permit condition then the cost-effectiveness needs to be determined based on
15 amortizing the capital cost over the reduced equipment life. The cost-
16 effectiveness of the semi-dry scrubbers based on a useful life of 6.5 years (i.e., the
17 number of years after July 1, 2014 that the control would be operated if the
18 Foster-Wheeler boiler ceased operation in 2020) is approximately \$5,200 per ton
19 of SO₂ controlled (see attached spreadsheet for details of cost-effectiveness
20 evaluation). This cost-effectiveness far exceeds the range of SO₂ cost-
21 effectiveness evaluated by EPA in establishing the presumptive BART limits. In
22 EPA’s assessment they looked at costs ranging from \$400/ton to \$2,000/ton. The
23 cost-effectiveness of the semi-dry scrubbers if operated only 6.5 years would be
24 almost triple the high end of the range of what EPA considered cost-effective.
25 Therefore, with only a 6.5-year operational life it is appropriate to consider BART

¹²⁴ UE 233/Idaho Power/1500/Carstensen/2 lines 18-20.

¹²⁵ UE 233 Idaho Power/1500 Carstensen/2 lines 21-22.

¹²⁶ For the record CUB does not think anyone should buy into this argument for PacifiCorp either – willful ignorance is generally no excuse under the law and CUB does not see why that should be any different here. See Mark D. Yochum, Ignorance of the Law is No Excuse Except for Tax Crimes, 27 Duq. L. Rev. 221, n. 1 (1989) ((Latin Expression) *Ignorantia juris quod quisque tenetur scire, meninem excusat.* (Ignorance of the law, which everyone is bound to know, excuses no man.)).

1 to require no additional SO₂ controls so long as the Foster-Wheeler boiler is
2 required to cease operation by the end of 2020.¹²⁷

3 And, in 2009, Idaho Power, as a co-owner of the plant, would have been informed of the DEQ's
4 decision on BART, which invited PGE, on behalf of the owners of the plant, to propose early
5 shut down as a method to reduce the cost of pollution control:

6 On December 17, 2008, DEQ received comments from PGE requesting that two
7 "decision points" be added to the proposed rules, which would allow PGE to
8 consider in 2012 and 2015 whether or not to close the Boardman plant by 2020 or
9 2029, rather than install the controls that DEQ had proposed. After careful
10 consideration, DEQ decided not to include PGE's proposal in the final
11 recommendation to the commission, but instead added provisions in the Regional
12 Haze Plan that allow PGE to request a rule change if a decision is made in the
13 future to close the plant. This will allow operation of the plant for a limited time
14 without installing one or more of the controls proposed by DEQ, and thus help
15 ensure that investments made at Boardman are cost-effective for rate payers. DEQ
16 will make every effort to expedite this request.¹²⁸

17 Yet even with the historical facts set forth above, Idaho Power seems to want the
18 Commission to believe that it never felt the need to ensure that PacifiCorp, the co-owner and
19 operator of the Jim Bridger 3, was considering the least-cost/least-risk early closure/plant *phase-*
20 *out* approach to Regional Haze Rules for Bridger 3. As CUB has demonstrated in its UE 246
21 Rebuttal Testimony, if in 2009 PacifiCorp had reexamined its analysis, it would have found that
22 phasing out the plant sometime between 2020 and 2025 would have been the least cost/least-risk
23 option. Under the terms of its contract, PacifiCorp could have [REDACTED]
24 [REDACTED] and still saved customers millions of dollars.¹²⁹

25 This spring's PacifiCorp IRP Update showed that in 3 of the 6 studied scenarios, additional
26 clean air investment in Bridger 3 is not cost effective.¹³⁰ Idaho Power, as a minority owner of the

¹²⁷ UE 246/CUB/Exhibit 206, pages 6-7.

¹²⁸ Summary of decision from DEQ website

¹²⁹ UE 246/CUB/200/Jenks-Feighner/40-41.

¹³⁰ UE 246/CUB/100/Feighner-Jenks/35-36.

1 PGE Boardman plant, knows that phasing out coal plants in compliance with the federal Clean
2 Air Act is a real possibility and can be the least-cost/least-risk decision for customers, as opposed
3 to making investments in coal plants and keeping them running, like PacifiCorp seems inclined
4 to do. Idaho Power should know by now that PacifiCorp's clean air analysis of Bridger 3 did not
5 consider the possibility of phasing out the plant instead of making the expensive clean air
6 investments.

