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March 15, 2023

VIA ELECTRONIC FILING

Public Utility Commission of Oregon
Filing Center
P.O. Box 1088
201 High Street S.E., Suite 100
Salem, OR 97308-1088

Re: Docket No. PCN 5 – In the Matter of Idaho Power Company’s Petition for Certificate of Public Convenience and Necessity.

Attention Filing Center:

Attached for filing in the above-referenced docket is Idaho Power Company’s Motion to Compel, expedited consideration is requested.

Please contact this office with any questions.

Thank you,

Alisha Till
Paralegal

Attachments

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY

PETITION FOR CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY.

IDAHO POWER’S MOTION TO COMPEL

*EXPEDITED CONSIDERATION
REQUESTED*

1 Pursuant to OAR 860-001-0420 and OAR 860-001-0500(7), Idaho Power Company
2 (“Idaho Power” or “Company”) moves the Public Utility Commission of Oregon (“Commission”) for
3 an order compelling intervenor Sam Myers to produce a complete response to Idaho Power’s
4 First Set of Data Requests (“DR”) to Sam Myers.¹

5 Idaho Power certifies that the parties have conferred, as required by OAR 860-001-
6 0500(7), but have been unable to resolve this dispute. Given its fast-approaching surrebuttal
7 testimony deadline, Idaho Power respectfully requests expedited consideration of this motion.

I. INTRODUCTION

8 In this proceeding, certain parties have expressed concerns about the fire risk associated
9 with the proposed Boardman to Hemingway transmission line (“B2H”). Mr. Myers’ testimony
10 expressed particular concern about the risk of fire caused by dust clouds where B2H will cross
11 agricultural land. To support this claim, Mr. Myers’ Amended Opening Testimony² included
12 testimony from Heppner Fire & Rescue Fire Chief Steven C. Rhea. In that testimony, Chief Rhea
13 claimed to have personal knowledge of two fires that were caused by static electricity from a dust
14 cloud surrounding a transmission line, including a fire occurring in Gilliam County in July 2022.

¹ Attachment 1, Idaho Power’s First Set of Data Requests to Sam Myers.

² Sam Myers’ Amended Opening Testimony (Feb. 3, 2023).

1 This testimony noted that the fire occurred “last July” on the “Brad Anderson Ranch,” and asserted
2 that the fires “can be documented by the Oregon State Fire Marshalls Office,” but did not provide
3 further evidence or documentation of the official cause of the fire.

4 Because this assertion lacked supporting evidence, and because Chief Rhea’s testimony
5 was filed only two weeks before Idaho Power’s reply testimony deadline, the Company did not
6 have the opportunity to fully investigate these claims and prepare a response. Dr. Chris
7 Lautenberger’s Reply Testimony addressed this assertion to the extent possible given the limited
8 information and time.³ However, to provide a full response in its surrebuttal testimony, Idaho
9 Power needs to better understand the basis for Mr. Myers’ and Chief Rhea’s claims. If Mr. Myers
10 does not provide the information requested, the Company will be prejudiced in preparing its
11 responsive testimony.

12 The information sought is highly relevant to the issues Mr. Myers has raised in this case,
13 and therefore Idaho Power asks that the Commission promptly grant its Motion to Compel.

II. BACKGROUND

14 On January 17, 2023, Mr. Myers filed his Opening Testimony, making several claims
15 regarding the potential harms caused by wildfires along the B2H route.⁴ In his Amended Opening
16 Testimony, filed on February 3, 2023, Mr. Myers included the testimony of Chief Rhea which
17 referred to the Gilliam County fire.

18 Idaho Power initially conducted its own investigation but was not able to verify additional
19 details about the fire referenced by Chief Rhea. Idaho Power served data requests on Mr. Myers
20 on February 24, 2023 seeking more information regarding this fire.⁵ In particular, DRs 1, 2, and
21 5 requested that Chief Rhea provide the exact date and location of the fire, as well as any official

³ Idaho Power/1300, Lautenberger/49.

⁴ Sam Myers’ Opening Testimony at 2-3 (Jan. 17, 2023).

⁵ Attachment 1, Idaho Power’s First Set of Data Requests to Sam Myers.

