

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

PCN 5

In the Matter of

IDAHO POWER COMPANY,

Petition for Certificate of Public
Convenience and Necessity.

MEMORANDUM

On March 15, 2023, Idaho Power Company filed a motion to compel in this matter seeking “an order compelling intervenor Sam Myers to produce a complete response to Idaho Power’s First Set of Data Requests (“DR”) to Sam Myers.”¹ On March 21, 2023, I held a conference with the parties to discuss the motion. Mr. Meyers and counsel for Idaho Power appeared at the conference, along with several other participants.²

At the conference, Mr. Myers explained that he was not currently in possession of documents sought by Idaho Power through their discovery requests but was working diligently to acquire them. Mr. Myers indicated an intent to comply with the discovery request but required additional time to do so. Mr. Myers was unable to provide a specific timeline by which he could respond to the outstanding data requests but stated he believed he would be able to do so in the very near future. Idaho Power explained that considerable time has already passed and that several of its discovery requests only required responses to questions and did not require the production of documents. Idaho Power asserted that continued delay would cause prejudice to the company and the process.

As I stated at the conference, we wish to gather a robust and complete record for the Commission’s consideration of Idaho Power’s petition, however, parties also need to be able to review complete testimony and discovery as they prepare for the hearing on April 19, 2023, and April 20, 2023. Accordingly, I reiterate here that Mr. Myers should respond to the outstanding data requests as soon as possible and in phases as he acquires information responsive to the data requests – meaning he should not wait until he has all responsive material but should forward it to Idaho Power as it is received. This includes the written answers to the questions posed by Idaho Power in the data requests.³ This also includes any reports already in Mr. Myers or Fire Chief Rhea’s possession. I note that an email from Fire Chief Rhea to Idaho Power’s counsel

¹ Idaho Power Company Motion to Compel at 1 (March 15, 2023).

² Individuals appearing at the conference included Jocelyn Pease, Sam Myers, Irene Gilbert, Skylar Sumner, Jim Kreider, Isaac Kort-Meade, Matt Larkin, Courtney Waites, Kim Herb, Sudeshna Pal, Johanna Riemenschneider, and Charles Lockwood.

³ See Idaho Power Motion to Compel, Attachment 1 at 3.

states a report was already in Fire Chief Rhea's possession.⁴ As such, that report should be provided to the parties immediately.

At the conference, I incorrectly stated that responses to the data request should be submitted to the Filing Center. Rather, because this involves the discovery process, anything responsive to the data requests should be provided to the parties via Huddle. Should Mr. Myers be able to timely produce responsive answers and documents, I will extend the deadline for Mr. Myers to submit any such information as a supplement to his rebuttal testimony, limited to the responsive materials. At that time I will also extend the deadline for Idaho Power's surrebuttal related to the responsive materials.

Mr. Myers must also submit an update via email to the Filing Center by 3:00 p.m. on Thursday, March 23, 2023, describing what progress has been made in responding to Idaho Power's data requests and whether he will be able to completely respond to any outstanding data requests by the end of the week. This update can be a simple email describing the progress. If necessary, Idaho Power may file a response to Mr. Myers' update by 3:00 p.m. on Friday, March 24, 2023.

Dated this 22nd day of March, 2023, at Salem, Oregon.



John Mellgren
Administrative Law Judge

⁴ Idaho Power Motion to Compel, Attachment 3 at 1.

**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

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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).