7 **E. PacifiCorp's Actions With Regard to Bridger 3 Were Imprudent**

8 Idaho Power has told CUB that it is relying on PacifiCorp's testimony in PacifiCorp's UE
9 246 docket. That docket shows that PacifiCorp's actions were imprudent. By the fall of 2009, the
10 gas and power markets had changed due to the impact of historically low natural gas prices.¹³¹ If
11 PacifiCorp was continuing to update and monitor the cost-effectiveness of its investment in the
12 Bridger3 unit, it would have realized that the investment was no longer economic. Under terms
13 of the contract for this project, [REDACTED]
14 [REDACTED].¹³² By the fall of 2009, such a [REDACTED] would have been
15 least-cost/least-risk and the prudent thing to do.¹³³ By not monitoring the economics of this
16 investment and by not insisting that PacifiCorp monitor the economics of this investment, Idaho
17 Power was imprudent. Idaho Power's customers should not be required to pay higher rates due
18 its imprudence.

19 As CUB demonstrates in its UE 246 Rebuttal Testimony, the investment in Jim Bridger 3
20 was imprudent. PacifiCorp should have [REDACTED] and pursued a phase-out of the
21 plant. If PacifiCorp was imprudent, then it is a foregone conclusion that Idaho Power's less-than-

¹³¹ UE 246/CUB/200/Jenks-Feighner/32.

¹³² UE 246/CUB/200/Jenks-Feighner/40.

¹³³ UE 246/CUB/200/Jenks-Feighner/41.

1 rigorous analysis of the Bridger 3 clean air investments must also be imprudent.¹³⁴

2 **F. CUB’s Interpretation of the Used and Useful Standard Is Not Novel**

3 CUB is surprised by Idaho Power’s insistence that the only investment that should be
4 subject to prudence review in this docket is the scrubber upgrade investment. The Company’s
5 unwillingness to even answer data requests concerning the SCR is troubling because without the
6 SCR, the scrubber upgrade is not used and useful.¹³⁵ Idaho Power made the investment in the
7 scrubber upgrade in order to comply with Regional Haze Rules.¹³⁶ It intends to make the SCR
8 investment to also meet compliance standards for those same rules. Because of this, it is CUB’s
9 position that the used and useful standard is as much at issue in this docket as is the prudence
10 principle. CUB is also concerned because this approach will lead to piecemeal review of the
11 clean air investments, as each element of the investment will be brought before the Commission
12 individually as it occurs in its test year. This means the Regional Haze Rule investments as a
13 project will never come collectively before the Commission. And, this is a problem because the
14 investments are only used and useful when combined as a total project.¹³⁷ It is CUB’s position
15 that pieces of this kind of project cannot be brought into rates, just as incremental pieces of a
16 power plant cannot be brought into rates.¹³⁸

¹³⁴ UE 233/CUB/400/Feighner-Jenks/9 line 19 to Feighner-Jenks/10 line 2.

¹³⁵ UE 233/CUB/300/Feighner-Jenks/2 lines 16-19. See also:

There is one remaining issue in UE 233, and that is the prudence of the incremental pollution control investments—consisting only of the scrubber upgrades that were installed at Jim Bridger during the 2011 Test Year. Any request for information irrelevant to that narrow issue is outside of the scope of discovery in this case.

Idaho Power Company’s Response to the Citizens’ Utility Board of Oregon’s Motion to Compel, page 1-2; See also “the prudence of the SCR is not at issue in this case.” UE 233 Idaho Power Company/1700 Carstensen/2 line 15.

¹³⁶ UE 233/CUB/300/Feighner-Jenks/2 lines 19-22.

¹³⁷ UE 233/CUB/300/Feighner-Jenks lines 2-6.

¹³⁸ UE 233 CUB/300 Feighner-Jenks lines 7-20.

