



**Portland General Electric Company**

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August 13, 2009

***Via Electronic Filing and U.S. Mail***

Oregon Public Utility Commission  
Attention: Filing Center  
550 Capitol Street NE, #215  
PO Box 2148  
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**Re: UM 1401 – INVESTIGATION INTO INTERCONNECTION OF PURPA QF  
LARGER THAN 10MW**

Attention Filing Center:

Enclosed for filing in the captioned docket is an original and one copy of:

- **JOINT REPLY COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY, PACIFICORP AND IDAHO POWER COMPANY**

This document is being filed by electronic mail with the Filing Center. An extra copy of the cover letter is enclosed. Please date stamp the extra copy and return to me in the envelope provided.

This document is being served upon the UM 1401 service list.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Cece L. Coleman". The signature is written in black ink and is positioned above the typed name and title.

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**DOCKET NO. UM 1401**

In the Matter of THE PUBLIC UTILITY COMMISSION OF OREGON Staff's Investigation into Interconnection of PURPA Qualifying Facilities with a Nameplate Capacity Larger than 10 Megawatts to a Public Utility's Transmission or Distribution System	JOINT REPLY COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY, PACIFICORP, AND IDAHO POWER COMPANY
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**I. Introduction**

Idaho Power Company ("Idaho Power"), PacifiCorp d/b/a Pacific Power ("PacifiCorp"), and Portland General Electric Company ("PGE") (collectively "the Utilities"), jointly submit the following comments in response to the Opening Comments of the staff of the Public Utility Commission of Oregon ("Staff") and the Industrial Customers of Northwest Utilities ("ICNU").

**II. Background**

This docket was opened on November 4, 2008, at the request of the Public Utility Commission of Oregon ("Commission" or "OPUC") Staff, to initiate an investigation into the interconnection of PURPA Qualifying Facilities (QFs), with a nameplate capacity larger than 10 Megawatts, to a public utility's transmission or distribution system.

Pursuant to the procedural schedule outlined in the Prehearing Conference Memorandum of December 2, 2008, the electric utility companies were directed to file draft procedures and agreements for interconnection of QFs with a nameplate capacity larger than 10 megawatts ("MW"). Thereafter, on February 12, 2009, the parties agreed and requested that the Commission suspend the schedule for interconnections of QFs larger than 10 MW, but no larger than 20 MW. However, the utilities were directed to proceed

1 under the existing schedule with regard to QFs with a nameplate capacity larger than  
2 20 MW.

3 On March 9, 2009 the Utilities submitted the proposed documents in compliance  
4 with the Commission's Prehearing Conference Memorandum. Each utility began with its  
5 own interconnection agreement and interconnection procedures for FERC jurisdictional  
6 generators of 20 MW or more, and then revised such agreements and procedures to make  
7 them suitable to interconnection of QFs of 20 MW or more. The Staff and Intervenors then  
8 had the opportunity to submit Opening Comments on or about June 8, 2009, to raise  
9 concerns about the redlined documents previously submitted by the Utilities.

10 On July 6, 2009, the parties participated in a Technical Workshop in an effort to  
11 address issues raised by Staff and ICNU in their respective Opening Comments. The  
12 following section will discuss the Utilities' comments with respect to that workshop and any  
13 key issues, raised by Staff or ICNU, that remain unresolved.

### 14 III. Comments

#### 15 A. **Response to Staff's Opening Comments**

16 In its Opening Comments, Staff identified several disputed issues, commented on  
17 the red-lined QF interconnection procedures and agreements individually submitted by the  
18 Utilities, and recommended that the Utilities create one standardized set of procedures and  
19 a standardized agreement. In addition, Staff recommended that each utility file the  
20 standardized procedures and agreement as tariffs, or as attachments to a tariff.

