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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. UM 1461

Enclosed for filing in the above-referenced docket are an original and one copy of the Opening Comments of Idaho Power Company.

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 McIndoo".

Wendy McIndoo
Legal Assistant

cc: Service List

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document in
3 Docket UM 1461 on the following named person(s) on the date indicated below by email
4 and/or first-class mail addressed to said person(s) at his or her last-known address(es)
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1 BEFORE THE PUBLIC UTILITY COMMISSION
2 OF OREGON

3 UM 1461

4 In the Matter of

5 PUBLIC UTILITY COMMISSION OF
6 OREGON,

7 Investigation of matters related to electric
8 vehicle charging.

**Opening Comments of Idaho Power
Company**

9 I. INTRODUCTION

10 Idaho Power Company ("Idaho Power" or "Company") submits the following opening
11 comments in the above-referenced proceeding. Idaho Power appreciates the opportunity to
12 submit comments in this proceeding and supports the Commission's efforts to address the
13 legal and policy issues surrounding EV charging.

14 II. BACKGROUND

15 The Public Utility Commission of Oregon ("Commission") initiated this proceeding to
16 investigate the appropriate role of the Commission and electric utilities in the development of
17 electric vehicle ("EV") charging infrastructure. The Commission is addressing these issues
18 now, in part, because Oregon was selected as a test state for an EV pilot project.

19 On July 22, 2010, Staff issued a Straw Proposal that identified three broad issues
20 related to the development of a viable EV charging infrastructure for parties to address in
21 this docket. *First*, Staff identified issues related to public EV charging stations. Staff
22 describes public charging as occurring at EV charging stations in places such as shopping
23 centers, gas stations, community centers, places of worship, or curbside. These charging
24 stations would be available to EV drivers either free of charge or for a price. *Second*, Staff
25 identified issues related to at-premise charging. At-premise charging occurs at the EV
26 owner's home. It also encompasses charging that may occur at a person's office or

1 charging by EV fleet owners. *Third*, parties should address the potential for EVs to provide
2 ancillary services to the utilities. Staff's Straw Proposal also identified more specific issues
3 relevant to this proceeding and was intended to initiate discussion among the parties. In
4 these comments, Idaho Power addresses several issues raised in Staff's proposal and
5 identified at the various workshops.

6 Idaho Power participated in two workshops convened by Commission Staff to
7 address various legal and policy issues related to the development in Oregon of an EV
8 charging infrastructure.

9 Idaho Power notes that there is currently a workshop scheduled for September 9,
10 2010, and that parties will file additional comments on September 21, 2010. Therefore, the
11 Company recognizes that these comments are preliminary and looks forward to continuing
12 to work with the parties to examine and resolve the many issues related to the development
13 of an EV charging infrastructure in Oregon.

14 III. DISCUSSION

15 A. Application to Idaho Power.

16 Idaho Power anticipates that the information and experiences gathered from this
17 study regarding the usage characteristics of EV charging stations and the impact upon the
18 electric system will assist in the development of appropriate regulatory treatment for this new
19 sector. For this reason, the Company believes the investigation is timely and looks forward
20 to participating fully. However, Idaho Power encourages the Commission and Staff to keep
21 in mind the fact that with respect to an emerging EV market, the Company may be differently
22 situated with respect to EVs, than Oregon's other electric utilities. The Company's Oregon
23 territory is primarily rural, and is not a part of the test area for this project. For these reasons,
24 it is expected that the introduction of EV technology into the Idaho Power rural service
25 territory will be slower than in the western part of the state.

26

1 Therefore, because the EV charging technology is in its infancy, with virtually no
2 current penetration in Idaho Power's service territory, it is premature to require Idaho Power
3 to provide any specific rate or regulatory treatment at this time. The EV project is a learning
4 opportunity and it would be advantageous to learn from its outcomes and then apply those
5 to rate designs and establish regulatory treatment. However, if the Commission wishes to
6 implement EV-related rules prior to the adoption of a significant level EV charging
7 technology in Idaho Power's service territory, Idaho Power Company requests that it be
8 exempted from the rules until such time as they are necessitated by adoption of EV charging
9 technology in Idaho Power's service territory.

