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November 27, 2007

VIA ELECTRONIC FILING AND U.S. MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

Re: Docket No. AR 521

Enclosed for filing in the above-referenced docket is an original and one copy of Idaho Power Company's Final Comments.

A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

A handwritten signature in cursive script that reads "Wendy L. McIndoo".

Wendy L. McIndoo
Legal Assistant

cc: Service List

1 BEFORE THE PUBLIC UTILITY COMMISSION
2 OF OREGON

3 AR 521

4 In the Matter of a Rulemaking to Adopt
5 Rules Related to Small Generator
6 Interconnection.

IDAHO POWER COMPANY'S
FINAL COMMENTS

7 INTRODUCTION

8 Over the past year, Idaho Power Company ("Idaho Power" or the "Company") has
9 been an active participant in both the informal interconnection workshop proceedings and in
10 this formal rulemaking docket. The Company has filed several rounds of written comments
11 and offered oral comments at the hearing on November 13, 2007. Idaho Power appreciates
12 the responsiveness of the Public Utility Commission of Oregon ("Commission") Staff to the
13 concerns of the Company as well as to those of the other parties. As a result of Staff's hard
14 work and willingness to work on the issues raised, the majority of Idaho Power's concerns
15 have been addressed in Staff's November 9, 2007 version of the proposed rules.
16 Accordingly, in these final comments, Idaho Power will discuss only three issues: dispute
17 resolution; insurance requirements for the generators under 200kw; and at the request of
18 the Administrative Law Judge ("ALJ") the Commission's authority to limit damages available
19 to the parties in the Interconnection Agreements.

20 DISCUSSION

21 **A. The Commission Should Adopt the Expedited Dispute Resolution**
22 **Procedures Proposed by the Parties**

23 At many of the workshops scheduled in this docket representatives of the
24 Interconnection Customers and the Oregon Department of Energy ("ODOE") expressed a
25 desire that the Interconnection Agreements contain alternative dispute resolution provisions.
26 Specifically, these parties were concerned that the Commission's existing complaint

1 procedures contained in OAR 860-013-0015 *et seq*, might prove unnecessarily cumbersome
2 in the case of a dispute arising from the negotiation or enforcement of an interconnection
3 agreement. As a result they feared that Interconnection Customers, aggrieved by some
4 action of the electricity distribution company (“EDC”), might hesitate to file a complaint with
5 the Commission out of concern that the process would result in expensive and protracted
6 litigation.

7 After the November 13th hearing, ODOE proposed that the Commission adopt an
8 expedited complaint process similar to that adopted for enforcement of telecommunications
9 interconnection agreements approved under the Federal Telecommunications Act (“ICAs”).
10 Those rules, which are found in OAR 860-016-0050 have proven quite effective in assisting
11 parties to ICAs to resolve their disputes expeditiously.

12 Idaho Power is comfortable with both the ODOE-proposed and the Staff-proposed
13 rules.

14 **B. The Commission Should Allow the EDCs to Require Small Generators to**
15 **Maintain Reasonable Amounts of Insurance**

16 In its Initial Comments, filed on October 17, 2007, Idaho Power objected to Staff’s
17 Proposed OAR 860-082-0035, which provides that Interconnection Customers cannot be
18 required by the EDC to maintain general liability insurance for generating facilities with
19 capacities smaller than 200kw. Idaho Power pointed out that a small project could cause
20 just as severe an injury as that caused by a larger project, and that it was not appropriate to
21 transfer the risk of such an injury to the EDC.

22 At the Public Hearing, Staff argued that the Commission had already decided this
23 issue in UM 1129, and that no EDC had yet come forward with any compelling evidence to
24 suggest that it might be harmed by the failure of a small generator to carry insurance.
25 However, Idaho Power has observed customer practices that raise concern. In particular,
26 damage can be caused by either high or low voltage when the EDC system is disconnected

1 and the generator continues to supply voltage to the islanded distribution system. The
2 protection systems installed with the generator are designed to eliminate this condition.
3 However, Idaho Power has experience with Interconnection Customers who disable the
4 protection systems. It is not difficult to predict that an accident could be caused by such a
5 condition and that Company personnel or property could be hurt. If the Interconnection
6 Customer was not insured, and was thinly capitalized, Idaho Power would be without
7 remedy.