1 documentation of the fire from the Oregon State Fire Marshall.⁶ In DRs 3 and 4, Idaho Power
2 asked if Chief Rhea personally witnessed or responded to the fire, or in the alternative, how Chief
3 Rhea knew about the cause of ignition of the fire.⁷

4 In accordance with Administrative Law Judge (“ALJ”) John Mellgren’s February 2, 2023
5 Ruling, Idaho Power requested that Mr. Myers respond to the DRs within five business days.⁸ On
6 February 25, 2023, Mr. Myers left a voicemail for Idaho Power’s counsel expressing difficulty in
7 responding to the DRs within the prescribed time frame and requesting a 60-day extension.

8 Idaho Power responded to Mr. Myers via email on February 27, 2023,⁹ noting that the
9 Company disagreed with Mr. Myers’ proposal for a 60-day extension, and instead agreeing to a
10 14-day extension as prescribed by OAR 860-001-0540(1). Under Idaho Power’s proposed
11 extension, the new deadline for Mr. Myers’ response to these DRs would have been Friday, March
12 10, 2023. Mr. Myers never responded to this communication.

13 On March 3, 2023, Chief Rhea sent an email to Idaho Power’s counsel regarding the DRs,
14 and copying Mr. Myers on the email as well.¹⁰ In that email, Chief Rhea provided further
15 information about a fire in Gilliam County at “14906 Heritage Lane on Brad Anderson’s Farm
16 08/02/2022 @ 17:39 hrs.”¹¹ In addition, Chief Rhea referenced a fire that ignited “30 minutes
17 prior” to the Gilliam County fire along the same “High Voltage Transmission Line.” Chief Rhea
18 indicated that he would be compiling reports on these fires and providing them directly to Mr.
19 Myers, and specifically noted that he would not provide them to Idaho Power.¹²

20 When Mr. Myers did not provide a response to the DRs on March 10, 2023, Idaho Power

⁶ Attachment 1, Idaho Power’s First Set of Data Requests to Sam Myers.

⁷ Attachment 1, Idaho Power’s First Set of Data Requests to Sam Myers.

⁸ ALJ Ruling (Feb. 2, 2023).

⁹ Attachment 2, Idaho Power’s Email Communications to Mr. Sam Myers at 1.

¹⁰ Attachment 3, Chief Steven Rhea’s Email Communication to Idaho Power.

¹¹ Attachment 3, Chief Steven Rhea’s Email Communication to Idaho Power.

¹² Attachment 3, Chief Steven Rhea’s Email Communication to Idaho Power.

1 sent an email on March 13, 2023¹³ requesting a response and stating that if no response was
2 received, Idaho Power would be filing this Motion to Compel. To date, Idaho Power has not
3 received a response to this email nor to the DRs.

III. ARGUMENT

4 The claims made by Mr. Myers and Chief Rhea about the risk of wildfire near high-voltage
5 transmission lines warrant a full and complete response. While Chief Rhea's subsequent email
6 provides some additional detail, it does not respond directly to the Company's data requests and
7 does not provide additional evidence to substantiate the allegations in Mr. Myers' Amended
8 Opening Testimony. Without more specificity on which fires Chief Rhea is referring to and
9 documentation regarding the cause of these fires, Idaho Power cannot fully analyze and respond
10 to these claims. Chief Rhea indicated on March 3, 2023 that he is compiling additional
11 documentation and providing it to Sam Myers—suggesting that over a week later, Mr. Myers may
12 likely already be in possession of the requested information.¹⁴ Yet, Mr. Myers has not timely
13 provided the requested information in response to Idaho Power's DRs. Mr. Myers' failure to timely
14 respond to these discovery requests is prejudicial to Idaho Power because it impairs the
15 Company's preparation of its Surrebuttal Testimony and its ability to properly respond to Mr.
16 Myers' assertions.

17 Moreover, Idaho Power's data requests are entirely appropriate and comply with the
18 requirements of OAR 860-001-0500. The information requested is commensurate with the needs
19 of the case as it specifically requests information used to support Mr. Myers' assertions.¹⁵ It is
20 commensurate with the resources available to the parties as it asks only for reports that Chief
21 Rhea indicated that he already reviewed as well as reasonable inquiries into Chief Rhea's

¹³ Attachment 2, Idaho Power's Email Communications to Mr. Sam Myers at 1.