10 **B. Legal Issues.**

11 The development of an EV charging infrastructure, particularly one that includes
12 public charging stations, raises many important legal issues that the Commission should
13 address now so that its EV charging policy is on sound legal ground. The Company
14 stresses the importance of understanding and analyzing these legal issues to prevent future
15 litigation or possible federal preemption. Moreover, because many of the legal issues are
16 jurisdictional their significance is paramount to the implementation of a regulatory scheme
17 for EV charging.

18 **1. The Sale of Electricity By EV Charging Stations Is Likely A**
19 **Wholesale Transaction Subject to Federal Jurisdiction.**

20 The sale of power from a public utility to an EV charging station for the purpose of
21 providing EV charging services to the public likely falls under the exclusive jurisdiction of the
22 Federal Energy Regulatory Commission ("FERC"). This is a "sale for resale" and therefore a
23 wholesale transaction. As such, federal law, primarily the Federal Power Act and each
24 utility's FERC tariffs govern the transaction. Moreover, if the transaction is wholesale, the
25 Oregon Commission cannot regulate the transaction and the EV charging stations cannot
26 purchase power at a retail rate under Commission-approved tariffs.

1 The Federal Power Act ("FPA") grants exclusive jurisdiction to FERC to regulate
2 wholesale sales of electricity in interstate commerce.¹ The U.S. Supreme Court noted that
3 FERC's jurisdiction is "plenary and extend[s]...to all wholesale sales in interstate commerce
4 except those which Congress has made explicitly subject to regulation by the States."² In
5 distinguishing federal from state jurisdiction, the United States Circuit Court for the District of
6 Columbia recently noted, "FERC has jurisdiction over wholesale sales and transmission,
7 [and] states [have] jurisdiction over retail distribution."³ Moreover, FERC's jurisdiction
8 extends to include the exclusive authority to establish rates for the sale of wholesale
9 electricity.⁴

10 The FPA defines the "sale of electric energy at wholesale" as a "sale of electric
11 energy to any person for resale."⁵ A retail sale, on the other hand, is a sale of electricity to
12 an end user that consumes the electricity.⁶ The Oregon legislature defined a "retail

13 ¹ See 16 U.S.C. § 824(a)-(b); *Transmission Agency of Northern California v. Sierra Pacific Power Co.*,
14 295 F.3d 918, 928 (9th Cir. 2002) ("16 U.S.C. §§ 824-824m, delegates to the Federal Energy
15 Commission 'exclusive authority to regulate the transmission and sale at wholesale of electric energy
16 in interstate commerce' (quoting *New England Power Co. v. New Hampshire*, 455 U.S. 331, 340
17 (1982)). FERC's exclusive jurisdiction is not limited to establishing rates. See *Niagara Mohawk
Power Corp.*, 123 FERC P 61143, 2008 WL 2067373, *4 (May 15, 2008) (when FERC has exclusive
jurisdiction it extends beyond rates to all agreements or services affecting or relating to
interconnection).

18 ² *Fed. Power Comm'n v. Southern Cal. Edison Co.*, 376 U.S. 205, 216 (1964). The rare exception to
19 FERC's exclusive jurisdiction is found in the Public Utility Regulatory Policy Act, which is inapplicable
here. See *Connecticut Light and Power Co.*, 70 F.E.R.C. ¶ 61,012, 61,024 (1995) (PURPA and
FERC's regulations provide exemptions from regulation under the FPA).

20 ³ See *Southern California Edison Co. v. F.E.R.C.*, 603 F.3d 996, 997 (D.C. Cir. 2010); see also
21 *Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 850 (9th Cir. 2003) (FERC has exclusive jurisdiction over
wholesale sales and states have exclusive jurisdiction over retail sales); *Promoting Wholesale
22 Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities;
Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 61 Fed. Reg. ¶ 21,540 at
23 218 (1996) ("we believe that states have authority over the service of delivering electric energy to end
users.").