1 CUB notes that Idaho Power is also arguing that it will be evaluating the cost-
2 effectiveness of investments in additional emission control equipment for the Bridger 3 and
3 North Valmy power plants in the future.¹³⁹ This misses the point. The Company needed to be
4 reviewing the need for the SCR at the same time that it was considering how to manage BART
5 and it should have been updating its evaluation of this multi-year project along the way. Would
6 the scrubber and the SCR together fix the BART issue? If not, would either be used and useful
7 alone? It is CUB's position that the single scrubber investment, because it cannot individually
8 meet the requirements of Regional Haze Rules, and must be accompanied by other investments,
9 including the SCR,¹⁴⁰ may be "used," but it is not "useful" for the purpose of complying with the
10 clean air requirements.¹⁴¹ This is contrary to what Idaho Power argues.¹⁴²

11 If Idaho Power insists that investments must be considered on a piecemeal basis, and that
12 the costs associated with the investments are irrelevant, then it leaves the Commission no choice
13 but to find that each discrete investment is not by itself "used and useful." This is the only way to
14 ensure that all relevant costs are considered in a prudence review.

15 Idaho Power's testimony asserts that CUB has proposed that a "novel" treatment of the
16 used and useful standard be applied in this docket. Specifically, the Company attacks CUB's
17 proposed disallowance of the scrubber investment at Bridger 3 because CUB has argued that it is
18 not used and useful for the purpose of meeting the requirements of the Regional Haze Rule,
19 which do not take effect until 2015.¹⁴³ The Company characterizes CUB's position as being fully

¹³⁹ UW 233 Idaho Power Company/1700 Carstensen/2 lines 20-22.

¹⁴⁰ UE 233/CUB/300/Feighner-Jenks/32.

¹⁴¹ UE 233/CUB/300/Feighner-Jenks/3 lines 5-13.

¹⁴² The Company argues that "CUB focuses its "useful" standard on compliance with *all* Regional Haze Rules, disregarding the fact that the Scrubber Upgrade was installed to comply with *existing* regulations. UE 233/Idaho Power/1700/Carstensen/3 lines 17-19.

¹⁴³ UE/233/IDAHO POWER/1600/Said/1-2.

1 averse to the inclusion of any pollution control devices in rates at any point prior to the effective
2 date of the regulation for which the devices were installed.¹⁴⁴ This is an overly broad view of
3 CUB’s position. CUB’s June 20, 2012, Testimony stated that the scrubber investment will not,
4 on its own, help the plant meet the RHR standards.¹⁴⁵ A separate investment in SCR technology
5 will be needed to bring the plant into compliance with the RHR standards.¹⁴⁶ CUB therefore
6 argues that the piecemeal strategy of evaluating each component of the plant’s clean air
7 compliance strategy separately, is inadequate to determine prudence; what should have been
8 evaluated was a comprehensive strategy that included the scrubber, SCR, and all associated and
9 subsequent investments that are necessary to bring the plant into compliance with state and
10 federal clean air regulations.

11 CUB has stated that Idaho Power’s argument that the scrubber is currently used and
12 useful because it is removing pollution from the plant’s emissions is specious.¹⁴⁷ CUB believes
13 that any number of pollution control devices and other add-ons that improve the operation of the
14 plant could be used, but would not necessarily be considered useful under the current regulatory
15 scheme.¹⁴⁸ In response, Idaho Power states that “the Scrubber Upgrade was determined to be the
16 only **technically feasible retrofit technology** to meet the regulatory presumptive limit of 95
17 percent reduction in SO₂ emissions”¹⁴⁹ But, the Scrubber Upgrade does not meet the NO_x
18 emissions limits, so additional pollution control is necessary. When this additional pollution
19 control is considered along with the scrubber upgrade, CUB’s analysis in UE 246 demonstrates

¹⁴⁴ UE/233/IDAHO POWER/1600/Said/1, lines 19-22.

¹⁴⁵ UE/233/CUB/300/Feighner-Jenks/13.

¹⁴⁶ UE 233/CUB/300/Feighner-Jenks/2.

¹⁴⁷ UE 233/CUB/400/Feighner-Jenks 7 lines 17-18.

¹⁴⁸ UE 233/CUB/400/Feighner-Jenks 7 lines 18 - 20.

¹⁴⁹ UE 233/Idaho Power/1700/Carstensen/4 lines 7-9 (emphasis in original).