¹⁴ Attachment 3, Chief Steven Rhea's Email Communication to Idaho Power.

¹⁵ OAR 860-001-0500(1).

1 knowledge of the fires.¹⁶ It is commensurate with the importance of the issues, as Idaho Power
2 cannot provide an informed response to Mr. Myers' claims without the requested information.¹⁷ It
3 is not overly cumulative, duplicative, burdensome, or broad.¹⁸ Finally, the DRs do not request
4 privileged information or the preparation of a study.¹⁹

IV. CONCLUSION

5 Mr. Myers' refusal to provide Idaho Power with adequate responses to reasonable
6 discovery requests within the agreed-upon schedule is depriving the Company of the full
7 evidentiary proceeding ordered by Commission and will severely hamper Idaho Power's ability to
8 timely prepare its case. Therefore, Idaho Power respectfully requests that the Commission grant
9 this Motion to Compel on an expedited basis.

DATED: March 15, 2023

McDOWELL RACKNER GIBSON PC



Lisa Rackner
Jocelyn Pease
McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205
dockets@mrq-law.com

IDAHO POWER COMPANY
Donovan Walker
Lead Counsel
P.O. Box 70
Boise, Idaho 83707
dwalker@idahopower.com

Attorneys for Idaho Power Company

¹⁶ OAR 860-001-0500(1).

¹⁷ OAR 860-001-0500(1).

¹⁸ OAR 860-001-0500(2).

¹⁹ OAR 860-001-0500(3) & (4).

ATTACHMENT 1

to

Idaho Power's Motion to Compel

*Idaho Power's First Set of Data
Requests to Sam Myers*

IDAHO POWER COMPANY'S FIRST SET OF DATA REQUESTS TO
SAM MYERS

DOCKET PCN 5

Issued: February 24, 2023

Response Due By: *Please provide your responses to these questions by **5:00 p.m. on March 3, 2023***, and if you have any questions, please contact the undersigned counsel for Idaho Power Company (Idaho Power) immediately.

The following instructions apply to Idaho Power's Data Requests (Requests):

INSTRUCTIONS

1. Each Request and every subpart thereof should be answered separately and to the full extent required by the Public Utility Commission of Oregon's (Commission) discovery guidelines and Oregon Administrative Rules on the basis of all information known to Mr. Myers and his witnesses and consultants, unless the Request or subpart thereof is objected to, in which event the reasons for the objection should be stated in detail.
2. Where a complete answer to a particular Request is not possible, the Request should be answered to the extent possible and a statement should be made indicating why only an incomplete answer is given. If any claim of privilege is asserted, the claim and the grounds upon which it is asserted should be set forth fully, and any part of an answer as to which privilege is not claimed should be given in full.
3. The response to each Request should set forth the full text of the Request being answered.
4. Where appropriate, responses to these Requests should include any pertinent information revealed or contained in each document (as defined herein) or other property in the possession, custody or control of Mr. Myers, or his consultants or witnesses in this case or others acting on his behalf (including attorneys).
5. The term "documents" as used in each Request includes all writings and records of every type in the possession, custody or control of Mr. Myers, or his consultants or witnesses in this case or others acting on his behalf (including attorneys)—whether the information is stored electronically, on paper, or any other medium—including reports, studies, analysis, correspondence, memoranda, drawings, maps, letters, studies, spreadsheets, or audio recordings.
6. In responding to each Request, identify each document relied upon in responding to such Request and each document containing all or part of the information reported in responses to the Request. If the response includes any attachments or documents, please provide them in their native format (e.g., spreadsheets in original Excel spreadsheets with cell formulae intact).
7. If your responses include confidential material, you must mark confidential responses as "Confidential" and post them to Huddle in the appropriate "Confidential" folder. Access to Confidential folders is limited to individuals who have signed the general protective order. You should not send confidential documents (hard copy or electronic) separately to the

Commission, its Staff, or Idaho Power; you should post confidential responses **only** to the Huddle account.