#### 21 1. ***The Workshop facilitated a thorough and productive discussion and 22 resolution of some issues.***

23 At the July 6 Workshop the Parties engaged in a thorough discussion of the  
24 concerns raised by both Staff and ICNU. As a result, the parties were able to resolve – at  
25 least from the Utilities' perspective – several issues. First, the Utilities believe that the  
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1 parties reached resolution on the need for a definition of “Point of Delivery” – not for  
2 purposes of determining losses or charges, but for purposes of providing clarity to the  
3 definition of “Net Output”. As the Utilities explained at the workshop, it is the “Point of  
4 Interconnection”, not the “Point of Delivery”, that is dispositive when allocating the costs  
5 associated with an interconnection. Second, the Utilities explained the need for the  
6 definition of “Net Output”—to distinguish it from “Station Power”, which is important from an  
7 accounting perspective, but also quite significant to an interconnected QF, to protect its QF  
8 status. Finally, the Utilities agreed to work collaboratively, to create a standardized set of  
9 interconnection procedures and a standardized form of agreement.

10 **2. The standardized QF-LGIP and QF-LGIA prepared by the Utilities,**  
11 **satisfies Staff’s request, addresses most of Staff’s concerns, and should be**  
12 **approved by the Commission.**

13 On July 13, 2009, the various parties to this docket were provided an  
14 electronic copy of a standardized set of QF interconnection procedures and a standardized  
15 form of agreement for QFs that resulted from the Utilities’ collaborative efforts. Those  
16 documents represent the Utilities’ best efforts to address or respond to most, if not all, of  
17 the issues identified by Staff in its comments to the utilities’ respective redlined proposals,  
18 some of which are further explained below.

19 Specifically, the standardized QF interconnection procedures and/or form of  
20 agreement addresses the following Staff concerns:

- 21 a. Uniformity in naming conventions. Uniformity in naming conventions  
22 was easily achieved as a result of creating standardized procedures  
23 and one form of Agreement.
- 24 b. The term of the agreement, and the automatic renewal of the  
25 agreement on a year-to-year basis, after the initial term of the  
26 agreement has expired. In Article 2, Section 2.2 of the standardized

1 Qualifying Facility Large Generator Interconnection Agreement (“QF-  
2 LGIA”) provides for a 10 year term, which is automatically renewed on a  
3 year-to-year basis provided the Customer give the appropriate notice to  
4 renew and there have been no material changes in circumstances  
5 surrounding the QF-LGIA.

6 c. Confidentiality issues. Interconnection Customers will have the ability to  
7 request that their information be subject to confidentiality provisions  
8 under the agreement. (See Article 3, Section 3.1 of the QF-LGIA.)

9 d. The filing of QF-LGIAs. In Article 3, Section 3.1 of the QF-LGIA, the  
10 Utilities agree to file executed QF-LGIAs, if required.

11 e. Provisions regarding reactive power and the QF’s ability to receive  
12 compensation for operating in a manner that benefits the specific  
13 utility’s power factor. The Utilities have collectively agreed to retain all  
14 the provisions related to reactive power. (See Article 9, Section 9.6 et.  
15 sec. of the QF-LGIA.)

16 **3. The provisions relating to a Joint Operating Committee are unnecessary,**  
17 **and should not be required by the Commission.**

18 With regard to Staff’s concern about deleting the “Joint Operating  
19 Committee”, the Utilities discussed the issue further and collectively decided to continue  
20 their support for deleting that provision, not because they oppose such a committee, but  
21 because the collective experience of the Utilities suggests that such committees have not  
22 proven to be useful with existing interconnected generators. In addition, the Utilities believe  
23 that, in the absence of such a provision, there is nothing to prohibit the creation of such a  
24 committee in the future, should the need arise. Notwithstanding their proposal to delete the  
25 provision, the Utilities are willing to retain the Joint Operating Committee provisions if it is  
26 important to stakeholders in this docket.

1       **4.    *The standardized QF-LGIPs and the standardized form of the QF-LGIA***  
2       ***should be approved by the Commission and then referenced in a tariff***  
3       ***schedule and placed on the Utilities' websites, rather than filed as tariffs.***

4               In response to Staff's proposal that the utilities file the QF-LGIA and the QF-  
5 LGIP as tariffs, or as attachments to a tariff, the Utilities would propose the following  
6 alternative:

7               Upon Commission approval or adoption of the standard QF-LGIA and QF-  
8 LGIP, each utility will add a statement to the appropriate utility schedule that states as  
9 follows: "Interconnection of a QF of 20 MW capacity or more shall be governed by the  
10 terms, conditions and provisions of the Commission-approved QF interconnection  
11 procedures and the Commission-approved QF interconnection agreement available on the  
12 Company's website at [insert appropriate company website address here] and available  
13 from the Company upon request ."

