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**VIA E-MAIL TO**

Public Utility Commission of Oregon  
Filing Center  
201 High Street SE, Suite 100  
Salem, Oregon 97301-3398

**Re: Docket UE 426 - In the Matter of Idaho Power Company, Request for a General Rate Revision**

Attached for filing in the above-referenced docket, please find Idaho Power Company's Supplement to Motion for a Modified Protective Order.

Please contact this office with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Cole Albee". The signature is written in a cursive style. Below the signature is a solid horizontal line.

Cole Albee  
Paralegal  
McDowell Rackner Gibson PC

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 426**

In the Matter of  
IDAHO POWER COMPANY,  
Application for a General Rate Revision

**IDAHO POWER COMPANY'S  
SUPPLEMENT TO MOTION FOR A  
MODIFIED PROTECTIVE ORDER**

1           In response to Administrative Law Judge (“ALJ”) Mellgren’s December 18, 2023 Ruling,  
2 Idaho Power Company (“Idaho Power” or the “Company”) provides the following supplement to  
3 its Motion for a Modified Protective Order (“MPO”), which was originally filed on December 13,  
4 2023. ALJ Mellgren’s Ruling identifies three provisions of Idaho Power’s proposed MPO for  
5 which supplemental justification is requested: Section 2(d), Section 4(a), and Section 16.<sup>1</sup> After  
6 providing additional context for how the MPO was developed, Idaho Power provides additional  
7 discussion regarding each of these items in turn. Additionally, as described in greater detail  
8 below, Idaho Power respectfully requests that ALJ Mellgren modify the MPO to eliminate service  
9 of Highly Confidential Information via U.S. mail.

**I. BACKGROUND AND CONTEXT FOR MPO**

10           As required by OAR 860-001-0080(3)(a)(F), a party filing a motion for an MPO must confer  
11 with the other parties to the proceeding and represent whether the other parties support the  
12 motion. While this is not strictly required at the outset of a proceeding, before parties have  
13 formally intervened, it is common practice to confer with the parties likely to intervene in advance  
14 of filing the MPO. Consistent with this practice, Idaho Power anticipated that Public Utility  
15 Commission of Oregon (“Commission”) Staff and the Oregon Citizens’ Utility Board (“CUB”) would

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<sup>1</sup> Order No. 23-478 at 1-2 (Dec. 18, 2023) [hereinafter “Ruling”].

1 likely be parties to Idaho Power’s rate case proceeding, and conferred extensively with Staff and  
2 CUB to develop the proposed MPO.

3 Idaho Power initiated outreach to Staff and CUB on December 1, and over the next two  
4 weeks exchanged numerous emails and participated in multiple telephone conferences with both  
5 parties to address parties’ concerns regarding providing flexible means to access Highly  
6 Confidential Information in a remote work environment while also balancing the Company’s  
7 concerns regarding the security of the systems used to transmit Highly Confidential Information.  
8 Idaho Power also consulted with its in-house cyber security experts to ensure that the terms in  
9 the MPO were adequately robust to protect Idaho Power’s most sensitive information. CUB and  
10 Staff also coordinated with their respective Information Technology (“IT”) departments to confirm  
11 that the terms included in the MPO would be workable. The MPO that Idaho Power initially  
12 circulated on December 1 was markedly different from the MPO that Idaho Power eventually filed,  
13 in large part due to incorporating input from Staff and CUB, and the parties’ own IT departments.  
14 In Idaho Power’s view, the MPO that resulted from this process strikes a reasonable balance.  
15 Additionally, to the extent that this MPO includes terms that differ from prior MPOs, this is in large  
16 part because Staff and CUB insisted on the use of encrypted email for the transmittal of  
17 information, and it is critical that the MPO clearly define how information may be securely  
18 transmitted via encrypted email and also articulate baseline system security requirements for  
19 individuals that may be transmitting Highly Confidential Information electronically. Finally, it bears  
20 noting that similar terms are included in another MPO that was recently issued by the Commission  
21 in Docket UG 490.<sup>2</sup>