1 that phasing out the plant between 2020 and 2025 is a cost effective alternative. So the scrubber
2 may have been the only “technically feasible retrofit technology” but it was not the only answer.
3 Idaho Power could have conducted a Boardman-style *phase-out* of the Bridger 3 plant, and then
4 even the “only technically feasible retrofit technology” answer might not have been required.

5 As for the CH2M HILL study oft cited by Idaho Power, that was a study of how to meet
6 BART in total, including its requirements for NO_x, SO₂, and PM₁₀.¹⁵⁰ That study concluded that
7 Bridger 3 could comply with BART without installing a SCR, which was incorrect. The SO₂
8 information was just one piece of that study, and the study’s findings, actually bolster CUB’s
9 argument that this is all being done piecemeal.

10 Idaho Power essentially admits the piecemeal nature of things when it states, “[t]herefore,
11 even though the Scrubber Upgrade on a standalone basis does not render Bridger 3 compliant
12 with all Regional Haze Rules, it did reduce SO₂ emission in compliance with existing regulations
13 – all of which support the larger scope of Regional Haze Rules.”¹⁵¹ Where CUB and Idaho
14 Power disagree is that SO₂ emissions removal makes the scrubber used and useful. As CUB has
15 previously argued, Idaho Power could decide to invest in a multi-billion dollar carbon
16 sequestration project at the plant tomorrow that would reduce its carbon emissions to nearly zero;
17 this investment would be used the minute the project became functional, but would not become a
18 useful least-cost/least-risk investment without the introduction of a carbon regulatory regime and
19 a great deal of technical and economic analysis.¹⁵² The scrubber upgrade here is only used and
20 useful in the context of the Regional Haze Rules, and can only be evaluated for prudence in the

¹⁵⁰ UE 233/Idaho Power/1301/2

¹⁵¹ UE 233/Idaho Power/1700/Carstensen/4 lines 11-14.

¹⁵² UE 233/CUB/400/Feighner-Jenks/7 line 20 to Feighner-Jenks/8 line 4.

1 context of all costs associated with meeting the Regional Haze Rules.¹⁵³

2 **G. It Is Precisely Because CUB’s Methodology Is Simple That It Works**

3 Idaho Power criticizes CUB’s proposal as failing “to acknowledge the process required to
4 accomplish the timely evaluation, development, permitting, and completion” of the required
5 retrofits.¹⁵⁴ CUB addressed this same criticism at length in the UE 246 docket. As explained in
6 the Prehearing Brief for that docket, PacifiCorp—Bridger 3’s majority owner and the entity to
7 which Idaho Power has delegated away its oversight in this matter—ignored the possibility of a
8 *phase-out* of the plant and also ignored the opportunity to [REDACTED] related to the
9 construction of the scrubber.¹⁵⁵ Had PacifiCorp phased out the plant, it would not have needed
10 to construct the scrubber or to later contract for an SCR.¹⁵⁶ Notwithstanding this, if it had kept
11 updating its analysis, reviewed the current situation before signing the contract, reviewed the
12 contract’s provisions during the construction period, and [REDACTED]
13 [REDACTED], it could have mitigated these unwarranted and imprudently incurred costs.
14 Customers should never have to pay for imprudent costs.

15 **H. CUB Agrees With Staff That There Were Infirmities in The Decision-Making**
16 **Process—However, the Infirmities Were Of Far Greater Importance Than Staff**
17 **Realized**

18 The Company objects to Staff’s August 2012 testimony by stating that:

¹⁵³ UE 233/CUB/400/Feighner-Jenks/8 lines 5-7.

¹⁵⁴ UE 233/Idaho Power/1700/Carstensen/4 lines 21-23.

¹⁵⁵ UE 246 – CUB’s Pre-hearing Brief at 37.

¹⁵⁶ UE 246/CUB/200/Jenks-Feighner/39 lines 13-15.

1 Because of the subjective nature of the decision-making process required for
2 investments like the Scrubber Upgrade, it is understandable that there are
3 differing views on what should be reasonably considered before a decision is
4 ultimately reached.¹⁵⁷

5 CUB finds a lot of humor in this statement. Both Idaho Power and PacifiCorp have been
6 arguing strenuously for these dockets to be reviewed with the Objective Reasonableness
7 standard, and here we have Idaho Power admitting to just how subjective the decision making
8 process is for making large investments of this type. CUB will not belabor the point here, but it is
9 CUB's position that, whether reviewed under a subjective or an objective reasonableness
10 standard, the investments in this docket were imprudent.