8. In the event that Mr. Myers asserts that any requested data is not relevant or material to any issue in this matter, Mr. Myers should describe, in detail, the specific basis for such assertion.
9. Please provide responses to the following Requests by the due date either by email or posted to the Commission's Huddle account. Contact the undersigned counsel before the response due date noted above if the Requests are unclear or if you need more time.

DATA REQUESTS

Please refer to the testimony of Heppner Fire & Rescue Fire Chief Steven C. Rhea, which is included on pages 2-3 of 4 of Sam Myers' Amended Opening Testimony filed on February 3, 2023, in which Chief Rhea discusses a fire occurring in Gilliam County in July 2022 ("July 2022 Fire").

1. Chief Rhea testifies that the July 2022 Fire occurred "this last July[.]" What was the exact date of the July 2022 Fire?
2. Chief Rhea testifies that the fire occurred "near Blalock Canyon in Gilliam County, Oregon on the Brad Anderson Ranch on Heritage Lane[.]" Please identify the specific location of the fire using the nearest address, crossroads, geographic coordinates, or another means (e.g., marking location on a map).
3. Did Chief Rhea personally witness the ignition of the July 2022 Fire?
 - a. If Chief Rhea did not personally witness the ignition, please provide a brief explanation describing how Chief Rhea learned of the ignition of the July 2022 Fire.
4. Did Chief Rhea respond to the July 2022 Fire?
 - a. If yes, did Chief Rhea or any other members of Heppner Fire & Rescue prepare a written report regarding the July 2022 Fire at that time?
 - b. If yes, please provide that report.
5. Referring to Chief Rhea's statement that "[b]oth of the fires I mentioned can be documented by the Oregon State Fire Marshalls Office," did the Oregon State Fire Marshall issue any findings regarding the official cause of the July 2022 fire?
 - a. If yes, please provide a report or any other documentation of the results of the investigation by the Oregon State Fire Marshall that determined the official cause.

As stated above, if you have any questions about these Requests, please have your lawyer contact Ms. Pease and me as soon as possible. If you are not represented by counsel, you may contact Ms. Pease and me directly.

Sincerely,



Lisa Rackner

Email: lisa@mrq-law.com

Phone: 503-595-3925

Jocelyn Pease

Email: jocelyn@mrq-law.com

Phone: 503-290-3620

McDowell Rackner Gibson PC
419 SW 11th Ave., Suite 400
Portland, OR 97205

Attorneys for Idaho Power Company

ATTACHMENT 2

to

Idaho Power's Motion to Compel

*Idaho Power's Email Communications
to Sam Meyers*

From: [Jocelyn Pease](#)
To: ["sam.myers84@gmail.com"](mailto:sam.myers84@gmail.com)
Cc: [Stanish, David](#); dwalker@idahopower.com; [Larkin, Matt](#); [Waites, Courtney](#); [Lisa Rackner](#); [Isaac Kort-Meade](#)
Subject: PCN 5 - Conferring re Extension for Responses to Discovery Request for Sam Myers
Date: Monday, March 13, 2023 7:08:00 PM
Attachments: [Data Requests.msg](#)

Mr. Myers:

I am writing to confer regarding the data requests that Idaho Power issued to you on February 24, 2023. By voicemail, you had requested a 60-day extension, and Idaho Power did not agree to your request. Instead, Idaho Power agreed to an extension from a 5 business-day turnaround to a two-week turnaround for the responses, and accordingly, the deadline for these responses was March 10, 2023. That deadline has now passed, and you still have not provided any response. By email dated March 3, 2023 (attached) Chief Rhea indicated that he is compiling reports and providing information directly to you. Please provide the responses to Idaho Power's data requests by no later than the close of business on March 14, 2023. If you do not provide the responses, Idaho Power will file a motion to compel discovery, asking that the Administrative Law Judge issue an order directing you to respond to Idaho Power's request.

