

DONALD L. HOWELL, II
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0312
IDAHO BAR NO. 3366

RECEIVED
FILED
2004 SEP -8 PM 1:52
IDAHO PUBLIC
UTILITIES COMMISSION

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5983

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO POWER COMPANY,)	
)	CASE NO. IPC-E-04-4
Complainant,)	
)	STAFF MOTION TO STRIKE
v.)	THE REBUTTAL AND
)	SUPPLEMENTAL TESTIMONY
CITY OF EAGLE, IDAHO,)	OF DON C. READING AND
)	PIKE TEINERT
Respondent.)	

COMES NOW the Commission Staff pursuant to Commission Rules 56, 246 and 256, and moves the Commission to strike the Rebuttal and Supplemental Prefiled Testimony offered by the City in this case. As explained in greater detail below, the Commission's scheduling Orders do not authorize the City (the Respondent in this case) to file Rebuttal and Supplemental testimony two days before the technical hearing. Consequently, the Staff requests that the Commission strike the prefiled Rebuttal and Supplemental Testimony of Don C. Reading and Pike Teinert filed September 7, 2004. If the Commission desires, the Staff is ready to provide oral argument regarding this Motion to Strike as a preliminary matter at the technical hearing scheduled for tomorrow, September 9, 2004. Ruled 246, IDAPA 31.01.01.246.

ARGUMENT IN SUPPORT OF THE MOTION TO STRIKE

The Staff maintains there are several reasons why the Commission should strike the prefiled Rebuttal and Supplemental Testimony Dr. Don C. Reading and Pike Teinert, PE. First, the scheduling Orders in this case do not allow the City to file rebuttal. In the Commission's scheduling Order No. 29465 issued April 14, 2004, the City and the Staff were originally scheduled to file their direct testimony on the same day – June 25, 2004. This Order did not indicate any rebuttal or surrebuttal testimony being filed by Staff or the City.

On June 9, 2004, Staff filed a Motion to Extend the Deadline for it to file prefiled testimony. Staff requested that the deadline for its testimony be extended from June 25 to July 30, 2004. On June 14, 2004, the City of Eagle also filed a Motion requesting an extension of time in which to submit its prefiled testimony. The City's Motion, filed after the Staff's Motion, requested an extension from June 25 to July 2, 2004. The City was certainly aware that Staff's requested filing date was to be after the City's requested filing date. In its June 14 Motion, the City did not request permission to file Rebuttal or Surrebuttal testimony. In Order No. 29542 issued July 7, 2004, the Commission granted the Staff's Motion and the City's Motion. Order No. 29542 observed that all the parties to the case consented to the two extensions of time. Order No. 29542 at 1.

Second, the untimely Eleventh-hour filing of this Rebuttal and Supplemental testimony by the City is prejudicial to the Staff and Idaho Power. The Rebuttal and Supplemental testimony of the two city witnesses purports to respond to Staff's direct testimony filed July 30, 2004. The City's rebuttal testimony was filed 41 days after the Staff filed its testimony. Moreover, this rebuttal testimony was filed a mere two days before the Commission's technical hearing scheduled for tomorrow. The rebuttal was filed without a Motion and the City offers no explanation on why it did not file this testimony sooner.

The City's Rebuttal and Supplemental testimony was prefiled at a time when Staff and other counsel are preparing for the technical case. It is prejudicial and unreasonable to allow the City to file rebuttal testimony at this late date. Consequently, the Staff believes that it is appropriate and within the Commission's discretion to strike this rebuttal and supplemental testimony. Order No. 29555 at 10.

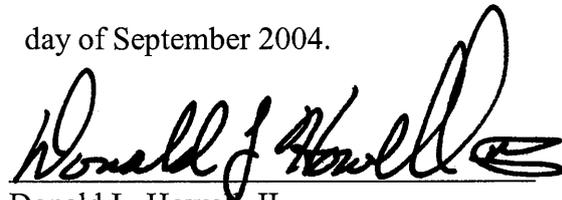
Third, the City's Rebuttal and Supplemental testimony is offered after Idaho Power filed its rebuttal testimony. As contemplated by the Commission's scheduling Order Nos. 29465

and 29542, Idaho Power as the Complainant is entitled to the last word. The Commission's Rule 249.01 contemplates that only the Complainant is entitled to file rebuttal testimony. IDAPA 31.01.01.249. Staff further asserts that the City's Rebuttal and Supplemental testimony refutes testimony or position advocated by Idaho Power. If the Commission were to allow the City's Rebuttal and Supplemental testimony to be spread on the record, it would be contrary to the Commission's scheduling Orders and presumably gives the City, instead of the Company, the last word.

PRAYER

In summary, the Staff respectfully requests that the Commission strike the City of Eagle's Rebuttal and Supplemental testimony filed September 7, 2004. This rebuttal testimony is contrary to the Commission's scheduling Orders, untimely submitted a mere two days before the technical hearing, and is prejudicial to the other parties in this case as they prepare for tomorrow's technical hearing. Pursuant to Rule 246, the Staff requests that the Commission rule upon this Motion before taking evidence at tomorrow's hearing. IDAPA 31.01.01.246. If necessary, the Staff stands ready to present oral argument concerning this Motion at tomorrow's technical hearing.

Respectfully submitted this 8th day of September 2004.



Donald L. Howell, II
Deputy Attorney General

Vld/N:IPCE0404_dh2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 8TH DAY OF SEPTEMBER 2004, SERVED THE FOREGOING **STAFF MOTION TO STRIKE REBUTTAL AND SUPPLEMENTAL TESTIMONY OF DON C. READING AND PIKE TEINERT**, IN CASE NO. IPC-E-04-4, BY E-MAIL AND MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

BARTON L KLINE
MONICA B MOEN
IDAHO POWER COMPANY
PO BOX 70
BOISE ID 83707-0070
E-mail: bkline@idahopower.com
mmoen@idahopower.com

SUSAN BUXTON
BRUCE SMITH
JOHN McFADDEN
MOORE SMITH BUXTON & TURCKE
225 N 9TH ST SUITE 420
BOISE ID 83702
E-mail: bms@msbtlaw.com
seb@msbtlaw.com

B. NEWAL SQUYRES
MARY V. YORK
HOLLAND & HART LLP
PO BOX 2527
BOISE ID 83701
E-mail: nsquyres@hollandhart.com
myork@hollandhart.com

CITY OF EAGLE
PO BOX 1520
EAGLE ID 83616

EAGLE RIVER LLC
C/O A. ENNIS DALE
485 E. RIVERSIDE DR.
EAGLE ID 83616



SECRETARY