

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER)	
COMPANY'S APPLICATION FOR A)	CASE NO. IPC-E-06-09
CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY FOR THE EVANDER)	ORDER NO. 30136
ANDREWS POWER PLANT)	

On September 22, 2006, the Commission received a Motion from the Industrial Customers of Idaho Power (ICIP) seeking to compel Idaho Power Company to fully and completely respond to five confidential production requests. The parties had previously entered into a Protective Agreement that was intended to control the availability and dissemination of information claimed to be confidential or trade secrets. *Idaho Code* § 48-801; IDAPA 31.01.01.067.04; IRCP 26(c). ICIP sought expedited relief on shortened notice pursuant to Rule 256. IDAPA 31.01.01.256. On September 22, 2006, the Commission also received a letter/motion from Heinz Frozen Food Company entitled Motion to Protect Trade Secret and Confidential Information of a Non-Party. Based upon our hearing, the Commission grants ICIP's request in part and denies the request in part.

THE HEARING

By agreement of the parties (Idaho Power, ICIP, and Commission Staff), the Commission convened a hearing on September 26, 2006, on shortened notice to address ICIP's Motion. ICIP, Idaho Power, and Staff were all represented at the hearing. A representative from Heinz was given the opportunity to participate in the hearing telephonically, but declined. The Commission directed that the hearing be closed and that the transcript be sealed pursuant to Rule 287. IDAPA 31.01.01.287.

DISCUSSION AND FINDINGS

ICIP initially asked the Commission to compel Idaho Power to fully and completely respond to Production Request Nos. 49, 50, 51, 52, and 53. At hearing ICIP withdrew its request with regard to No. 53.

ICIP argued that Idaho Power's objections to the production requests were untimely. Pursuant to Rule 225, parties have 14 days to object or explain why a production request cannot be answered, and 28 days in which to answer. IDAPA 31.01.01.225.03. Idaho Power did not object to any of the requests within 14 days. Instead, the Company submitted "partial" answers

within the 28 days stating that certain information was regarded as confidential and would not be supplied.

Upon examination of the actual questions and answers, we find that Idaho Power supplied sufficient responses to Request Nos. 49 and 51. We find Idaho Power's responses reasonably address the requests and generally provide more information than simply objecting to the requests. We also note the Protective Agreement recites that all production requests are considered as continuing, and parties have an obligation to answer and supplement responses with any additional information or documents that may be obtained or discovered after submission of an answer. IRCP 26(e)(3). We remind the parties of this responsibility and our expectation that they will comply with it.

With regard to the remaining two requests, we find, and Idaho Power admits, that it did not answer Request Nos. 50 and 52. Given the protections incorporated in the Protective Agreement and the issues in this case, we find it reasonable, necessary, and in the public interest that Idaho Power be compelled to respond to Request Nos. 50 and 52. Although the Commission understands the concerns of Idaho Power and Heinz in protecting confidential information, we find that the procedures and protections set forth by the parties' Protective Agreement, Commission Rules, and the Idaho Rules of Professional Conduct provide sufficient protections and assurances that this information will be safeguarded. In particular, the Agreement safeguards the disclosure of confidential information or trade secrets, limits the number of individuals with access, and allows Idaho Power to "approve" the individuals for access before the information is disclosed. IDAPA 31.01.01.067, 31.01.01.233; *Idaho Code* §§ 48-802, 48-803. Disclosure is restricted to ICIP's two counsel and its single expert witness. We further find there is a very strong public interest in the complete and thorough examination of the decision to go forward with the construction of a new power plant. The public interest compels the answer to Request Nos. 50 and 52 under the procedures and protections afforded by the Protective Agreement.

The requested information has been identified as confidential information by the parties, and has been handled under the special procedures for confidential information set out in the parties' Protective Agreement. Similarly, the Commission has held a closed hearing and ordered a sealed transcript pursuant to Rule 287. Under the parties' Protective Agreement, only those persons who have signed and executed an "Exhibit A" are granted access to information

deemed confidential. Additionally, Idaho Power must acknowledge and approve each "Exhibit A" prior to making the disclosure. The Protective Agreement prohibits the re-disclosure and the use of confidential information for any purpose other than that required by the Commission's consideration of Case No. IPC-E-06-09.

In summary, we find that there are sufficient safeguards in place to protect any claimed confidential information in this situation, and order Idaho Power to respond. As an added precaution, we order Idaho Power to make the requested information immediately available for inspection on its premises where the inspecting party can then identify only those portions for copying that are deemed necessary for the preparation of its presentation in this case. See Protective Agreement, ¶ 2.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

Idaho Power Company is an electrical corporation providing electric service to the public within the State of Idaho, *Idaho Code* §§ 61-118, 61-119, and is operating as a public utility. *Idaho Code* § 61-129.

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, its Application for a Certificate of Public Convenience and Necessity for the Evander Andrews Power Plant, and the issues involved in this case by virtue of Title 61, Idaho Code, and more specifically *Idaho Code* §§ 61-129, 61-501, 61-502, 61-503, 61-515, 61-520, 61-523, 61-524, 61-526, *et seq.*

There are sufficient safeguards in the parties' Protective Agreement, the Commission's Rules of Procedure, the Idaho Trade Secrets Act, and the Idaho Rules of Professional Conduct to protect any claimed confidential information that Idaho Power is required to disclose from being disclosed to Heinz's competitors.

ORDER

IT IS HEREBY ORDERED that the Industrial Customers of Idaho Power's Motion to Compel is granted in part as to Request Nos. 50 and 52, and is denied in part as to Request Nos. 49 and 51.

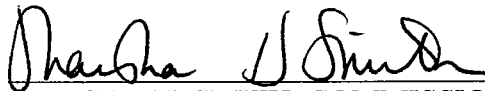
IT IS FURTHER ORDERED that Idaho Power shall fully and completely respond to the Third Confidential Production Request of the Industrial Customers of Idaho Power, No. 50 and No. 52. Idaho Power shall make the requested information immediately available for inspection on its premises where the inspecting party can then identify only those portions for

copying that are deemed necessary. This will minimize the amount of confidential information being disseminated. This information is to be made available to the parties on or before October 2, 2006.

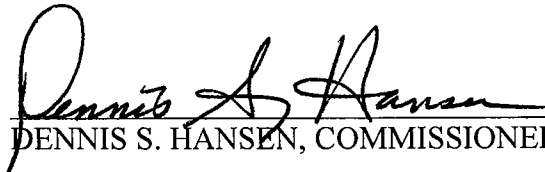
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th day of September 2006.



PAUL KJELLANDER, PRESIDENT



MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

O:IPC-E-06-09_dw4