RICHARDSON & O'LEARY
ATTORNEYS AT LAW
Tel: 208-938-7900 Fax: 208-938-7904
P.O. Box 7218 Boise, ID 83707 - 515 N. 27th St. Boise, ID 83702

April 29, 2013

Public Utility Commission
Attn: Filing Center
550 Capitol Street NE #215
PO Box 2148
Salem, OR 97308

Re: UM 1610 –Community Renewable Energy Association's Reply Testimony

Dear Filing Center:

Enclosed please find the Community Renewable Energy Association's reply testimony for filing in the above-referenced docket. This enclosure contains:

- Reply Testimony of Ormand Hilderbrand: CREA/400

We are providing the Commission with an original and (5) copies of this filing. Please contact me with any questions. Thank you for your assistance.

Sincerely,

Gregory M. Adams
Attorney for the Community Renewable Energy Association

Enc.

BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

IN THE MATTER THE PUBLIC UTILITY COMMISSION OF OREGON **Investigation Into Qualifying Facility Contracting and Pricing**	)	**CASE NO. UM 1610**

Community Renewable Energy Association

Exhibit 400

Reply Testimony of Ormand Hilderbrand

April 29, 2013

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I. Introduction

Q. Please state your name and business address.

A. My name is Ormand G. Hilderbrand and my business address is 71190 N. Klondike Road, Wasco, Oregon 97065.

Q. Are you the same Ormand Hilderbrand who provided opening testimony?

A. Yes. I provided opening testimony on behalf of the Community Renewable Energy Association ("CREA"), which is CREA/100.

Q. What is the purpose of your reply testimony?

A. I will provide reply testimony on behalf of CREA to some of the issues I addressed in my opening testimony. My reply testimony will specifically address the following issues, as set forth in the Administrative Law Judge's ("ALJ") Procedural Order on December 21, 2012: Issue 1.B: Levelized Pricing; Issue 3: Schedule for Avoided Cost Rates; Issue 4.A: Price Adjustments for Integration Costs; Issue 5: Eligibility Issues (sub-issues A. and B. only).

I will be CREA's only reply witness. CREA understands that some other qualifying facility ("QF") parties may provide testimony in reply to some of the issues raised, and CREA may endorse such testimony through legal briefing. Unless otherwise expressed in my reply testimony, CREA's position remains as set forth in CREA's witnesses' opening testimony and set forth in CREA/101.

II. Issue 1.B: Levelized Pricing

Issue 1. B. Should QFs have the option to elect avoided cost prices that are levelized or partially levelized?

Q. Commission Staff's witness stated: "Staff sees no real change in the arguments regarding levelization since 2005 and therefore recommends the Commission not levelize avoided cost prices."[1] Do you agree with this statement?

A. No. I do not agree that the conclusion reached in 2005 precludes the Commission's consideration in this case. First, a review of the 2005 order reveals that the Commission only addressed the issue of levelization in a footnote, and did so only to state: "we need not address the issue of levelization in this Order."[2] This hardly dispatches with the merits of levelization in all future cases, including this case where the issue has been raised eight years later. Additionally, I believe that the circumstances are materially different today than the circumstances presented to the Commission in 2005.

Q. How are circumstances different today?

A. The sufficiency periods QFs face today can be quite long and contain very low avoided cost rates based only on the avoided cost of market prices for the initial years of most QF contracts. For example, in PacifiCorp's UM 1396 compliance filing, PacifiCorp proposed a sufficiency period for its renewable avoided cost rates that would last six years.[3] That means that the QF would only receive a very low rate based upon a forward market price curve for the first six of the fifteen years a renewable QF would be entitled to the fixed avoided cost rates. In Portland General Electric Company's ("PGE") UM 1396 compliance filing, the off-peak avoided cost rates for variable QFs taking non-renewable rates during one month of the sufficiency period were actually negative.[4] In other words, the QF would have to pay PGE to accept its power during some periods of the initial year of the long-term contract. PGE's proposed rates

[1] Staff/100, Bless/13.
[2] *See* OPUC Order No. 05-584 at 28 n.46.
[3] *See* UM 1396 PacifiCorp/201, Griswold/10 (filed Feb. 13, 2012).
[4] *See* UM 1396 PGE/105, Macfarlane/7 (filed March 16, 2012).

during the sufficiency period of the renewable avoided cost rates were likewise very low – including an off-peak rate of $0/MWh in one month.[5] These circumstances did not exist in 2005.