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<sup>2</sup> *In the Matter of Nw. Nat. Gas Co., dba Nw. Nat., Request for a Gen. Rate Revision, Docket UG 490, Order No. 23-480, Appendix A at 6 (Dec. 19, 2023).*

## II. DISCUSSION

1 **A. Section 2(d) Enumerates the Categories of Information That May Be Designated as**  
2 **Highly Confidential Information, but Does Not Result in “Automatic” Highly**  
3 **Confidential Designation.**

4 In his Ruling, ALJ Mellgren commented that Section 2(d) of Idaho Power’s proposed MPO  
5 “covers significant material that is not ordinarily considered to be highly confidential information  
6 in Commission proceedings,” and that “[w]hile some material covered by that section may qualify  
7 as highly confidential information, I do not agree that all such information should be automatically  
8 designated as highly confidential information.”<sup>3</sup>

9 Section 2 of Idaho Power’s proposed MPO is as follows:

10 Any party may designate as Highly Confidential Information any  
11 information the party reasonably determines:

- 12 a. Falls within the scope of [Oregon Rules of Civil Procedure  
13 (“ORCP”)] 36(C)(1) (a trade secret or other confidential  
14 research, development, or commercial information) or the  
15 exemptions under Oregon Public Records law, ORS  
16 192.345 and 192.355;
- 17 b. Is not publicly available;
- 18 c. Is not adequately protected by the general protective order;  
19 and
- 20 d. Is related to the Company’s tax filings, financial forecasts,  
21 Company load growth projections that include sensitive  
22 customer load, highly sensitive wages and compensation  
23 information, or competitively or commercially sensitive  
24 information requested in discovery that Idaho Power and the  
25 requesting party agree is appropriately designated as highly  
26 confidential.

27 Idaho Power understands the ALJ to be asking for additional justification for the highly confidential  
28 treatment of the information listed in 2(d), and also an explanation for the inclusion of 2(d), which  
29 is not commonly included in other MPOs and was removed by the ALJ.<sup>4</sup> Idaho Power will address  
30 these issues in turn.

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<sup>3</sup> Ruling at 1.

<sup>4</sup> Ruling at 2; Ruling, Appendix A at 1.

1 First, regarding the categories of information, it is important to understand as a general  
2 matter that there is no “automatic” designation of the information in these categories. Instead, by  
3 order of operations, the information must (1) fall within the scope of ORCP 36(C)(1) or a Public  
4 Records Law exemption, (2) not be publicly available, (3) not be adequately protected by the  
5 General Protective Order (“GPO”), **and** (4) fall within one of the categories enumerated in  
6 Section 2(d). Within the enumerated categories, Idaho Power has not designated (and does not  
7 plan to designate) all such information as Highly Confidential Information—and the information in  
8 these categories would not be “automatically” designated as Highly Confidential Information.  
9 Idaho Power, Staff, and CUB understand Section 2(d) to limit the types of information that may  
10 be designated as Highly Confidential Information.

11 Second, the categories listed in Section 2(d) are generally consistent with categories of  
12 information that are routinely designated as Highly Confidential Information.<sup>5</sup> However, in the  
13 interest of further narrowing the information that may be designated as Highly Confidential  
14 Information, Idaho Power proposes to exclude the tax-related information as well as the  
15 Company’s load growth projections that include sensitive customer load information, and will  
16 instead designate this information as confidential consistent with the general protective order  
17 (“GPO”). Thus, the three remaining categories of information that may be designated as Highly  
18 Confidential Information include financial forecasts, highly sensitive wages and compensation  
19 information, and competitively or commercially sensitive information requested in discovery.

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<sup>5</sup> See *In the Matter of Pac. Power & Light, dba PacifiCorp, Filing of Tariffs Establishing Automatic Adjustment Clauses Under the Terms of SB 408*, Docket UE 177 *et al.*, Order No. 06-033 at 4 (Jan. 25, 2006) (protecting PacifiCorp’s highly confidential tax information); *In the Matter of Nw. Nat. Gas Co., dba Nw. Nat., Request for a Gen. Rate Revision*, Docket UG 435, Order No. 21-465 at 2 (Dec. 16, 2021) (providing highly confidential treatment for financial forecasts); *In the Matter of Portland Gen. Elec. Co, Application for Waiver of the Competitive Bidding Rules*, Docket UM 2176, Order No. 21-216 at 1 (July 7, 2021) (providing highly confidential treatment for Portland General Electric Company’s (“PGE”) commercially sensitive information, including commercial terms and conditions establishing counterparty compensation, methods used to identify proposed cost competitive pricing, and PGE’s confidential business plans).