14              In support of its alternative proposal, the Utilities would initially point out that  
15 their respective state tariffs have, with few exceptions, typically contained information  
16 relating to the rates, terms and conditions associated with the company's offering of retail  
17 electric service. QF interconnection procedures and agreements have no relationship to a  
18 utility's offering of retail service to customers, other than they, too, fall within the exclusive  
19 jurisdiction of the State. In addition, the procedures and agreement associated with small  
20 generator interconnections (approved as part of AR 521) are not included in the utilities'  
21 tariffs, so there is no expectation, on the part of potential QFs, that the large QF  
22 interconnection procedures or agreement, should be included in the tariffs, and to do so  
23 may create some confusion.

24              More importantly, the QF-LGIP and QF-LGIA are voluminous and would  
25 significantly increase the size of each utility's tariff, thereby increasing the administrative  
26 costs associated with managing and producing the tariff. Thus, from the Utilities'

1 perspective, the cost, burden, and potential confusion associated with maintaining such  
2 documents in a tariff, seem to outweigh any benefit to be gained by including them directly  
3 in each utility's tariff. The Utilities believe that their alternative proposal will ensure that  
4 potential QFs, as well as the Commission, can easily locate and obtain copies of the  
5 standard QF interconnection procedures and agreements, without the need to include such  
6 documents directly in the tariff.

7 **B. Response to ICNU's Comments**

8 In its Opening Comments, ICNU proposes a reasonableness standard with respect  
9 to costs, which the Utilities think is unnecessary, but which they do not oppose. However,  
10 the majority of ICNU's comments appear to support shifting the costs of "network upgrades"  
11 to the Utilities and their retail customers, in violation of PURPA's and the OPUC's "avoided  
12 costs" mandates, rather than requiring the QF to bear those costs associated with its  
13 interconnection request. The Utilities generally oppose ICNU's proposal as being contrary  
14 to PURPA and the Oregon Commission's rules and policies, because ratepayers should  
15 not subsidize QFs. Therefore, Utilities' renew and incorporate herein, the arguments raised  
16 in their initial comments filed in March, and respond to ICNU's specific arguments below.

17 **1. PURPA Requires QFs to Pay All Interconnection and Network Upgrade**  
18 **Costs.**

19 ICNU argues that because network upgrades generally benefit the utility and  
20 its customers, PURPA requires the utility and its customers pay for the costs.<sup>2</sup> In support of  
21 this argument, ICNU cited *National Association of Regulatory Utility Commissioners v.*  
22 *Federal Energy Regulatory Commission* ("NARUC"), where the United States Court of  
23 Appeals, District of Columbia Circuit ("D.C. Circuit") affirmed a Federal Energy Regulatory

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26 <sup>2</sup> Opening Comments of ICNU at 4-5.

1 Commission (“FERC”) order—Order No. 2003<sup>3</sup> adopting the Large Generator  
2 Interconnection Procedures and Agreement—that allocated the costs of network upgrades  
3 to all utility customers.<sup>4</sup> That case is not dispositive of this issue, however, because the  
4 case was not about PURPA interconnections. In *NARUC*, the petitioners argued that  
5 because Order No. 2003 required all utility customers to pay for the costs of network  
6 upgrades it violated the “cost causation” principle that required an interconnecting  
7 generator to assume all costs caused by its interconnection.<sup>5</sup> In affirming FERC’s order,  
8 the court noted that FERC adopted the view that customer “but-for” causation was not  
9 dispositive of the network upgrades issue.<sup>6</sup> However, the decisions cited by the court  
10 where FERC departed from “but-for” causation are decisions based on FERC’s  
11 transmission tariffs—not PURPA.