11 Staff's June, July, and August 2012 Testimonies conclude that Idaho Power acted
12 prudently in relying on PacifiCorp's management decisions at the Bridger 3. This conclusion is
13 reached in large part on the basis of Staff's theoretical exercise of what a prudently-acting
14 company should do in evaluating a significant resource investment such as the one at hand. This
15 exercise comprises eight distinct steps for assessing the regulatory needs of a plant and
16 implementing upgrades.¹⁵⁸ Of these eight steps, Staff acknowledges that Idaho Power did not
17 sufficiently conduct four of them:

18 In my discussion above I note several areas where Idaho Power did not meet the
19 standard of what a company would do to inform a reasonable decision. The areas
20 include: failure to consider CO₂ emission regulation at the time of its decision;
21 failure to include, at the time of its decision, sensitivity cases for variations in
22 fuel, electricity and CO₂ regulatory cost; failure to be aware of the PacifiCorp life-
23 cycle economic analysis; and failure to re-evaluate its decision as significant
24 milestones were reached.¹⁵⁹

25 Staff argues further that, even though Idaho Power's evaluation of the investment at Bridger 3

¹⁵⁷ UE 233/Idaho Power/1700/Carstensen/5 lines 9-12.

¹⁵⁸ UE 233/ CUB/400/Feighner-Jenks/8 lines 8-14 citing to UE 233/Staff/1100/Colville/14-20.

¹⁵⁹ UE 233/Staff/1100/Colville/20 lines 10-16.

1 was lacking in rigor, the decision to defer to PacifiCorp’s judgment and move forward with the
2 investment was prudent because, “under the Commission’s prudence standard, the primary focus
3 of the inquiry is on reasonableness of the action, not on the process leading to it.”¹⁶⁰ Staff also
4 stated that the benefit was so large that correcting all the decision process infirmities identified
5 by CUB and Staff would not have led Idaho Power to choose to make the investments at issue.¹⁶¹
6 But CUB has proven this wrong with our analysis in UE 246. If the Companies had gotten the
7 modeling correct in the first place, and if the Companies had monitored and updated its studies
8 for this investment, it would not have had a large positive number associated with it. Instead, the
9 Companies would be *phasing out* the plant.

10 Unfortunately, Staff failed to adequately analyze whether the action—about which it
11 continues to make conclusory statements—was in fact reasonable. The Staff conclusion that
12 PacifiCorp’s actions with regard to Bridger 3 were prudent was based on an extrapolation that
13 Staff cannot explain.¹⁶² In UE 246, CUB asked Staff to explain how this extrapolation worked.
14 The answer CUB received was not satisfactory. Some of the studies Staff extrapolated from did
15 not exist, and others did not include the costs that are at issue in this docket.¹⁶³

16 CUB refers the Commission to CUB’s UE 246 Pre-hearing Brief for issues related to Jim
17 Bridger 3 such as contracts, PVRR(d) analyses, Boardman phase out options, etc.^{164,165}

¹⁶⁰ UE 233/Staff/1100/Colville/21 lines 5-7.

¹⁶¹ UE 233/Staff/1200 Colville/3 lines 10-13.

¹⁶² UE 246/Staff/400/16

¹⁶³ UE 246/CUB/200/Jenks-Feighner/10-11

¹⁶⁴ It is not CUB’s practice to refer to confidential information from other dockets but since Idaho Power Company has chosen to rely on the testimony of Mr. Teply (which contains lots of confidential references) and since Staff has cited heavily to those confidential sources, CUB finds itself forced to also cite to this material. We understand through an email discussion with the Company’s attorneys on October 2, 2012, that they have no objection to this practice.

¹⁶⁵ UE 246 – CUB’s Pre-hearing Brief at 35-39.