1           The financial forecasts are ORCP 36(C)(1) trade secret, non-public commercial  
2 information. This forward looking information is highly uncertain, speculative, and has the ability  
3 to materially impact the Company's stock price if made public. Moreover, the Securities and  
4 Exchange Commission's Regulation FD has severe penalties for utility personnel, including jail  
5 time, if material non-public information is improperly disclosed.<sup>6</sup> Improper disclosure in a manner  
6 that fails to comply with Regulation FD may also subject Idaho Power to liability for investors who  
7 subsequently rely upon that information. In light of the potential consequences of improper  
8 disclosure, the GPO does not adequately protect this information, and Highly Confidential  
9 Information designation is warranted.

10           The highly sensitive wages and compensation information contains proprietary  
11 compensation information and analysis, created by Idaho Power for the Company's needs and  
12 unique circumstances. Unlike other wage and benefits documents provided under the General  
13 Protective Order, these documents contain Idaho Power's wage and benefits calculation  
14 methodology and inputs; they constitute trade secrets under ORCP 36(C)(1) and have  
15 independent market value. Improper disclosure of this proprietary information could disadvantage  
16 Idaho Power as the Company competes for personnel.

17           The competitively or commercially sensitive information that may be requested in  
18 discovery includes ORCP 36(C)(1) trade secret and non-public commercial information. Idaho  
19 Power expects this information may include information concerning resource procurements, and  
20 this information is not adequately protected by GPO because release of specific bid-related  
21 information may damage ongoing negotiations, increase costs for future procurements, and/or  
22 decrease bidder participation if made public.

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<sup>6</sup> See *generally* 17 C.F.R., Part 243.

1 Finally, although this provision is not commonly included in other MPOs, it was included  
2 in Idaho Power’s MPO specifically at Staff’s request to limit the type of information that may be  
3 classified as highly confidential.

4 **B. Section 4(a) Provides Options for Securely Transmitting, Storing, and Filing Highly**  
5 **Confidential Information.**

6 In his Ruling, ALJ Mellgren comments that “the very specific proposed requirements found  
7 in Sections 4(a) and 16 of Idaho Power’s proposed modified protective order are not commonly  
8 seen in general rate cases and may be difficult for some potential intervenors to comply with,  
9 resulting in stifling public participation in this docket[.]” and directs that Idaho Power provide  
10 additional explanation and justification for these terms.<sup>7</sup>

11 Section 4(a) details the means for electronic transmission, storage, and filing of Highly  
12 Confidential Information as follows:

13 Electronic transmission, storage and filing:

- 14 i. For transmission to or among Qualified Persons or filing  
15 Highly Confidential Information at the Commission: Any  
16 Highly Confidential Information sent via email must be  
17 encrypted using a FIPS 140-2 approved algorithm such as  
18 AES-128, AES-192 or AES-256. Free tools such as 7zip,  
19 WinZip and PGP can provide such encryption. The  
20 password must be sent separately from the encrypted file.  
21 Alternatively, secure email gateways which secure the  
22 transmission of email through the use of password protected  
23 portals (e.g., Proofpoint’s Email Encryption) can be used as  
24 long as those services are managed and licensed at an  
25 enterprise level (not a personal account). Highly  
26 Confidential Information transmitted through these secure  
27 email gateways does not require additional [Federal  
28 Information Processing Standards (“FIPS”)] encryption.
- 29 ii. For storage of Highly Confidential Information or transmission  
30 among Qualified Persons: Cloud-based file sharing and  
31 collaborative solutions such as Box, DropBox, SharePoint  
32 Online, etc. may be used if the service is managed and  
33 licensed through an enterprise level license, meaning no  
34 personal accounts may be used. The service must be  
35 configured to require multifactor authentication and must  
36 store its data exclusively in the United States.