24 ⁴ See 16 U.S.C. §§ 824d, 824e.

25 ⁵ 16 U.S.C. § 824(d).

26 ⁶ Rules Concerning Certification of the Electric Reliability Organization 114 FERC P 61104 at **18
(Feb. 03, 2006) (FERC declined to define the term "end user" because it "is a term in common use in
the electric power industry.").

1 electricity consumer” as “the end user of electricity for specific purposes such as heating,
2 lighting, or operating equipment.”⁷ Here, EV charging stations arguably will not use the
3 electricity for a specific purpose like operating equipment. Rather, they will sell the power to
4 their customers to charge their vehicles. Therefore, EV charging stations are likely not “end
5 users” and the sale from the utility is likely a sale for resale.

6 Moreover, the wholesale transaction between the public utility and EV charging
7 station is a transaction in interstate commerce even if the EV charging station sells the
8 power exclusively within Oregon. In determining whether a particular utility is selling power
9 in interstate commerce, the U.S. Supreme Court noted that even if electrical power is *merely*
10 *commingled* with power sold in interstate commerce, it falls under FERC’s exclusive
11 jurisdiction.⁸ By virtue of the interconnected nature of the modern electrical grid, nearly all
12 electricity is commingled with power sold in interstate commerce.⁹ Because of this fact, the
13 D.C. Circuit noted that “FERC has jurisdiction over all interstate transmission service *and*
14 *over all wholesale service . . .*”¹⁰ Thus, nearly all wholesale transactions are sales in
15 interstate commerce because virtually all electricity is interstate in nature.

16 In *People’s Electric Cooperative*, FERC reversed an Initial Decision and found that
17 the transactions at issue were sales for resale in interstate commerce because:

18 The case law does not support the proposition underlying the
19 Initial Decision, namely, that an entity receiving electric energy
20 from out-of-state and selling it for resale solely within a state
must transmit electric energy back out of the state in which it
resides before Commission jurisdiction may attach.¹¹

21 _____
22 ⁷ ORS 757.600(29) and OAR 860-038-0005(56).

23 ⁸ *F.P.C. v. Florida Power and Light Co.*, 404 U.S. 453, 463 (1972) (commingling of electricity on a bus
constitutes a sale in interstate commerce).

24 ⁹ See *New York v. F.E.R.C.*, 535 U.S. 1, 7 (2002) (“any electricity that enters the grid immediately
becomes part of a vast pool of energy that is constantly moving in interstate commerce”).

25 ¹⁰ *Detroit Edison Co. v. F.E.R.C.*, 334 F.3d 48, 51 (D.C. Cir. 2003) (emphasis added).

26 ¹¹ *People’s Electric Cooperative*, at P 62111.

1 In that case, FERC concluded that sales from a rural electrical cooperative to tribal
2 and municipal authorities were subject to FERC jurisdiction even though both the
3 cooperative and the local authorities operated wholly within one state. FERC held that
4 because “commingled interstate electric energy does flow through the People's system, it
5 does mean that People's operates in interstate commerce.”¹² Because the cooperative
6 operated in interstate commerce and sold power to the local authorities for resale, FERC
7 had exclusive jurisdiction over the transaction even though neither the cooperative nor the
8 local authorities sold any of their power to out-of-state purchasers. Here, any power sold by
9 a utility in the state of Oregon to an EV charging station includes power commingled with
10 interstate electric energy because Oregon’s utilities all commingle power generated in
11 Oregon with power purchased or generated out-of-state. Thus, in this type of transaction
12 the utility would sell power in interstate commerce to EV charging stations making the
13 transaction FERC-jurisdictional.

14 The crux of FERC jurisdiction is the characterization of the transaction between the
15 EV charging station and its customer as the sale of electricity. The pricing used by EV
16 charging stations is therefore key to understanding whether the transaction is a sale of
17 electricity or the sale of another commodity or a service. The Commission defined
18 “electricity” as “electric energy, measured in kilowatt-hours, or electric capacity, measured in
19 kilowatts, or both.”¹³ This definition suggests that if the transaction pricing is based upon a
20 price determined on a per-kilowatt-hour (“kWh”) basis, then the transaction is a sale of
21 electricity and therefore the transaction between the utility and the charging station is FERC
22 jurisdictional.