1 While CUB disagrees with almost everything else Staff says, CUB does agree that there
2 were infirmities in the decision making process in this docket and that “this docket presents an
3 opportunity for the Commission to clarify its expectations for utilities with respect to
4 environmental compliance investments.”¹⁶⁶ CUB appreciates that Staff ultimately concluded that
5 the Company failed to consider CO₂ emission regulation at the time of its decision.¹⁶⁷ CUB also
6 appreciates that Staff recognizes that since the Company only recently became aware of the
7 analysis entitled “CAI Capital Projects Study for Jim Bridger U3 – Dec. 2008” and that Idaho
8 Power “did not meet the standard of what a company would do to inform a reasonable decision
9 because of the failure to be aware of the key life-cycle economic study justifying its decision.”¹⁶⁸
10 CUB also appreciates that Staff recognizes that

11 The first documented update to the analysis of compliance with environmental
12 requirements was performed during the Idaho Power 2011 IRP acknowledgment
13 process. Given that this analysis was not performed until the Scrubber Upgrade
14 Project was nearly complete, I conclude that Idaho Power did not meet the
15 standard of what a company would do (sic) inform a reasonable decision because
16 of failure (sic) re-evaluate its decision as significant milestones were reached.¹⁶⁹

17 CUB further appreciates that Staff now recognizes that the choice of an assumed idling date can
18 impact the PVR(d) analysis.¹⁷⁰ And CUB also appreciates Staff’s identification of the lack of
19 sensitivity analyses for BART compliance costs as a decision-making process infirmity.¹⁷¹ But in
20 terms of analysis of studies, that is where our agreement with Staff ends.

¹⁶⁶ UE 233/Staff/1200/Colville/6 lines 8-10.

¹⁶⁷ UE 233/Staff/1100/Colville/15 lines 2-5.

¹⁶⁸ UE 233/Staff/1100/Colville/18 lines 7-12.

¹⁶⁹ UE 233/Staff/1100/Colville/19 lines 5-11.

¹⁷⁰ UE 233/Staff/1200/Colville/7 lines 13-16.

¹⁷¹ UE 233/Staff/1200/Colville/7 lines 17-21.

1 **VII.ADDITIONAL RECOMMENDATIONS**

2 Notwithstanding Staff’s weak analysis in this docket, CUB does join with Staff in
3 recommending that:

4 The Commission should clarify that Guidelines 4 and 8 direct the utilities to
5 evaluate investments that would extend the economic and physical life of existing
6 resources, including evaluation of alternatives that would result in shorter life
7 extensions, no extension of the resource life, or shorten the assumed resource life.
8 The Commission should clarify that the IRP Guidelines also direct the utilities to
9 conduct risk analysis, including analysis of the risk of future environmental
10 regulation, to test whether the investment to extend the life of an existing resource
11 is part of an overall resource strategy with the best combination of expected costs
12 and associated risks for the utility and its customers.¹⁷²

13 CUB respectfully requests that the Commission require Idaho Power to conduct the detailed
14 analytical, company-wide reviews outlined by CUB in this docket—and to take into
15 consideration all of CUB’s concerns—on a going-forward basis so that future dockets dealing
16 with these and other pollution control regulations are not burdened with the same “did they or
17 didn’t they know” issues as this docket has been, and, most importantly, so that customers pay
18 only the appropriate share of the Company’s prudent costs of doing business. Customers cannot
19 afford a repeat of the Company’s planning decision process for the pollution control investments
20 that was shortsightedly based on the assumption that existing units must continue to operate
21 regardless of likely costs, with ratepayers bearing the burden. Customers also do not want any
22 more piecemeal reviews.

23 **VIII. DISALLOWANCE REQUESTED BY CUB**

24 Whether investment costs related to pollution control can be evaluated and determined to
25 be prudent is not a new issue. CUB and the OPUC saw similar issues arise related to the

¹⁷² UE 233/Staff/1100/Colville/22 line 15 to Colville/23 line 3.