Q. What is the impact of the low sufficiency period rates and the long sufficiency periods on a small QF?

A. As Dr. Reading has explained on behalf of CREA, levelization "may allow small QFs to meet financial obligations during the initial years of the contract where a lengthy sufficiency period may result in non-levelized rates that are too low to allow QFs to meet debt service obligations and start-up costs."[6]

If a 10 megawatt ("MW") wind project was to be built today, it would be in the $20 - $25 million cost range to bring to commercial operation. Typically, the owners are attempting to develop the project with an equity target of 25-40% or around $5 - $7.5 million in cash equity and with the balance to be financed by commercial debt, which would be $15 - $23 million in loans. Even at today's low interest rates, I sincerely doubt that a small QF could be financed through a commercial source with the pricing available during sufficiency periods. From my experience in working with many commercial lenders – they will all demand specific performance measures that included Debt Service Coverage Ratios ("DSCR"). With these low sufficiency period rates, the project will not be able to meet even the most minimal DSCR – and as a result will not be financed.

The only option is to have a much higher percentage of cash equity by the community owners and a much lower amount of commercial debt. Obviously this is a problem because most small community projects have limited cash resources. Even if they were able to contribute a

[5] *See* UM 1396 PGE/102, Macfarlane/6 (filed March 16, 2012).
[6] CREA/200, Reading/10.

higher amount of cash equity, their return on the cash equity would be so low due to the current tariff prices that the project would not be economically viable.

The so called "sufficiency prices" will most likely stop any small community QF projects in Oregon – unless there is the option of levelized pricing. This would allow for a higher price in the earlier years where a "sufficiency" exists, while providing a lower tariff rate than would otherwise be available in the latter years.

III. Issue 3: Schedule for Avoided Cost Rates

Q. In your opening testimony, you stated that CREA may respond to specific proposals to address the scheduling topic. Do you have any response at this time?

A. Yes. As explained in my opening testimony, CREA believes the Commission should provide for fair treatment and predictability in the schedule of rate changes. Based upon a review of the proposals of other parties, I believe that the proposal for an annual update by Mr. John Lowe, witness for the Renewable Energy Coalition, is the best approach.[7] Specifically, I agree to the following points:

- The Commission should implement a complete update to the rates within 30 days of the acknowledged Integrated Resource Plan ("IRP"), and a more limited annual update.
- The annual update should occur one year after the effective date of the then-current rates.
- The annual update should be based on information from the utility's last acknowledged IRP (or an acknowledged update), and should be limited to a gas price forecast update, market price update, new loads and contracts in excess of four years.[8]
- If the annual update is scheduled to occur within 90 days of the date on which an IRP is

[7] REC/100, Lowe/5-12.
[8] *See* REC/100, Lowe/10; REC/200, Schoenbeck/15-16.

scheduled to be acknowledged, the annual update should be deferred until after IRP acknowledgement.

Q. What is the basis for this position?

A. As I explained in my opening testimony, I understand the utilities' largest concern to be that the rates can become out-dated within the two year cycle if the gas prices change. This proposal is similar to the proposal adopted by the Idaho Public Utilities Commission, which I mentioned in my opening testimony. Adding an additional annual update to change the gas forecast and a few other pre-determined and transparent inputs should largely eliminate the complaint by the utilities that the published rates can become stale. I believe that an additional annual rate update provides a reasonable solution to complaints of the possibility of harm caused by the eligibility cap being set at 10 MW. This is a reasonable resolution to the concern with two year updates, which also provides QFs with predictability and fairness as to the time when the rates will change. The annual updates could be conducted relatively quickly, but parties should be provided the opportunity to fully review and comment on the full update occurring after IRP acknowledgement.

IV. Issue 4: Price Adjustments for Specific QF Characteristics

Issue 4. A. Should the costs associated with integration of intermittent resources (both avoided and incurred) be included in the calculation of avoided cost prices or otherwise be accounted for in the standard contract? If so, what is the appropriate methodology?

Q. Commission Staff proposes that the Commission differentiate standard avoided cost rates for different resource types based upon capacity contribution.[9] Does CREA have a

[9] Staff/100, Bless, 22-27; Staff/102.

response to the proposals on this issue?

A. Yes. CREA stands by its position in Dr. Reading's testimony that adoption of a separate capacity component for standard rates will allow for potential gaming by the utility and will require more resources to validate the utility's capacity assumption for each individual resource type.[10] Staff's proposal to have each utility implement these different components in their individual IRP will provide too much opportunity for gaming by the utility and impose too large an administrative cost on QFs seeking to ensure the avoided cost rates are accurately and transparently calculated.

