

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 233**

In the Matter of )

IDAHO POWER COMPANY )

Request for a general rate revision )

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**AUGUST 13, 2012 REBUTTAL TESTIMONY OF THE  
CITIZENS' UTILITY BOARD OF OREGON**

August 13, 2012



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IDAHO POWER COMPANY	)	TESTIMONY OF THE CITIZENS'
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_____	)	

1           Our names are Gordon Feighner and Bob Jenks, and our qualifications are listed  
2 in CUB Exhibit 101.

3 **I. Introduction**

4           CUB's final round of testimony (its August 13, 2012 Rebuttal Testimony) in this  
5 docket focuses on the prudence of Idaho Power's Jim Bridger Unit 3 Scrubber Upgrade  
6 Project, which is the one remaining issue in UE 233. CUB will respond to Staff's June  
7 2012 Rebuttal Testimony and to the Company's July 2012 Reply Testimony regarding  
8 this same issue. In addition to the above, CUB will further demonstrate that the  
9 economics related to the Company's clean air investments are not favorable when  
10 compared with available alternative scenarios for Jim Bridger 3, including the potential  
11 for a phase out with reduced investment.

1 **II. CUB’s Response to Idaho Power’s Reply Testimony**

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

4 The heart of Idaho Power’s argument for the prudence of the clean air  
5 investments at Jim Bridger 3 is contained in the following statement:

6 Idaho Power relied on PacifiCorp, as the plant operator, to prepare these  
7 studies. As such, Idaho Power relies on the testimony and analysis set  
8 forth in the direct and reply testimony of PacifiCorp witness Chad A.  
9 Teply, and the reply testimony of PacifiCorp witness Cathy S. Woollums  
10 to rebut CUB’s criticism.<sup>1</sup>

11 Idaho Power has the burden of proof in this case, and has delegated that burden to  
12 PacifiCorp through PacifiCorp’s testimony in another docket.<sup>2</sup> That is a choice that only  
13 Idaho Power can make, and CUB sees that choice as indicative of the other choices that  
14 Idaho Power has made in regard to Jim Bridger 3. Idaho Power explains this choice by  
15 stating that PacifiCorp, as the “designated plant operator,” is responsible for the day-to-  
16 day activities of the plant.<sup>3</sup> While CUB agrees that PacifiCorp is the day-to-day operator  
17 of Jim Bridger 3, CUB does not agree that Idaho Power can delegate away its  
18 responsibility for the making of the clean air investments at Jim Bridger 3 to PacifiCorp.

19 As CUB has previously argued, the plant is a rate-based asset belonging to both  
20 Idaho Power and PacifiCorp. As a co-owner of the unit, Idaho Power is responsible to  
21 ensure that the unit is managed in a least cost/least risk manner. Idaho Power has the  
22 burden of proof, and Idaho Power alone must demonstrate that the clean air investments  
23 made at Jim Bridger 3 were prudent.

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<sup>1</sup> UE 233/IPCO/1500/Carstensen/6.

<sup>2</sup> The Reply Testimony of Mr. Teply is UE 246/1500 and the Reply Testimony of Ms. Woollums is UE 246/1400.

<sup>3</sup> UE 233/IPCO/1500/Carstensen/6.

1 As a co-owner, Idaho Power has to agree in writing to all significant capital  
2 investments in the plant.<sup>4</sup> By minimizing its engagement in the least cost/least risk  
3 planning for the clean air investments being made in the unit, the Company has taken a  
4 significant risk. That risk will not diminish or go away with the conclusion of this rate  
5 case. This is true because, having largely delegated its responsibilities to PacifiCorp, only  
6 PacifiCorp will likely be involved in the making of the decision on whether to go forward  
7 with the selective catalytic reduction (SCR) investment at the unit—a decision that Idaho  
8 Power will nonetheless bear full responsibility for the making.

9 Idaho Power should be very concerned about this looming decision being made  
10 by PacifiCorp alone. This spring's PacifiCorp IRP Update showed that in 3 of the 6  
11 studied scenarios, additional clean air investment in Jim Bridger 3 is not cost effective.<sup>5</sup>  
12 Idaho Power's concern should be heightened by the fact that it, as a minority owner of  
13 the PGE Boardman plant, it knows that phasing out coal plants in compliance with the  
14 federal Clean Air Act is a real possibility and can be the least cost/least risk decision for  
15 customers, as opposed to making investments in coal plants and keeping them running,  
16 like PacifiCorp seems inclined to do. Idaho Power should know by now that PacifiCorp's  
17 clean air analysis of Jim Bridger 3 did not consider the possibility of phasing out the plant  
18 instead of making the expensive clean air investments.

