

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) EPAct Docket No. 06-0001
Idaho Power Company)
Hells Canyon Complex)
FERC Project No. 1971)
)

Order Granting in Part and Denying in Part Motions Objecting to Discovery Requests

At the May 10, 2006, prehearing conference, after being informed that the parties were entering into a joint stipulation leaving only one condition remaining challenged in this proceeding, I directed that the parties file amended discovery requests by May 16, 2006, and any objections to the requests by May 19, 2006. Both the Forest Service and the National Marine Fisheries Service filed revised motions for discovery on Idaho Power Company, and Idaho Power Company served revised motions for discovery on both the Forest Service and the National Marine Fisheries Service. Each entity on whom a revised motion for discovery was served has objected to some or all of the requested discovery, except that Idaho Power did not appear to object to the revised discovery request of the National Marine Fisheries Service.

Idaho Power Company Objections to Forest Service Discovery Requests

Several of Idaho Power's objections were based on the contention that they should not have to respond to interrogatories that would otherwise be covered in their written direct testimony. I do not find this to be a valid basis for objection.

Interrogatories are designed to clarify the evidence and narrow issues likely to be presented in a case, and the fact that a question asked would be part of the testimony presented in the direct case of the questioned party is not a basis for not answering the question. Additionally, if the question will be answered a week later in written direct testimony I do not see much chance for prejudicial harm against Idaho Power. Thus, I overrule the objections to interrogatories 1, 3, 4 and 5, and to the portions of interrogatories 19, 21, 22, 23, 24, 25, 26, 27 and 28 covered by that objection.

Idaho Power also objected to a number of interrogatories that would require them, they contend, to conduct new research and perform new analysis (6, 7, 8, 9, 10, and 11), and would be unduly burdensome in that it would require the compilation of extremely large amounts of data (14, 15). Given the limited time period for the completion of discovery, and the general requirement that a party can only discover what is already in existence, I sustain these objections, but I am willing to hear further argument on these objections at the scheduled June 1 follow-up prehearing conference. However, to the extent that these interrogatories can be answered without the conduct of new research and analysis, Idaho Power is directed to do so.

The objection to interrogatory 29 is sustained.

The objection to the Request for Production No. 2 is denied, unless Idaho Power can identify with greater specificity exactly which documents fall into this “unduly burdensome” category.

Forest Service Objections to Idaho Power Discovery Requests

The Forest Service has objected to interrogatories 1-8 and 12 through 25 and requests for production 1, 6 and 10.

I sustain the objection to interrogatories 1 through 5. First, I have considerable difficulty in detecting a connection between the material facts alleged as issues for me to determine in this proceeding, and the information that will be generated by the response to these interrogatories. The information on parcels of land under Forest Service administration is also, according to the Forest Service, not discoverable as it is already either in the license proceeding record or otherwise obtainable by Idaho Power. 7 C.F.R. § 1.641(b)(2)(ii). I sustain the objection to request for production 1 as it covers this same information.

I sustain the objections to interrogatories 6 through 8. The purpose of this proceeding is for me, as the administrative law judge, to make material fact findings on issues pertaining to conditions raised by Idaho Power. Asking the Forest Service to provide its version of material facts in a proceeding where Idaho Power is being asked to raise disputed issues of material fact for my resolution is not consistent with the purpose of these proceedings. As I will discuss in my ruling on the burden of proof, Idaho Power, as the party raising alleged facts in dispute that are material to conditions imposed by the Forest Service, has the burden of going forward on these facts.

Interrogatories 12 through 25 appear to seek material which may be relevant to issue 4.6, but which also appears to be overreaching in terms of the information which it is seeking. The time period Congress implicitly allowed for discovery in this proceeding is incredibly brief, and the amount of information sought in these interrogatories, and in the accompanying requests for product, appears to be quite broad, particularly in light of the relatively narrow framing of issue 4.6. I will consider, if Idaho Power is able to craft a more finely honed discovery request prior to the June 1 follow-up prehearing

conference, attempts to gather pertinent information as to this issue, but as crafted it appears to be far too detailed and burdensome to be compliant with the expedited circumstances associated with this hearing process. I encourage Idaho Power and the Forest Service to confer and try to ascertain whether they can agree on a more suitable exchange of information in this particular area. As currently drafted, however, I sustain the Forest Service's objections to interrogatories 12-15, 17-19, and 22-25. I conclude that interrogatories 16, 16a, 20, 20a and 21 can be answered consistent with this hearing's purpose. I sustain the objection to request for production 6 to the extent it covers the interrogatories for which I sustain the objections, and overrule the objection to request for production 6 as it applies to the remaining interrogatories.

There appears to be no basis for sustaining the Forest Service objection to request for production 10 as the request described does not match up to the objection in the Forest Service's document.

National Marine Fisheries Service Objections to Idaho Power Discovery Requests

Idaho Power served four interrogatories on National Marine Fisheries Service, all relating to issue 6. NMFS objected on two criteria—that the information was already in the FERC record or otherwise readily available to Idaho Power, or that it would be too burdensome to conduct the studies or otherwise produce the materials requested in the extremely brief period available before the hearing. Under 7 C.F.R. § 1.641(b)(2)(ii), I may not authorize the discovery of information that is “already in the license proceeding

record or otherwise obtainable by the party” or is “unduly burdensome.” Thus, unless I hear to the contrary at before or during the follow-up prehearing conference on June 1, I am constrained to sustain the objections of the National Marine Fisheries Service.

MARC R. HILLSON
Chief Administrative Law Judge

May 26, 2006