If the Commission is inclined to adjust pricing for small QFs based upon capacity, the Commission should use the proposal of the Oregon Department of Energy ("ODOE") to utilize the Effective Load Carrying Capability method, which as ODOE's witness explains, will fully account for the capacity value of the QF.[11] Additionally, the Commission should limit the opportunities for a utility to individually calculate this potential reduction to the avoided cost rates in an IRP process, which provides little opportunity for discovery and meaningful critique.

Q. Commission Staff testified that wind QFs should transact directly with the host balancing authority to secure wind integration services.[12] What is CREA's position on Staff's wind integration proposal?

A. Staff's proposal was not entirely clear, but it appeared to propose that all small wind QFs would need to secure wind integration services as a condition of being entitled to sell under a fixed rate PURPA PPA. If that was Staff's proposal, CREA opposes that proposal. CREA believes that such a requirement would be inconsistent with PURPA, and therefore illegal, which

[10] CREA/200, Reading/4.
[11] ODOE/100, Carver/7-8
[12] Staff/100, Bless/27

will be addressed in legal briefing.

Additionally, as a developer, I believe the proposal would undermine QF projects. A QF that is directly connected to the purchasing utility would have no occasion to purchase balancing services from that utility's transmission function because the QF would not typically be a transmission customer of that utility. This will lead to disputes over whether the utility is evading its mandatory purchase obligation by refusing to offer the balancing services. Additionally, Staff's proposal could be construed as a proposal that the wind integration charge imposed on the small QF would be subject to change throughout the term of the PURPA PPA. This would present problems for financing the project because the overall revenue stream to be obtained by the QF would be uncertain.

Q. How should the Commission address the issue if it implements a wind integration charge for small QFs?

A. The better policy is to provide the QF with the option of using the purchasing utility's integration services as a reduction to the fixed avoided cost rates, or agreeing to secure a third party's wind integration services and receiving no reduction to the fixed avoided cost rates. In fact, that is how the Commission addressed the issue for large QFs in UM 1129. Specifically, the order in UM 1129 stated, "For large QFs, Staff recommends that avoided cost rates be adjusted for integration costs, based on studies conducted for each company's system."[13] Staff also stated "if the QF chooses to contract for integration services with a third party, the utility should make no downward adjustment in avoided cost payments for integration costs." The Commission declared, "We agree with Staff."[14]

This methodology, currently implemented for large QFs, allows the QF to use the

[13] OPUC Order No. 07-360 at 24.
[14] *Id.* at 25.

purchasing utility's integration services and receive a fixed avoided cost rate that includes a fixed deduction for integration costs, or, if the QF chooses, to secure the integration services elsewhere and receive no reduction to the otherwise available avoided cost rates. No party has demonstrated this approach is unreasonable for small QFs if wind integration will apply to them as well. As I noted above, Staff's proposal would be unworkable in many circumstances.

V. Issue 5: Eligibility Issues

Issue 5. A. Should the Commission change the 10 MW cap for the standard contract?

Q. Commission Staff suggests that lowering the cap to 3 MW may be warranted.[15] Do you believe that the Commission should lower the eligibility cap for any resource types?

A. No. As I mentioned in my opening testimony, Oregon's renewable portfolio standard ("RPS") actually instructs the Commission to implement special policies for community-scale projects up to 20 MW.[16] The Staff's alternative proposal would go in the wrong direction.

Q. Do you have any other comments on this topic?

A. CREA supports the proposal by One Energy witness Bill Eddie to compensate smaller QFs below 3 MW in size for additional benefits they provide to the utility,[17] but it is critical that this proposal be implemented as a "check box" on the standard contract, rather than as a basis to lower the eligibility cap for all projects below 10 MW. As mentioned above, Oregon's RPS actually requires the Commission to promote projects under 20 MW. Oregon will not reach 8% penetration of such projects if the cap is lowered to 3 MW.

[15] Staff/100, Bless/16.
[16] CREA/100, Hilderbrand/5-7.
[17] OneEnergy/100, Eddie/33-41.

Issue 5. B. What should be the criteria to determine whether a QF is a "single QF" for purposes of eligibility for the standard contract?

Q. Some parties recommended revising the partial stipulation from UM 1129 regarding eligibility for standard rates. Has this testimony changed your position that it is not easy to "disaggregate" a wind or solar project under the existing criteria in Oregon?

A. No. There is a five-mile separation rule. As I explained in my opening testimony, there is little risk of the same type of disaggregation that occurred in Idaho where there was only a one-mile separation rule and wind QFs of up to 10 average monthly MW could obtain published rates.[18] However, CREA is not in favor of disaggregation, and has considered proposals to modify the passive investor exception to the UM 1129 partial stipulation through workshops since the filing of my opening testimony.