19 It is CUB's position that by delegating all of its responsibility to PacifiCorp to  
20 make decisions regarding the clean air investments to be made in the Jim Bridger 3 plant,  
21 and by allowing clean air investments to continue to be made at that plant without  
22 consideration of the least-cost/least risk strategies known to Idaho Power through its

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<sup>4</sup> UE 233/IPCO/1400/Carstensen/2, lines 10-12.

<sup>5</sup> UE 246 CUB/100/Feighner-Jenks/36.

1 experience with the Boardman plant, the Company has failed to properly manage a rate-  
2 based asset. In other words, the Company has been imprudent in the making of  
3 investments at Jim Bridger 3.

4 **B. Idaho Power Has Known About BART Flexibility Since 2008**

5 While the OPUC Staff may argue that PacifiCorp did not know about the option  
6 under Regional Haze Rules of reducing pollution control costs by phasing out a plant  
7 before 2010, the same argument definitely cannot be made for Idaho Power.

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

11 As noted above, the Clean Air Act requires consideration of the remaining  
12 useful life of the plant. EPA's rules recognize that if the remaining useful  
13 life is limited by permit condition then the cost-effectiveness needs to be  
14 determined based on amortizing the capital cost over the reduced  
15 equipment life. The cost-effectiveness of the semi-dry scrubbers based on  
16 a useful life of 6.5 years (i.e., the number of years after July 1, 2014 that  
17 the control would be operated if the Foster-Wheeler boiler ceased  
18 operation in 2020) is approximately \$5,200 per ton of SO<sub>2</sub> controlled (see  
19 attached spreadsheet for details of cost-effectiveness evaluation).<sup>3</sup> This  
20 cost-effectiveness far exceeds the range of SO<sub>2</sub> cost-effectiveness  
21 evaluated by EPA in establishing the presumptive BART limits. In EPA's  
22 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  
24 would be almost triple the high end of the range of what EPA considered  
25 cost-effective. Therefore, with only a 6.5-year operational life it is  
26 appropriate to consider BART to require no additional SO<sub>2</sub> controls so  
27 long as the Foster-Wheeler boiler is required to cease operation by the end  
28 of 2020.<sup>6</sup>

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

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<sup>6</sup> UE 246/CUB/Exhibit 206, pages 6-7.

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

13 Yet, even with the historical facts set forth above, Idaho Power seems to want the  
14 Commission to believe that it never felt the need to ensure that PacifiCorp, the co-owner  
15 and operator of the Jim Bridger plant, was considering the least cost/least risk early  
16 closure/plant phase-out approach to Regional Haze Rules for Jim Bridger 3. As CUB has  
17 demonstrated in its UE 246 Rebuttal Testimony, if in 2009 PacifiCorp had reexamined its  
18 analysis it would have found that phasing out the plant sometime between 2020 and 2025  
19 would have been the least cost/least risk option. Under the terms of its contract,  
20 PacifiCorp could have terminated the Scrubber Upgrade project and still saved customers  
21 millions of dollars.<sup>8</sup>

### 22 **C. PacifiCorp’s Actions Were Imprudent**

23 Idaho Power has told CUB that it is relying on PacifiCorp’s testimony in  
24 PacifiCorp’s UE 246 docket. That docket shows that PacifiCorp’s actions were  
25 imprudent. By the fall of 2009, the gas and power markets had changed due to the impact  
26 of unconventional natural gas.<sup>9</sup> If PacifiCorp was continuing to update and monitor the  
27 cost-effectiveness of its investment in Jim Bridger Unit 3, it would have realized that the

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<sup>7</sup> Summary of decision from DEQ website

<sup>8</sup> UE 246/CUB/200/Jenks-Feighner/40-41

<sup>9</sup> UE 246/CUB/200/Jenks-Feighner/32

1 investment was no longer economic. Under terms of the contract for this project,  
2 PacifiCorp could terminate without cause and pay only the costs the contractor had  
3 incurred to date.<sup>10</sup> By the fall of 2009, such a cancellation would have been least  
4 cost/least risk and the prudent thing to do.<sup>11</sup> By not monitoring the economics of this  
5 investment, and not insisting that PacifiCorp monitor the economics of this investment,  
6 Idaho Power was imprudent. Idaho Power's customers should not be required to pay  
7 higher rates due its imprudence.