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<sup>7</sup> Ruling at 2.

1 This provision was discussed at length among Idaho Power, Staff, and CUB. Initially,  
2 Idaho Power had proposed that certain Highly Confidential Information would be available for on-  
3 site inspection in Portland at Idaho Power’s counsel’s offices. However, based on feedback from  
4 Staff and CUB that on-site inspection would be challenging for Staff and CUB in light of their  
5 current staffing and remote work environment, the provisions regarding electronic transmission,  
6 storage, and filing were added. The intent of this provision was to provide a variety of means with  
7 which a Qualified Person may access Highly Confidential Information, while providing enough  
8 specificity regarding the terms to ensure the security of Highly Confidential Information.

9 Regarding the encryption provisions, it is essential to ensure that any encryption that may  
10 be used is FIPS-approved. These are standards set by the National Institute of Standards and  
11 Technology (“NIST”) for use in non-classified computer systems. These standards are commonly  
12 implemented in consumer technology and are generally considered to be secure, and from Idaho  
13 Power’s perspective, if the parties plan to use encryption of data, it must be performed using a  
14 known secure protocol.

15 Regarding the options provided in Section 4(a), Idaho Power sought to provide a number  
16 of options for Qualified Persons specifying how to store, transmit and share information. In the  
17 event that one option is not viable for a specific user or use case, then other options are available  
18 to choose from. These include emailing Highly Confidential Information in a secure fashion (either  
19 encrypted or through a secure portal) or sharing it through properly managed cloud services. Each  
20 of these options are industry-standard secure options for collaboration. The tools required to  
21 properly encrypt the data are readily available and free for any party to download. Additionally,  
22 cloud storage solutions are commonly used due to their ability to provide secure collaboration.  
23 Idaho Power’s only request is that a corporate tenant be used for such cloud collaboration,  
24 because this ensures that the cloud provider and the entity have a relationship and vested interest  
25 in protecting the data stored on the platform. Additionally, it ensures better management of the



1 security controls and access to the stored data, as personal accounts with cloud services, such  
2 as Dropbox, do not have the same contractual obligations as corporate accounts.

3 Idaho Power also proposed multifactor authentication for access to Highly Confidential  
4 Information stored in cloud solutions because: (1) it is supported by most if not all cloud solution  
5 providers, and (2) it is a fairly standard requirement within the industry. This requirement is  
6 imposed on all of Idaho Power's vendors within the Company's standard contracts.

7 Importantly, as described above, Idaho Power included these proposals as an alternative  
8 to requiring on-site inspection, and vetted these proposals with Staff and CUB. To the extent that  
9 there may be concerns about potential intervenors having difficulty complying with these terms,  
10 Idaho Power is not aware that any intervenors (or potential intervenors) have identified any such  
11 concerns. Additionally, it is important to note that not all intervenors seek access to Highly  
12 Confidential Information. While no party has yet raised any with any specificity concerns with  
13 transmittal, storage, and filing, Idaho Power would be open to revisiting this issue in the event that  
14 it arises in the future, or would be open to holding a conference with the ALJ on the MPO to  
15 discuss any specific concerns in greater detail.

16 **C. Section 16 Is Designed to Ensure the Security of IT Systems Used by Qualified**  
17 **Persons.**

18 In Section 16, Idaho Power included the following provisions designed to ensure the  
19 security of the information technology systems of Qualified Persons seeking to access Highly  
20 Confidential Information:

21 All Qualified Persons must take reasonable precautions to keep  
22 Highly Confidential Information secure. Qualified Persons may  
23 reproduce Highly Confidential Information to the extent necessary  
24 to participate in these proceedings. A Qualified Person may discuss  
25 Highly Confidential Information obtained under this order only with  
26 other Qualified Persons who have obtained the same information  
27 under this order, and only in relation to this proceeding. Qualified  
28 Persons commit to abide by the following terms:

29 a. The entity with which the Qualified Person is  
30 associated shall utilize industry-accepted firewalls,