CREA believes that the partial stipulation could be modified to allow for use of passive investors at community wind projects while still disallowing the type of disaggregation with which the utilities appear to be concerned. I understand the utilities' concern to be that a single entity could use the current passive investor exception to own and operate separate 10 MW projects within five miles of each other. The Commission could address the utilities' concerns by revising the definition of "passive investor" in the partial stipulation such that the definition is more in line with that in the Internal Revenue Service ("IRS") rules.[19] It is my understanding that, under such a modification, the partial stipulation would still allow for participation by a single passive investor in more than one project within five miles of others, but only if that entity was truly a passive investor that did not "materially participate" in the management and operation of the project, as defined by the IRS. CREA is actively engaged in working with the

[18] CREA/100, Hilderbrand/13-14.
[19] The existing version of the Partial Stipulation is contained in PacifiCorp/202.

other parties on this issue and is willing to work with them to reach resolution of this issue. If an agreement is not reached, CREA may further explain the legal requirements of the IRS's passive investor rule in legal briefing.

However, as I noted above, CREA does not believe that a convincing case has been made to lower the eligibility cap for fear of disaggregation in Oregon because it is already very difficult to disaggregate a large project under the existing five-mile separation rule.

Q. Does this conclude your testimony?

A. Yes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of April, 2013, a true and correct copy of the within and foregoing **REPLY TESTIMONY OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION** was served as shown to:

ADAM BLESS **(C)** BRITTANY ANDRUS **(C)** PUBLIC UTILITY COMM. OF OREGON PO BOX 2148 SALEM OR 97308-2148 adam.bless@state.or.us brittany.andrus@state.or.us	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
JAY TINKER **(C)** PORTLAND GENERAL ELECTRIC 121 SW SALMON ST – 1WTCO702 PORTLAND OR 97204 pge.opuc.filings@pgn.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
J RICHARD GEORGE **(C)** PORTLAND GENERAL ELECTRIC 121 SW SALMON ST – 1WTC1301 PORTLAND OR 97204 richard.george@pgn.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
JOHN W STEPHENS **(C)** ESLER STEPHENS & BUCKLEY 888 SW FIFTH AVE STE 700 PORTLAND OR 97204-2021 stephens@eslerstephens.com mec@eslerstephens.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
DONOVAN E WALKER IDAHO POWER COMPANY PO BOX 70 BOISE ID 83707-0070 dwalker@idahopower.com dockets@idahopower.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail

LISA F RACKNER ADAM LOWNEY MCDOWELL RICKNER & GIBSON PC 419 SW 11th AVE STE 400 PORLTAND OR 97205 dockets@mcd-law.com adam@mcd-law.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
MEGAN WALSETH DECKER **(C)** RENEWABLE NORTHWEST PROJECT 421 SW 6TH AVE STE 1125 PORTLAND OR 97204-1629 megan@rnp.org	___ Hand Delivery __ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
STEPHANIE S ANDRUS **(C)** PUC STAFF – DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096 stephanie.andrus@state.or.us	___ Hand Delivery __ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
THOMAS H NELSON PO BOX 1211 WELCHES OR 97067-1211 nelson@thnelson.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
RENEE M FRANCE **(C)** OREGON DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096 renee.m.france@state.or.us	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
R BRYCE DALLEY PACIFIC POWER 825 NE MULTNOMAH ST STE 2000 PORTLAND OR 9732 bryce.dalley@pacificorp.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
MARY WIENCKE 825 NE MULTNOMAH ST STE 1800 PORTLAND OR 97232-2149 mary.wiencke@pacificorp.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail
PACIFICORP dba PACIFIC POWER 825 NE MULTNOMAH ST STE 2000 PORTLAND OR 97232 oregondockets@pacificorp.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile X Electronic Mail

JOHN LOWE
RENEWABLE ENERGY COALITION
12050 SW TREMONT ST
PORTLAND OR 97225-5430
jravenesanmarcos@yahoo.com

__ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

IRION A SANGER **(C)**
MELINDA J DAVISON **(C)**
S BRADLEY VAN CLEVE **(C)**
DAVISON VAN CLEVE PC
333 SW TAYLOR – STE 400
PORTLAND OR 97204
ias@dvclaw.com
mjd@dvclaw.com; mail@dvclaw.com
bvc@dvclaw.com