#### 8 **D. Used and Useful Standard**

9 Idaho Power has repeatedly claimed that the only issue in this docket is the  
10 prudence of a discrete single investment in the scrubber upgrade:

11 There is one remaining issue in UE 233, and that is the prudence of the  
12 incremental pollution control investments—consisting only of the  
13 scrubber upgrades that were installed at Jim Bridger during the 2011 Test  
14 Year. Any request for information irrelevant to that narrow issue is  
15 outside of the scope of discovery in this case.<sup>12</sup>

16 But that single investment, because it cannot meet the requirements of Regional  
17 Haze Rules, must be accompanied by other investments, including the SCR.<sup>13</sup> Without  
18 the SCR, the investment may be “used,” but it certainly is not “useful” for the purpose of  
19 complying with clean air requirements. If Idaho Power insists that investments must be  
20 considered on a piecemeal basis, and that the costs associated with the investments that  
21 must accompany a particular investment are irrelevant, then it leaves the Commission no  
22 choice but to find that each discrete investment is not by itself “used and useful.” It is the  
23 only way to ensure that all relevant costs are considered in a prudency review.

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<sup>10</sup> UE 246/CUB/200/Jenks-Feighner/40

<sup>11</sup> *Ibid.*

<sup>12</sup> Idaho Power Company's Response to the Citizens' Utility Board of Oregon's Motion to Compel, page 1-2

<sup>13</sup> UE 233/CUB/300/Feighner-Jenks/6

1 Idaho Power's testimony asserts that CUB has proposed that a "novel" treatment  
2 of the used and useful standard be applied in this docket. Specifically, the Company  
3 attacks CUB's proposed disallowance of the scrubber investment at Jim Bridger Unit 3  
4 because CUB argued that it is not used and useful for the purpose of meeting the  
5 requirements of the Regional Haze Rule (RHR), which does not take effect until 2015.<sup>14</sup>  
6 The Company characterizes CUB's position as being fully averse to the inclusion of any  
7 pollution control devices in rates at any point prior to the effective date of the regulation  
8 for which the devices were installed.<sup>15</sup> This is an overly broad view of CUB's position.  
9 CUB's June 2012 testimony stated that the scrubber investment will not, on its own, help  
10 the plant meet the RHR standards.<sup>16</sup> A separate investment in SCR technology will be  
11 needed to bring the plant into compliance with the RHR standards.<sup>17</sup> CUB argues instead  
12 that the piecemeal strategy of evaluating each component of the plant's clean air  
13 compliance strategy separately is inadequate to determine prudence; what should have  
14 been evaluated was a comprehensive strategy that included the scrubber, SCR, and all  
15 associated and subsequent investments that are necessary to bring the plant into  
16 compliance with state and federal clean air regulations.

17 Idaho Power's argument that the scrubber is currently used and useful because it  
18 is removing pollution from the plant's emissions is specious. Any number of pollution  
19 control devices and other add-ons that improve the operation of the plant can be used, but  
20 would not necessarily be considered useful under the current regulatory scheme. Idaho  
21 Power could decide to invest in a multi-billion dollar carbon sequestration project at the

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<sup>14</sup> UE 233/IPCO/1600/Said/1-2.

<sup>15</sup> UE 233/IPCO/1600/Said/1, lines 19-22.

<sup>16</sup> UE 233/CUB/Feighner-Jenks/300/13.

<sup>17</sup> UE 233/CUB/300/Feighner-Jenks/2



1 plant tomorrow that would reduce its carbon emissions to nearly zero; this investment  
2 would be used the minute the project became functional, but would not become a useful  
3 least cost/least risk investment without a carbon regulatory regime and a great deal of  
4 technical and economic analysis.

5 The Scrubber Upgrade here is only used and useful in the context of the Regional  
6 Haze Rules, and can only be evaluated for prudence in the context of all costs associated  
7 with meeting the Regional Haze Rules.

### 8 **III. CUB's Response to OPUC Staff's Rebuttal Testimony**

9 Staff's June 2012 Rebuttal Testimony concludes that Idaho Power acted prudently  
10 in relying on PacifiCorp's management decisions at the Jim Bridger plant. This  
11 conclusion is reached in large part on the basis of Staff's theoretical exercise of what a  
12 prudently-acting company should do in evaluating a significant resource investment such  
13 as the one at hand. This exercise comprises eight distinct steps for assessing the  
14 regulatory needs of a plant and implementing upgrades.<sup>18</sup> Of these eight steps, Staff  
15 acknowledges that Idaho Power did not sufficiently conduct four of them:

16 In my discussion above I note several areas where Idaho Power did not  
17 meet the standard of what a company would do to inform a reasonable  
18 decision. The areas include: failure to consider CO<sub>2</sub> emission regulation at  
19 the time of its decision; failure to include, at the time of its decision,  
20 sensitivity cases for variations in fuel, electricity and CO<sub>2</sub> regulatory cost;  
21 failure to be aware of the PacifiCorp life-cycle economic analysis; and  
22 failure to re-evaluate its decision as significant milestones were reached.<sup>19</sup>

23 Staff argues further that, even though Idaho Power's evaluation of the investment at Jim  
24 Bridger 3 was lacking in rigor, the decision to defer to PacifiCorp's judgment and move  
25 forward with the investment was prudent because, "under the Commission's prudence

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<sup>18</sup> UE 233/Staff/1100/Colville/14-20.