23

24 _____

25 ¹² *Id.* at P 62113 (quotations omitted).

26 ¹³ OAR 860-038-0005(23).

1 On the other hand, if the sale to the EV owner is characterized as the sale of another
2 commodity or a service, and thus the price is not based on the amount of energy loaded into
3 the car's battery, then it is arguably not a sale of electricity. As discussed more fully below,
4 ORS 757.005(1)(b)(G) provides an exemption from the definition of "public utility" and
5 provides that entities that furnish electricity or other *alternative fuel* to any number of
6 customers for use in motor vehicles are not "public utilities" under Oregon law. This
7 suggests that the sale in this context does not involve "electricity" but rather "alternative
8 fuel." Other Oregon statutes and administrative rules also describe electricity used to
9 operate an EV as an "alternative fuel."¹⁴ Likewise, the EV charging stations may charge a
10 flat fee or charge for other services such that the EV owner is not purchasing electricity
11 measured on a kWh basis.

12 **2. EV Charging Stations Are Not Public Utilities Under Oregon Law.**

13 An EV charging station would not be a "public utility" under Oregon law when it
14 provides electricity only for motor vehicle charging. The legislature granted the Commission
15 broad authority to protect utility customers and the public generally from unjust and
16 unreasonable rates and "to obtain for them adequate service at just and reasonable rates."¹⁵
17 The Commission's broad authority, however, extends only to "public utilities."¹⁶ ORS
18 757.005(1)(a)(A) defines "public utilities" generally as:

19

20 ¹⁴ See e.g. ORS 469.160; OAR 330-070-0013(5); and OAR 330-110-0010.

21 ¹⁵ See ORS 756.040 ("the commission shall make use of the jurisdiction and powers of the office to
22 protect such customers, and the public generally, from unjust and unreasonable exactions and
23 practices and to obtain for them adequate service at fair and reasonable rates."); *Pacific Northwest
24 Bell Telephone Co. v. Sabin*, 21 Or.App. 200, 213 (1975) ("The Commissioner appears, therefore, to
25 have been granted the broadest authority—commensurate with that of the legislature itself—for the
26 exercise of his regulatory function."); *Pacific Northwest Bell Telephone Co. v. Katz*, 116 Or. App. 302,
309 (1992) (legislature "has granted broad power to the PUC to perform its [ratemaking] function.").

¹⁶ ORS 756.040(2) ("The commission is vested with power and jurisdiction to supervise and regulate
every *public utility* . . . and to do all things necessary and convenient in the exercise of such power
and jurisdiction.") (emphasis added).

1 Any corporation, company, individual, association of
2 individuals, or its lessees, trustees or receivers, that owns,
3 operates, manages or controls all or a part of any plant or
4 equipment in this state for the production, transmission,
5 delivery or furnishing of heat, light, water or power, directly or
6 indirectly to or for the public, whether or not such plant or
7 equipment or part thereof is wholly within any town or city.

8 ORS 757.005(1)(b)(G), however, provides an exemption from this general definition:

9 Any corporation, company, partnership, individual or
10 association of individuals that furnishes natural gas, electricity,
11 ethanol, methanol, methane, biodiesel or other alternative fuel
12 to any number of customers for use in motor vehicles and
13 does not furnish any utility service described in paragraph (a)
14 of this subsection.¹⁷

15 Although an EV charging station arguably provides a “utility service” because it
16 “furnish[es] . . . power . . . to or for the public,” it is clear from the context of these provisions
17 that an entity furnishing electricity for use in motor vehicles that does not otherwise provide
18 a utility service is not a public utility under Oregon law.¹⁸ Thus, read together, these
19 definitions suggest that as long as the entity does not “own, operate, manage or control all
20 or a part of any plant or equipment in this state for the production, transmission, [or]
21 delivery” of electricity to the public, it is not a “public utility.”¹⁹ Assuming the EV charging
22 station provides electricity only to charge its customer’s vehicles—and does not otherwise
23 generate, transmit or distribute electricity—it is not a “public utility” under Oregon law.²⁰

24 _____
25 ¹⁷ This exemption is not the only one. For example, others include entities providing power from solar
26 or wind resources to any number of customers. ORS 757.005(1)(b)(C)(iii).