__ Hand Delivery
__ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

BILL EDDIE **(C)**
ONE ENERGY RENEWABLES
206 NE 28TH AVE
PORTLAND OR 97232
bill@oneenergyrenewables.com

__ Hand Delivery
__ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

GLENN MONTGOMERY
OREGON SOLAR ENERGY INDUSTRIES ASSOCIATION
PO BOX 14927
PORTLAND OR 97293
glenn@oseia.org

__ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

KATHLEEN NEWMAN
OREGONIANS FOR RENEWABLE ENERGY POLICY
1553 NE GREENSWORD DR
HILLSBORO OR 97214
kathleenoipl@frontier.com
k.a.newman@frontier.com

__ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

MARK PETE PENGILLY
OREGONIANS FOR RENEWABLE ENERGY POLICY
PO BOX 10221
PORTLAND OR 97296
mpengilly@gmail.com

__ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

TONI ROUSH ROUSH HYDRO INC 366 E WATER STAYTON OR 97383 tmroush@wvi.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
JAMES BIRKELUND **(C)** SMALL BUSINESS UTILITY ADVOCATES 548 MARKET ST STE 11200 SAN FRANCISCO CA 94104 james@utilityadvocates.org	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
DAVID A LOKTING STOLL BERNE 209 SW OAK STREET STE 500 PORTLAND OR 97204 dlokting@stollberne.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
KENNETH KAUFMAN **(C)** JEFFREY S LOVINGER **(C)** LOVINGER KAUFMANN LLP 825 NE MULTNOMAH STE 925 PORTLAND OR 97232-2150 kaufmann@lklaw.com lovinger@lklaw.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
ROBERT JENKS **(C)** G CATRIONA MCCRACKEN **(C)** CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 400 PORTLAND OR 97205 dockets@oregoncub.org bob@oregoncub.org catriona@oregoncub.org	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
DAVID TOOZE CITY OF PORTLAND 1900 SW 4TH STE 7100 PORTLAND OR 97201 David.tooze@portlandoregon.gov	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail

ELAINE PRAUSE
JOHN M VOLKMAN
ENERGY TRUST OF OREGON
421 SW OAK ST STE 300
PORLTAND OR 97204
elaine.prause@energytrust.org
john.volkman@energytrust.org

___ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

LOYD FERY
11022 RAINWATER LANE SE
AUMSVILLE OR 97325
dlchain@wvi.com

___ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

MATT KRUMENAUER **(C)**
KACIA BROCKMAN **(C)**
OREGON DEPARTMENT OF ENERGY
1162 COURT ST NE
SALEM OR 97301-4096
matt.krumenauer@state.or.us
kacia.brockman@state.or.us

___ Hand Delivery
___U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

MIKE MCARTHUR
ASSOCIATION OF OR COUNTIES
PO BOX 12729
SALEM OR 97309
mmcarthur@aocweb.org

___ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

WILL K CAREY
ANNALA CAREY BAKER ET AL PC
PO BOX 325
HOOD RIVER OR 97031
wcarey@hoodriverattorneys.com

___ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

RICHARD LORENZ **(C)**
J LAWRENCE CABLE
CHAD STOKES
CABLE HUSTON BENEDICT
HAAGENSEN & LLOYD LLP
1001 SW FIFTH AVE STE 2000
PORTLAND OR 97204-1136
rlorenz@cablehuston.com
lcable@cablehuston.com
cstokes@cablehuston.com

___ Hand Delivery
___U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

DIANE HENKELS **(C)**
CLEANTECH LAW PARTNERS PC
6228 SW HOOD
PORTLAND OR 97239
dhenkels@cleantechlawpartners.com

__ Hand Delivery
__U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

PAUL D ACKERMAN **(C)**
EXELON BUSINESS SERVICES CO LLC
100 CONSTELLATION WAY STE 500C
BALTIMORE MD 21202
paul.ackerman@constellation.com

__ Hand Delivery
__U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

JOHN HARVEY **(C)**
EXELON WIND LLC
4601 WESTOWN PARKWAY STE 300
WEST DES MOINES IA 50266
john.harvey@exeloncorp.com

__ Hand Delivery
__U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

DARREN ANDERSON
NORTHWEST ENERGY SYSTEMS CO LLC
1800 NE 8TH ST STE 320
BELLEVUE WA 98004-1600
da@thenescogroup.com

__ Hand Delivery
__U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

DONALD W SCHOENBECK **(c)**
REGULATORY & COGENERATION
SERVICES INC
900 WASHINGTON ST STE 780
VANCOUVER WA 98660-3455
dws@r-c-s-inc.com

__ Hand Delivery
__U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

By _____
Gregory M Adams