1 Boardman coal plant owned by PGE and Idaho Power. In the case of Boardman, the projected
2 overall cost of new investments and O&M was about \$500 million. This figure resulted in PGE
3 analyzing and considering alternative paths and led to PGE’s determination that the least-cost/
4 least-risk approach was to phase out Boardman by 2020—a solution that meets BART Regional
5 Haze Standards while saving customers approximately \$200 million. Because Idaho Power is a
6 part-owner of Boardman, its customers will also see reduced costs due to the cost-effective
7 decision to close Boardman. Even with this knowledge, Idaho Power has still failed to consider
8 the full range of available options for Bridger Unit 3.¹⁷³

9 Idaho Power has not conducted the analysis that PGE conducted for Boardman and, as a
10 result, Idaho Power has continued to make new investments in Bridger without determining
11 whether the total cost of all the investments was prudent. It has then sought to add the costs of
12 those unanalyzed—and therefore imprudent—investments into rates. Prudence is all about what
13 the Company knew, or should have known, at the time it made its decision to enter into these
14 investments.¹⁷⁴ Idaho Power, as a result of its own lack of studies, clearly did not know enough

¹⁷³ UE 233/CUB/200/Feighner-Jenks/12.

¹⁷⁴ UE 233/CUB/200/Feighner-Jenks/13. Under Oregon law, the utility bears the burden to show that the proposed rate change is just and reasonable. ORS 757.210. When evaluating the prudence of a utility’s actions, the OPUC has consistently articulated and applied the following standard:

In a prudence review, the Commission examines the objective reasonableness of a company’s actions measured at the time the company 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.’” *In re PacifiCorp*, UM 995/UE 121/UC 578, Order No. 02-469 at 4 (emphasis added); *See also In re PGE*, UM 196, Order No. 10-051 at 5-6; *In re PGE*, UE 102, Order No. 99-033 at 36-37; *In re Transition Costs*, UM 834, Order No. 98-353 at 9.

In a prudence review, the Commission is careful to examine not only the actions a utility took, but also the actions that a utility *should have taken*. For example, in *In Re PacifiCorp*, UE 200, Order No. 08-548 at 19-20, the Commission discussed PacifiCorp’s Rolling Hills wind project. Specifically, the Commission found that PacifiCorp failed to act within the applicable Major Resource acquisition Guidelines in developing the project, which includes a requirement for utility’s to issue an RFP for certain resource acquisitions and review of proposals received. Because PacifiCorp failed to issue an RFP and seek review of the proposals received as required by the Guidelines, and

1 to knowledgably enter into these investments. The Company should not now be rewarded with
2 an increase in rates for imprudent behavior in failing to do its due diligence and conduct detailed
3 appropriate analysis.

4 Rather than joint ownership providing the Commission with double the due diligence
5 review of plans and options for the plant, we have found that, as the minority owner of the plant,
6 IDAHO POWER simply ignored its responsibility to participate in any decision making for the
7 plant related to clean air compliance investments. This might not have caused customers injury
8 had PacifiCorp acted prudently in its decision making, but CUB has unfortunately been forced to
9 conclude that PacifiCorp was not operating prudently with regard to this plant and that customers
10 have been, and are continuing to be, injured by both companies' failure to appropriately
11 determine the least-cost method for complying with clean air regulations.¹⁷⁵

12 CUB urges the Commission to deny rate recovery for the scrubber upgrade at issue in this
13 docket and to order the Company to return the deferred costs to customers. IDAHO POWER,
14 having failed to conduct due diligence in regard to decisions made for the Bridger 3 plant, should
15 not be rewarded with favorable ratemaking treatment of the investment costs incurred as a result
16 of its imprudent decision making.¹⁷⁶

17 In the alternative, CUB points out to the Commission that it could find that the scrubber
18 upgrade is simply not used and useful at this time and that it will not be used and useful without
19 the addition of the SCR. The Commission could then deny rate recovery for the scrubber upgrade

subsequently failed to meet its burden of persuasion with regard to the prudence of its actions taken outside of the guidelines, the Commission declared the project to be imprudent and denied cost recovery for the resource.

¹⁷⁵ UE 233/CUB/300/Feighner-Jenks/14 line 17 to Feighner-Jenks/15 line 9.

¹⁷⁶ UE 233/CUB/300/Feighner-Jenks/15 lines 10 - 13.

1 until the time that the investment is found to be used and useful.¹⁷⁷ Either way, the dollars
2 currently in deferral must be returned to customers.

3 **IX. CONCLUSION**

4 CUB thinks that no matter which way you slice it, Idaho Power was imprudent in its
5 decision making—or the lack thereof—in regard to Bridger 3. This imprudence stems from three
6 separate acts.