- 1 up-to-date anti-virus software, and non-end-of-life  
2 operating systems;
- 3 b. The entity with which the Qualified Person is  
4 associated shall secure electronic access to the  
5 entity's information systems containing Highly  
6 Confidential Information;
- 7 c. The entity with which the Qualified Person is  
8 associated shall store, process, and maintain any  
9 and all Highly Confidential Information on  
10 designated target servers that reside physically  
11 within the boundaries of the United States;
- 12 d. The entity with which the Qualified Person is  
13 associated shall not transfer any Highly Confidential  
14 Information outside of its network via unencrypted  
15 means;
- 16 e. The entity with which the Qualified Person is  
17 associated shall not process or transfer Highly  
18 Confidential Information to any unencrypted portable  
19 or laptop computing device, or any other  
20 unencrypted portable storage medium;
- 21 f. The entity with which the Qualified Person is  
22 associated shall use two-factor authentication for  
23 remote access to systems that access or store  
24 Highly Confidential Information;
- 25 g. The entity with which the Qualified Person is  
26 associated shall secure and prevent misuse of its  
27 own email resources;
- 28 h. The entity with which the Qualified Person is  
29 associated shall not store any Highly Confidential  
30 Information on any personal devices.

31 Idaho Power developed these provisions after consulting with its cybersecurity expert and  
32 in consultation with Staff and CUB. In discussions with Staff and CUB, these parties indicated a  
33 strong preference for flexibility to use encrypted emails and other means for collaboratively  
34 working together in a remote work environment. However, Idaho Power has significant concerns  
35 because the use of encrypted email and other means of transmittal is only as secure as the  
36 system with which it is transmitted. To address these concerns, Idaho Power proposes the terms  
37 included in Section 16, which are based on industry best practices and often called out within  
38 specific U.S. standards (e.g., NIST 180-53) and are consistent with the terms included in standard

1 contract language with Idaho Power’s vendors. Each term is included to address a specific threat  
2 related to the potential loss of Highly Confidential Information, and will help to ensure individuals  
3 with access to the Company’s Highly Confidential Information are taking basic precautions to  
4 protect Idaho Power’s data. For example, we require that our data be encrypted when it can be  
5 easily lost or stolen, such as on a laptop or Universal Serial Bus (“USB”) drive. Both of these use  
6 cases can be easily addressed by using Microsoft’s BitLocker or other open source  
7 solutions. Given that fact that these terms are consistent with industry best practices and Idaho  
8 Power’s vendors (both large and small) can accommodate with these terms, they are reasonable  
9 to include in the MPO.

10 The Section 16 provisions are narrowly tailored to ensure that Qualified Persons use  
11 systems that will ensure the appropriate level of care and security for Idaho Power’s Highly  
12 Confidential Information. Again, in vetting these proposals with Staff and CUB, Idaho Power  
13 understands that these terms were acceptable to Staff and CUB and, at this point, no party is  
14 asserting that they would not be able to comply with this term. That said, should an issue arise  
15 in the future, Idaho Power would address this issue in greater detail in light of any specific  
16 concerns that may be raised.

17 **D. U.S. Mail**

18 On December 15, 2023, Idaho Power filed its request for a general rate revision, and as  
19 requested by the Commission, provided a complete copy of the filing on a USB via U.S. mail.  
20 Idaho Power understands the two envelopes that contained the filing were tampered with and the  
21 USB was lost or stolen at some point in transit via U.S. mail. In light of this recent incident, Idaho  
22 Power respectfully requests that any references to transmittal of hard copies or removable media  
23 (USB drive) via U.S. First Class Mail instead be replaced with hand delivery or traceable delivery  
24 service.

1 **E. Conferring with Parties**

2 In light of Staff and CUB's role contributing to the development of the MPO at issue in this  
3 proceeding, Idaho Power conferred again with Staff and CUB regarding this Supplement, and  
4 Staff and CUB support Idaho Power's Supplement.

**III. CONCLUSION**

5 For these reasons, Idaho Power respectfully requests that the Commission issue a revised  
6 MPO that removes references to transmittal via U.S. mail as described herein, and otherwise  
7 maintains the MPO as issued by the ALJ, including Sections 4(a) and 16.

Dated: December 27, 2023

**McDOWELL RACKNER GIBSON PC**



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