12 PURPA, on the other hand, does require “but-for” analysis because it  
13 requires utilities to pay the “avoided cost” when purchasing QF output. PURPA defines the  
14 “avoided cost” as

15 “the cost to the electric utility of the electric energy which, but  
16 for the purchase from such cogenerator or small power  
17 producer, such utility would generate or purchase from another  
18 source.”<sup>7</sup>

19 The Oregon Commission also defined “avoided costs” as

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21 <sup>3</sup> Standardization of Generator Interconnection Agreements, Docket No. RM02-1-000, Order No.  
22 2003 (Aug. 19, 2003) (“Order No. 2003”).

23 <sup>4</sup> Opening Comments of ICNU at 6, citing *National Association of Regulatory Utility Commissioners*  
*v. Federal Energy Regulatory Commission*, 475 F.3d 1277 (D.C. Cir. 2007) (“*NARUC*”).

24 <sup>5</sup> *NARUC*, 475 F.3d at 1285.

25 <sup>6</sup> *Id.*

26 <sup>7</sup> See 16 U.S.C. § 824a-3(b) and (d) (emphasis added).



1           “the electric utility's incremental costs of electric energy or  
2           capacity or both which, but for the purchase from the qualifying  
3           facility or qualifying facilities, the electric utility would generate  
          itself or purchase from another source and shall include any  
          costs of interconnection of such resource to the system.”<sup>8</sup>

4           PURPA mandates that utility customers pay no more than the avoided cost  
5           for QF power.<sup>9</sup> That requires the QF to pay for all interconnection and network upgrade  
6           costs because the utility would not incur those costs but for the QF interconnection. Thus,  
7           when FERC departed from the “but-for” analysis for non-PURPA interconnections it did so  
8           without reference to PURPA’s avoided cost requirements. Unlike the non-PURPA  
9           interconnections governed by Order No. 2003, PURPA requires “but-for” analysis to ensure  
10          that utility customers remain indifferent to the QF interconnection.

11           To better understand why a QF should pay for network upgrade costs without  
12          reimbursement from the utility, it is helpful to consider a hypothetical. Assume that a QF  
13          seeks to interconnect and sell its output to a utility. Assume further that the utility’s least  
14          cost alternative for obtaining the amount of power to be provided by the QF would be to  
15          construct a new natural gas turbine-generator at a cost of \$1 million, to construct  
16          associated network upgrades at a cost of \$500,000, and to purchase required fuel at a cost  
17          of \$1.5 million. In this admittedly simplistic example, the utility avoids \$3 million in cost by  
18          purchasing QF output rather than building and operating its own generation source. This  
19          \$3 million in avoided cost is therefore the basis for the rate paid by the utility to the QF for  
20          the QF power. However, if the QF interconnection involves \$500,000 worth of network  
21          upgrades and the utility is required to reimburse the cost of these upgrades to the QF, as  
22          ICNU has proposed, then the utility has actually incurred \$500,000 worth of cost in order to  
23          secure the QF’s output. In such a case, the cost avoided by the utility by obtaining the QF

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25 <sup>8</sup> See OAR 860-029-0010(1) (emphasis added).

26 <sup>9</sup> See U.S.C. § 824a-3(b) and (d) and ORS 758.525(2).

1 power instead of building and operating its own generator is no longer \$3 million but is  
2 instead \$2.5 million. The utility's avoided cost has diminished and, because PURPA  
3 requires that a utility pay no more than its avoided cost for QF power, the rate the utility  
4 pays for the QF's power must also diminish.

5 As this hypothetical helps to demonstrate, the QF can be required to pay its  
6 own network upgrade costs without reimbursement and the utility can be required to pay for  
7 the QF power based on an avoided cost of \$3 million. Alternatively, the utility can be  
8 required to reimburse the QF network upgrade costs and the utility can be required to  
9 purchase the QF power based on an avoided cost of \$2.5 million. However, the utility  
10 cannot be required to both reimburse network upgrade costs and purchase the QF power  
11 based on an avoided cost of \$3 million. As a matter of policy, the Commission has already  
12 indicated which approach it prefers:

13 The utility should not adjust avoided cost rates for any distribution or  
14 transmission system upgrades needed to accept QF power. Such costs  
should be separately charged as part of the interconnection process.<sup>10</sup>

15 To comply with PURPA, the Commission must require a QF to bear its own cost of network  
16 upgrades or reverse its policy position and allow the adjustment of avoided cost to reflect  
17 the cost incurred by a utility to reimburse a QF's network upgrade costs.