Regards,
Jocelyn

Jocelyn C. Pease
McDowell Rackner Gibson PC
419 SW 11th Ave, Suite 400, Portland, OR 97205
Direct: 503-290-3620 | Mobile: 503-473-6207
Website: www.mrg-law.com | Email: jocelyn@mrg-law.com
Pronouns: she/her/hers

PRIVILEGE AND CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS MESSAGE MAY BE ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUALS OR ENTITIES NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY ME BY TELEPHONE OR E-MAIL, AND DESTROY THIS MESSAGE. THANK YOU.

From: Jocelyn Pease
Sent: Monday, February 27, 2023 11:14 AM
To: 'sam.myers84@gmail.com' <sam.myers84@gmail.com>
Cc: Lisa Rackner <lisa@mrg-law.com>; mlarkin@idahopower.com; dwalker@idahopower.com; Stanish, David <dstanish@idahopower.com>
Subject: PCN 5 - Conferring re Extension for Responses to Discovery Request for Sam Myers

Good morning, Mr. Myers:

We received your voicemail and are writing to confer regarding the discovery requests that we

issued on Friday. In your voicemail, you indicated that you would have difficulty responding to the discovery requests within 5 business days. The procedural schedule in Docket PCN 5 provides that after the filing of Idaho Power's Reply Testimony, discovery responses are due within 5 business days (best efforts). See Judge Mellgren's footnote 4 in his February 2, 2023 Ruling:

Following the filing of Idaho Power's Reply Testimony on February 21, 2023, the turnaround for discovery responses will be shortened to five business days (best efforts). Prior to that date, the turnaround for discovery requests is 14 calendar days under OAR 860-001-0540(1).

In response to your request, we would agree to an extension that would revert the deadline to the standard 14 days after service in accordance with OAR 860-001-0540(1) ("Data requests must be answered within 14 days from the date of service."). The new deadline would be Friday, March 10, 2023. Idaho Power does not agree to your request for a 60-day extension.

Regards,
Jocelyn

Jocelyn C. Pease

McDowell Rackner Gibson PC

419 SW 11th Ave, Suite 400, Portland, OR 97205

Direct: 503-290-3620 | Mobile: 503-473-6207

Website: www.mrg-law.com | Email: jocelyn@mrg-law.com

Pronouns: she/her/hers

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ATTACHMENT 3

to

Idaho Power's Motion to Compel

*Chief Steven Rhea's Email
Communication to Idaho Power*

From: Steven Rhea <srhea0512@gmail.com>
Sent: Friday, March 3, 2023 3:34 PM
To: Jocelyn Pease <jocelyn@mrg-law.com>
Cc: Sam Myers <sam.myers84@gmail.com>
Subject: Data Requests

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Data Requests from Heppner Fire Chief testimony.

Ms. Pease

I have received the Incident Report from North Gilliam County RFPD. I also spoke with Casey Zellars the Gilliam County Fire Coordinator regarding the Fire at 14906 Heritage Lane on Brad Anderson's Farm 08/02/2022 @ 17:39 hrs. He advised the Fire did ignite under the BPA Transmission Line while only a Wheat Combine was in close proximity. He could not confirm nor deny that the fire was a result of a static charge from the High Voltage Transmission Lines however, there was no indication of ignition anywhere on the Combine.

He also advised that less than 30 minutes prior to the Gilliam County Fire incident, North Sherman County RFPD responded to a Fire that was caused by a Faulty Insulator on a Tower on the same High Voltage Transmission Line. It was confirmed by a BPA Technician that arrived on scene. I am in the process of obtaining the Incident Report from North Sherman County as further documentation.

Once I completed compiling the data of reports I will forward them to Mr. Myers. He asked me for documentation, not your firm. He will be the only one to receive the data.

Sent from [Mail](#) for Windows

DOCKET PCN 5 - CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2023 Idaho Power Company's Motion to Compel was served by USPS First Class Mail and Copy Center to said person(s) at his or her last-known address(es) as indicated below:

By: USPS First Class Mail and Copy Center:

John C. Williams
PO Box 1384
La Grande, OR 97850

Copies Plus
1904 Adams Ave,
La Grande, OR 97850
(541) 663-0725
copiespluslg@yahoo.com

DATED: March 15, 2023

/s/ Alisha Till

Alisha Till
Paralegal