8 On November 8, 2007, PacifiCorp addressed this same issue in its Initial Comments.
9 In addition to making an argument similar to that made by Idaho Power, PacifiCorp made
10 another very important point. PacifiCorp pointed out that the risk posed by the
11 interconnections at issue in this docket is largely that of physical damage, as opposed to the
12 financial risks posed by the QF agreements that were the subject of UM 1129. PacifiCorp
13 reasoned therefore that the logic that led the Commission to rule that the utilities could not
14 require the smallest generators to maintain insurance did not apply in this case. PacifiCorp
15 also pointed out that when the Oregon legislature sought to exempt net metering customers
16 from the obligation to carry insurance, it also insulated the interconnected utility from any
17 liability for injury resulting from the interconnection.

18 Idaho Power believes that PacifiCorp has persuasively distinguished the case of the
19 Interconnection Agreements at issue in this case with that of the net metering customers
20 governed by ORS 757.300 and the QF agreements under PURPA. Accordingly, the
21 Commission should strike the relevant portion of section 860-082-0035.

22 **C. The Commission has the Authority to Limit the Parties Liability to Each**
23 **Other for Damages Except in the Cases of Gross Negligence or Willful**
24 **Misconduct**

25 Staff's Proposed Rule 860-082-0037 provides that an Interconnection Customer or
26 an EDC may recover under the Interconnection Agreement, stating:

1 Neither Party may seek redress from the other counter part in an amount greater
2 than the amount of direct damage actually incurred.

3 At the November 13th hearing, the ALJ requested that the parties research and address in
4 their comments the scope of the Commission's authority to limit the parties' liability to each
5 other in this fashion. Idaho Power has concluded that it does.

6 Oregon courts have held that the Commission has the authority to limit a public
7 utility's liability, so long as the limitation does not limit liability for gross negligence. *Garrison*
8 *v. Pac. NW Bell*, 45 Or. App. 523, 531 (1980). The Oregon Court of Appeals noted that
9 courts in other jurisdictions are "virtually unanimous" on this issue. *Id.* A regulation limiting
10 a public utility's liability is central to the Commission's authority to establish reasonable
11 rates, because a public utility's expanded exposure to liability would increase the cost of
12 furnishing service and would result in higher rates. *Id.* Therefore, Commission regulations
13 limiting liability are effective against a breach of contract claim against a utility.¹ *Simpson v.*
14 *Phone Directories Co.*, 82 Or. App. 582, 587 (1986).

15 A limitation on damages imposed by the Commission will not be effective, however,
16 with respect to a public utility's gross negligence. *Garrison*, 45 Or. App. at 531; *In the Matter*
17 *of the Investigation into Rate Schedules of US West Comm. et al.*, Order No. 96-079, Docket
18 No. UT 119 (Mar. 20, 1996). For that reason, Idaho Power recommends excluding acts that
19 are a result of gross negligence from the proposed limitation on damages.

20 The Oregon courts have not explicitly addressed the mirror-image issue: whether
21 the Commission may limit the damages that public utilities may recover from a counterparty.
22 Given that the courts have established that the connection between limitations on liability

23 ¹ Although the Commission can limit a public utility's liability under Staff's Proposed Rule 860-
24 082-0037, it cannot limit liability for violations of ORS chapters 756, 757, or 758. ORS 756.185
25 provides for recovery of damages caused by a utility's violation of referenced statutes. It also
26 provides for treble damages in the event the violation is caused by the public utility's gross negligence
or willful misconduct. ORS 756.185(1). However, the statute does not apply to the liability of a public
utility for personal injury or property damage. ORS 756.185(4).

1 and rates provides the Commission with the ability to limit public utilities' liability, it follows
2 that a reciprocal limitation is also integral to the Commission's ability to regulate utility rates.

3 Thus, except in the case of gross negligence, the Commission has the authority to
4 impose limitations on damages. Idaho Power recommends that Staff's Proposed Rule 860-
5 082-0037 be amended to exclude gross negligence from the limitation on damages.

6 **D. Miscellaneous Issues**

7 In addition to the above, Idaho Power supports the positions taken by PacifiCorp in
8 its Initial Comments on the following issues:

9 1. NERC & WECC

10 Idaho Power agrees that Proposed Rule 860-082-0025(2) should be revised to
11 include reference to the Applicant's Interconnection Equipment and reference to NERC and
12 WECC reliability standards.

13 2. Cost Responsibility-Deposits

14 Idaho Power agrees that Proposed Rule 860-082-0030(7) should clarify that before
15 the EDC is required to start work on Interconnection Facilities, the parties must agree on
16 progress billing, final billing and payment schedules.

17 DATED: November 27, 2007.

McDOWELL & RACKNER PC

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19 

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in AR 521 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

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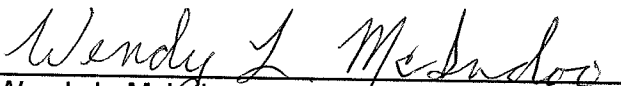
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