18 **2. Requiring Payment For Network Upgrades Is Not Discriminatory.**

19 ICNU argued that if the Oregon Commission does not adopt FERC's cost  
20 allocation methodology it violates FERC's PURPA regulations by discriminating between  
21 QFs governed by Oregon rules and QFs governed by FERC's rules.<sup>11</sup> ICNU's analysis,  
22 however, is wrong.

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25 <sup>10</sup> *Staff Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, OPUC Order No.  
07-360 (order adopting Large QF Guidelines) at Appendix A, page 5 (Aug. 20, 2007).

26 <sup>11</sup> Opening Comments of ICNU at 8.

1 As noted in Idaho Power's Opening Comments, FERC has exclusive  
2 jurisdiction over QF interconnection agreements when a QF may sell some portion of its  
3 output to a non-interconnecting utility and state agencies have exclusive jurisdiction when  
4 the interconnecting utility is obligated to purchase a QFs entire output.<sup>12</sup> When a state  
5 exercises exclusive jurisdiction, "QFs are obligated to pay the interconnection costs  
6 assessed by state regulatory authorities" regardless of the interconnection costs assessed  
7 by FERC.<sup>13</sup> The PURPA regulations essentially create two different regulatory schemes for  
8 QFs depending on whether the utility is purchasing the QF's output or transmitting it to  
9 another utility.<sup>14</sup> Thus, Oregon has exclusive jurisdiction to determine the appropriate  
10 interconnection costs for QFs under its jurisdiction, and choosing a method different than  
11 that used in FERC-jurisdictional interconnections does not violate PURPA. If ICNU's  
12 argument were correct, states would be bound by FERC's interconnection cost  
13 methodology and FERC's jurisdictional distinction would be meaningless.

14 Moreover, the prohibition on discrimination in 18 C.F.R. § 292.306(a) applies  
15 to generators under Oregon's exclusive jurisdiction and is not applicable to QFs governed  
16 by FERC.<sup>15</sup> That regulation does not require Oregon to treat generators under its exclusive  
17 jurisdiction identical to generators under FERC's exclusive jurisdiction nor does it require  
18 Oregon to treat generators under its jurisdiction identical to generators under the exclusive

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21 <sup>12</sup> Idaho Power Company's Opening Comments at 3.

22 <sup>13</sup> Re *Western Mass. Elec. Co.*, 61 FERC P 61182, 1992 WL 510299 at \*4 (1992)

23 <sup>14</sup> *West. Mass. Elec. Co. v. FERC*, 165 F.3d 922 (D.C. Cir. 1999) (regulations requiring QF  
24 interconnection and granting state's authority to determine interconnection costs do not apply to QFs  
falling under FERC jurisdiction) ("*WMECO*").

25 <sup>15</sup> See *Niagra Mohawk Power Corp.*, 123 FERC P 61,143, 2008 WL 2067373, \*4 (May 15, 2008) (18  
26 C.F.R. § 292.306(a) "is not applicable to transactions involving utilities transmitting QF power in  
interstate commerce, but is limited to purchases or sales of power between the electric utility  
obligated to purchase from or sell to a QF and that QF.").

1 jurisdiction of any other state. It prohibits discrimination by the Oregon Commission  
2 amongst QFs under its exclusive jurisdiction.

