

BARTON L. KLINE ISB #1526  
MONICA B. MOEN ISB #5734  
Idaho Power Company  
P.O. Box 70  
Boise, Idaho 83707  
Phone: (208) 388-2692  
FAX: (208) 388-6936

RECEIVED   
FILED

2004 SEP -8 AM 11: 15

IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Idaho Power Company

Express Mail Address

1221 West Idaho Street  
Boise, Idaho 83702

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO POWER COMPANY,	)	CASE NO. IPC-E-04-04
	)	
Complainant,	)	
	)	
v.	)	MOTION FOR ORDER EITHER STRIKING
	)	THE REBUTTAL AND SUPPLEMENTAL
CITY OF EAGLE, IDAHO,	)	TESTIMONY FILED BY THE CITY OF
	)	EAGLE OR GRANTING IDAHO POWER
Respondent.	)	LEAVE TO PRESENT LIVE REBUTTAL
_____	)	TESTIMONY AT THE TECHNICAL HEARING
	)	ON THIS MATTER
EAGLE RIVER, LLC,	)	
	)	
Intervenor.	)	
_____	)	

COMES NOW, Idaho Power Company ("Idaho Power" or the "Company") and, in accordance with RP 056, RP 231.01 and Order Nos. 29464 and 29574, hereby moves the Commission for an Order striking the rebuttal and supplemental testimony filed by the City of Eagle on September 7, 2004. Alternatively, should the Commission not issue an order

MOTION FOR ORDER EITHER STRIKING THE REBUTTAL AND SUPPLEMENTAL TESTIMONY FILED BY THE CITY OF EAGLE OR GRANTING IDAHO POWER LEAVE TO PRESENT LIVE REBUTTAL TESTIMONY AT THE TECHNICAL HEARING ON THIS MATTER

striking the rebuttal testimony of the City of Eagle, the Company respectfully requests that the Commission issue an order granting Idaho Power leave to present live rebuttal testimony at the technical hearing on this matter which is set for Thursday, September 9, 2004 at 9:30 AM. This Motion is based on the following:

I.

In Order No. 29444 issued March 15, 2004, the Idaho Public Utilities Commission ("IPUC" or the "Commission") scheduled a prehearing conference for the parties to discuss how the above-referenced case should be processed. As set out in Order No. 29444, the purpose of the prehearing conference was for the parties to agree upon how this case should be processed. Representatives for Idaho Power Company, the City of Eagle (the "City") and the Commission Staff ("Staff") entered appearances at the prehearing conference which was held on March 31, 2004.<sup>1</sup>

At the prehearing conference, the parties mutually agreed to the schedule and proposed that the Commission adopt the following schedule to process this case:

<u>DATE</u>	<u>ACTION</u>
April 30, 2004	Profile direct testimony of Idaho Power
May 17, 2004	Deadline for City and/or Staff discovery
June 4, 2004	Deadline to answer initial discovery
June 25, 2004 <sup>2</sup>	City and/or Staff profile direct testimony
July 8, 2004	Public workshop to dispense information

---

1 In Order No. 29543 issued on July 9, 2004, the IPUC granted Eagle River, LLC's Petition to Intervene in this matter.

2 In Order No. 29542 issued on July 7, 2004, the Commission ordered the Staff to file its direct testimony in this matter no later than July 30, 2004 and the City to file its direct testimony no later than July 2, 2004.

July 13, 2004	Deadline for Idaho Power discovery to City or Staff
August 2, 2004	Deadline to answer Idaho Power discovery
August 16, 2004 <sup>3</sup>	Prefile Idaho Power rebuttal testimony
September 9, 2004	Technical hearing in Boise
September 9, 2004	Public hearing in Eagle

The Commission approved this schedule via Order No. 29465 issued on April 14, 2005. The original schedule anticipated that both the City and the Staff would simultaneously file direct testimony in this matter on June 25, 2004. Although the schedule has been modified in conformance with the Orders identified herein to permit the City to file its direct testimony no later than July 2, 2004 and for the Staff to file its direct testimony no later than July 30, 2004, no accommodations were made in any Order issued by the IPUC in this case for the City or any other party other than Idaho Power to file testimony rebutting the direct testimony filed by any party.

## II.

Although the above-referenced schedule approved by the parties and ordered by the Commission did not allow the City or any other party other than Idaho Power to file rebuttal testimony in this matter, on Tuesday afternoon, September 7, 2004, less than 41 hours before the technical hearing in this matter, the City of Eagle served the Company with testimony that purports to be rebuttal testimony. In fact, the testimony presents totally new evidence and arguments not previously presented in the City's case to date.

---

<sup>3</sup> In Order No. 29574 issued on August 27, 2004, the Commission reset the date for Idaho Power to file its rebuttal testimony. The Order required Idaho Power to file its rebuttal testimony electronically by Monday September 6, 2004 and to file a hard copy of the testimony with the Commission on September 7, 2004. The Company served the rebuttal testimony on all the parties to this matter on Friday, September 3, 2004.

As the Complainant in this matter and as ordered by the Commission pursuant to Order No. 29465, Idaho Power is entitled to the opportunity to open and close the presentation of evidence in this case. In accordance with the schedule mutually agreed to by the parties in this case and as ordered by the Commission, the Company, therefore, respectfully requests that the Commission strike the rebuttal and supplemental testimonies of Don C. Reading, Ph.D and Pike Teinert that were filed on behalf of the City of Eagle on September 7, 2004.

Alternatively, Idaho Power hereby requests, given the City's ill-timed service of rebuttal and supplemental testimony in this matter, that, if the Commission does not issue an order striking the rebuttal and supplemental testimony of the City of Eagle, the Company be granted leave to present, at the technical hearing on this matter, live rebuttal testimony of the testimony filed by the City of Eagle on September 7, 2004.

Idaho Power requests that the Commission take up this matter at the time scheduled for the technical hearing of this case and that the technical hearing proceed immediately following the Commission's hearing on this Motion.

NOW, THEREFORE, Idaho Power respectfully requests that the Commission issue its Order striking the rebuttal and supplemental testimony filed by the City of Eagle on September 7, 2004 or, in the alternative, granting Idaho Power Company leave to present live rebuttal testimony at the technical hearing in this matter.

Respectfully submitted this 8<sup>th</sup> day of September 2004.



---

MONICA MOEN  
Attorney for Idaho Power Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8<sup>th</sup> day of September 2004, I served true and correct copies of the above and foregoing JOINT MOTION FOR ACCEPTANCE OF SETTLEMENT to the following parties:

Donald L. Howell, II  
Deputy Attorney General  
Idaho Public Utilities Commission  
472 W. Washington Street  
P.O. Box 83720  
Boise, Idaho 83720-0074

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Electronic Mail

Susan Buxton  
Moore Smith  
225 N. 9th Street, Suite 420  
Boise, Idaho 83702

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Electronic Mail

City of Eagle  
P.O. Box 1520  
Eagle, Idaho 83616

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Electronic Mail

B. Newel Squyres  
Mary V. York  
Holland & Hart, LLP  
Suite 1400, U.S. Bank Plaza  
101 S. Capitol Boulevard  
P.O. Box 2527  
Boise, ID 83701

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Electronic Mail

Eagle River, LLC  
c/o Ennis Dale  
485 E. Riverside Drive  
Eagle, ID 83616

Hand Delivered  
 U.S. Mail  
 Overnight Mail  
 FAX  
 Electronic Mail



MONICA B. MOEN