<sup>19</sup> UE 233/Staff/1100/Colville/20.

1 standard, the primary focus of the inquiry is on reasonableness of the action, not on the  
2 process leading to it.”<sup>20</sup>

3 But Staff failed to adequately analyze whether the action was in fact reasonable.  
4 The Staff conclusion that PacifiCorp’s actions with regard to Jim Bridger 3 were prudent  
5 was based on an extrapolation that Staff cannot explain.<sup>21</sup> In UE 246, CUB asked Staff to  
6 explain how this extrapolation worked. The answer CUB received was not satisfactory.  
7 Some of the studies Staff extrapolated from did not exist and the other did not include the  
8 costs that are at issue in this docket.<sup>22</sup>

9 While CUB will leave the argument over the standard of prudence to its attorneys in  
10 the briefing stage of this docket, the fact of the matter is that CUB is challenging the very  
11 prudence of the clean air investments Idaho Power permitted to be made at Jim Bridger 3.  
12 Since Idaho Power has essentially delegated away its defense of this matter to PacifiCorp  
13 by citing to PacifiCorp’s witness and testimony for support in this matter, it follows that  
14 if PacifiCorp’s clean air investments at Jim Bridger 3 are deemed to be imprudent, then  
15 Idaho Power’s clean air investments at Jim Bridger 3 were also imprudent. And, since  
16 PacifiCorp made all those investments happen on Idaho Power’s behalf, and with Idaho  
17 Power’s acquiescence, Idaho Power cannot help but also be found imprudent for lack of  
18 oversight, analysis, and input.

19 As CUB demonstrates in its UE 246 Rebuttal Testimony, the investment in Jim  
20 Bridger 3 was imprudent. PacifiCorp should have canceled the project and pursued a  
21 phase-out of the plant. If PacifiCorp was imprudent, then it is a foregone conclusion that

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<sup>20</sup> *Ibid.*

<sup>21</sup> UE 246/ Staff/400/16

<sup>22</sup> UE 246/CUB/200/Jenks-Feighner/10-11

1 Idaho Power's less-than-rigorous analysis of the Jim Bridger 3 clean air investments is  
2 also imprudent.

#### 3 **IV. CUB's Recommendations**

4 It remains CUB's position that it is appropriate for the Commission to find that  
5 Idaho Power has not met the burden of proof necessary to demonstrate either that the  
6 incremental clean air cost investment made at Jim Bridger 3 was used and useful, or that  
7 the investment was prudent. The Commission should reject Idaho Power's insistence that  
8 piecemeal review of incremental clean air investments is all that is necessary to  
9 determine prudence. The Commission can do this by finding that this investment is not  
10 "used and useful" and telling the Company to come back with a prudence review of the  
11 entire portfolio of investments necessary to meet Regional Haze Rules.

12 As an alternative, the Commission should find that the Company has failed to  
13 meet its burden of proof to demonstrate that this investment is prudent. The evidence  
14 presented in UE 246 shows that by the fall of 2009 the owners of Jim Bridger 3 should  
15 have garnered enough information to make them reverse course and instead pursue a  
16 phase-out of the plant.<sup>23</sup> Continuing to make clean air investments after that time period  
17 was clearly not prudent.

18 Given, however, that the test year for this docket is before the compliance  
19 deadline for RHR, the Commission does not have to do anything more than find that the  
20 clean air investments made at Jim Bridger 3 are not to be included in rates at this time.  
21 Alternatively, if the Commission wants to pursue and decide what the future ratemaking

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<sup>23</sup> UE 246/CUB/200/Jenks-Feighner/40.

- 1 treatment of the plant should be, CUB recommends that for ratemaking purposes, future
- 2 modeling of the plant should be based on a 2022 phase-out date.

## UE 233 – CERTIFICATE OF SERVICE

I hereby certify that, on this 20<sup>th</sup> day of June, 2012, I served the foregoing **AUGUST 13, 2012 TESTIMONY OF THE CITIZENS' UTILITY BOARD OF OREGON** 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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