3           With respect to 18 C.F.R. § 292.306(a), ICNU also argued that if Oregon  
4 departs from FERC’s methodology it will discriminate between QFs and non-QFs because  
5 non-QFs operating under FERC’s tariffs will not pay for network upgrades.<sup>16</sup> ICNU argues  
6 that 18 C.F.R. § 292.306(a) requires the Oregon Commission treat QFs and non-QFs  
7 equally—essentially rendering PURPA meaningless. Congress enacted PURPA “to  
8 encourage the economically efficient development of QFs, while protecting ratepayers by  
9 ensuring that utilities incur costs no greater than they would have incurred in lieu of  
10 purchasing QF power.”<sup>17</sup> To this end, PURPA specifically defines QFs and in doing so  
11 excludes all independent power producers that fail to meet the QF requirements.<sup>18</sup> This  
12 means that PURPA specifically requires state regulatory agencies to treat QFs substantially  
13 different from non-QFs. For instance, utilities must purchase QF power,<sup>19</sup> and utilities must  
14 purchase QF power at the avoided cost rate.<sup>20</sup> These obligations do not extend to non-QF  
15 independent power producers. PURPA intentionally created two classes of generators—  
16 QFs and non-QFs—and to argue that PURPA simultaneously mandated that both classes  
17 received identical treatment renders PURPA meaningless.

18           ICNU also argues that if QFs receive less favorable treatment under an  
19 Oregon tariff than they would receive under a FERC tariff, it will impede the development of  
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22 <sup>16</sup> Opening Comments of ICNU at 8.

23 <sup>17</sup> *In the Matter of Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities*,  
Docket UM 1129, Order No. 07-360 at 1 (Aug. 20, 2007) (“Order No. 07-360”).

24 <sup>18</sup> See 18 C.F.R. § 292.201-206 (defining QFs).

25 <sup>19</sup> 18 C.F.R. § 303(a).

26 <sup>20</sup> 18 C.F.R. § 304(a)(2).

1 QFs in Oregon.<sup>21</sup> However, even if Oregon adopts a different method, QFs will continue to  
2 receive extremely favorable treatment under PURPA. As noted above, PURPA requires  
3 interconnection and requires a utility to purchase the full output of the QF. This is not the  
4 case for non-QF independent power producers. Thus, QFs will continue to receive  
5 favorable treatment in Oregon even if they are required to pay for all network upgrades  
6 required because of their interconnection.

7 **3. ICNU Mischaracterizes California's Methodology.**

8 ICNU states that under the California LGIA, QFs recover all the costs of network  
9 upgrades from the utility.<sup>22</sup> However, ICNU has provides no support whatsoever for this  
10 statement—and the Utilities were unable to find any support for the statement either.  
11 Given ICNU's failure to provide any evidence in support of its statement, the Joint Utilities  
12 urge the Commission to disregard it.

13 **IV. Conclusion**

14 For the foregoing reasons, the Utilities respectfully request that the Commission  
15 adopt the standardized QF-LGIP and the QF-LGIA prepared by the Utilities and circulated  
16 to the parties on July 13, 2009, without the modifications proposed by the ICNU. The  
17 Utilities further propose that they be permitted to submit a new or modified schedule to their  
18 respective tariffs, which references the Commission approved QF-LGIP and QF-LGIA,  
19 offers to make copies of such available upon request, and also provides a reference or link  
20 to the respective utility company's website where the documents can be viewed and/or  
21 printed.

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25 <sup>21</sup> Opening Comments of ICNU at 9.

26 <sup>22</sup> Opening Comments of ICNU at 7.

1 The utilities appreciate the opportunity to submit these reply comments and reserve the  
2 right to modify or supplement them as may be necessary or appropriate.

3 Dated this 13<sup>TH</sup> day of August 2009.

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5 For Portland General Electric Company,

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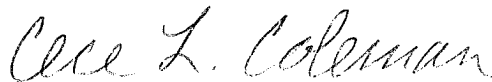
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused **JOINT REPLY COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY, PACIFICORP AND IDAHO POWER COMPANY** to be served by electronic mail to those parties whose email addresses appear on the attached service list, and by First Class US Mail, postage prepaid and properly addressed, to those parties on the attached service list who have not waived paper service from OPUC Docket No. UM 1401.

Dated at Portland, Oregon, this 13<sup>th</sup> day of August, 2009.



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