7 First, Idaho Power is imprudent because it delegated its management of the plant to
8 another utility and allowed that utility to make all the decisions regarding the scrubber clean air
9 investment being made at the Bridger 3 plant.

10 Second, Idaho Power is further imprudent by allowing clean air investments to continue
11 to be made at Bridger 3 without consideration of the least-cost/least-risk strategies known to
12 Idaho Power through its experience with the Boardman plant. In other words, the Company has
13 failed, and is failing, to properly manage a rate-based asset and has been imprudent in the
14 making of investments at Bridger 3.¹⁷⁸

15 And third, the Company is further imprudent because it has delegated defense of this
16 matter to the entity that itself failed to make prudent decisions that now inform the basis of the
17 disallowance that CUB is seeking in this matter.

18 Given that Idaho Power accepts its responsibility as owner of the plant to ask customers
19 to only include in rates those costs to provide utility service that are prudently incurred,¹⁷⁹ it is

¹⁷⁷ UE 233/CUB/300/Feighner-Jenks/15 lines 14-17.

¹⁷⁸ UE 233/CUB/400/Feighner-Jenks/3 line 19 to Feighner-Jenks/4 line 2.

¹⁷⁹ **Q. in its role as minority owner, does Idaho Power accept its responsibility to its customers to include in rates only those costs to provide utility service that are prudently incurred?**

Absolutely. The fact that Idaho Power has delegated to PacifiCorp the day-to-day operations of the Bridger plant – or any other plant for that matter – in no way suggests that Idaho Power is not

1 therefore CUB’s position that it is appropriate for the Commission to find that Idaho Power was
2 not duly diligent, has not met the burden of proof necessary to demonstrate either that the
3 incremental clean air cost investment made at Bridger 3 was used and useful, or that the
4 investment was prudent. These costs should not, therefore, be included in rates and that currently
5 deferred dollars must be immediately returned to customers.

6 Given that the test year for this docket is before the compliance deadline for RHR, the
7 plant is not yet compliant with RHR without a SCR, and the Company is arguing that the SCR is
8 not a legitimate subject of this docket, the Commission can simply find that the clean air
9 investments made at Bridger 3 are not used and useful and cannot at this time be included in
10 rates and that the costs in deferral must be returned to customers.

11 In terms of prudence, the Commission can find that the Company has failed to meet its
12 burden of proof to demonstrate that this investment is prudent because the evidence in this
13 docket and in UE 246 shows that by the fall of 2009 the owners of Bridger 3 should have
14 garnered enough information to make them reverse course and instead pursue a *phase-out* of the
15 plant.¹⁸⁰ Continuing to make clean air investments after that time period was clearly not prudent,
16 and the costs must be removed from rate base in the next tariff update and the deferred costs
17 must be returned to customers.

18 CUB further recommends that the Commission clarify what it expects utilities to analyze
19 when making environmental investments. CUB suggests that the Commission should request
20 that, for ratemaking purposes, future modeling of the plant should be based on a 2022 phase-out
21 date.

responsible for ensuring that only prudently incurred costs are included in rates.

UE 233/Idaho Power/1500/Carstensen/4 lines 1-7.

¹⁸⁰ UE 246/CUB/200/Jenks-Feighner/40.

1 As CUB has previously stated, the Commission has an opportunity here to send a
2 message to Idaho Power, and to all other electric utilities, that continued investment in coal-fired
3 electric generation plants must be supported by analysis showing that the investments are cost-
4 effective in the context of all the investment needed in the plant and that it would not be more
5 reasonable to invest in alternative resources. The Commission can also demonstrate through the
6 order issued in this docket that companies that fail to provide the required analysis will not be
7 rewarded for their lack of due diligence and imprudent behavior.¹⁸¹

Dated this 4th day of October, 2012.

Respectfully submitted,



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¹⁸¹ UE 233 CUB/200 Feighner-Jenks/16.

UE 233 – CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of October, 2012, I served the foregoing **CITIZENS' UTILITY BOARD OF OREGON'S PRE-HEARING BRIEF** in docket UE 233 upon each party listed in the UE 233 OPUC Service List by email and, where paper service is not waived, by U.S. mail, postage prepaid, and upon the Commission by email and by sending one original and five copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

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(HC denotes highly confidential)

(C denotes service of Confidential material authorized)

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