¹⁸ Presumably, the qualification in ORS 757.005(1)(b)(G) (“and does not furnish any utility service
described in paragraph (a) of this subsection”) was intended to make clear that when a public utility,
like Idaho Power, provides EV charging it is nonetheless still a public utility.

¹⁹ Another statute, ORS 758.400(3), defines “utility service” as used in the territorial allocation
statutes as “service provided by any equipment, plant or facility for the distribution of electricity to
users or the distribution of natural or manufactured gas to consumers through a connected and
interrelated distribution system.” Although this definition differs from that used in ORS 757.005, it
suggests generally that utility service requires some form of distribution through a distribution system.

²⁰ Although EV charging stations are not “public utilities” under Oregon law, if they fall under FERC’s
jurisdiction they will qualify as a “public utility” under the Federal Power Act. See 16 U.S.C. § 824(e).

1 This analysis does not change if an EV charging station purchases power at retail or
2 wholesale rates—the exemption focuses on what the EV charging station does with the
3 power it purchases not how it is purchased. So long as the only power the EV charging
4 station delivers to the public is for the purpose of providing fuel for use in motor vehicles it
5 likely still falls under the exemption in ORS 757.005(1)(b)(G).

6 **3. EV Charging Stations Are Not Electric Service Suppliers.**

7 An entity that sells or provides power for the purpose of charging EVs is not an
8 “electric service supplier” (“ESS”) as defined by Oregon law. The legislature defined
9 “electric service suppliers” as a person or entity that sells “electricity services available
10 pursuant to direct access to more than one retail electricity customer.”²¹ “Direct access” is
11 defined as “the ability of a retail electricity customer to purchase electricity *and certain*
12 *ancillary services* . . . directly from an entity other than the distribution utility.”²² Thus, to
13 qualify as an ESS the EV charging station must sell both electricity and “ancillary services.”²³

14 In Order No. 08-388, the *Honeywell* case, the Commission granted a declaratory
15 ruling regarding the applicability of certain Oregon statutes and Commission rules to
16 Honeywell’s business model.²⁴ Honeywell built and operated solar facilities on utility
17 customer premises. Honeywell owned the facilities and sold the electricity generated to the
18 utility customer, billing the customer for the actual kilowatt-hours of electricity generated.
19 The rate paid by the utility customer was determined by the agreement between the
20 customer and Honeywell, and “may be comparable to the electric utility’s retail tail block

21 _____

22 ²¹ ORS 757.600(16).

23 ²² ORS 757.600(6) (emphasis added).

24 ²³ “Ancillary services” are defined as “services necessary or incidental to the transmission and
25 delivery of electricity from generating facilities to retail electricity consumers, including but not limited
to scheduling, load shaping, reactive power, voltage control, and energy balancing services.” ORS
757.600(2).

26 ²⁴ *Re Honeywell and PacifiCorp*, Docket DR 40, Order No. 08-388 (July 31, 2008).

1 rate.”²⁵ The utility customer, in turn, entered into a conventional net metering arrangement
2 with the utility. The Commission ruled under the assumed facts presented by the parties,
3 that Honeywell was not an ESS because it sold electricity only and not ancillary services.²⁶
4 Here, EV charging stations will not sell ancillary services to their customers and therefore
5 the charging stations will not fall under Commission jurisdiction as an ESS.

6 **4. Reselling By EV Charging Stations Is Prohibited by Utility Tariffs.**

7 Under the current terms of Idaho Power’s Commission-approved retail tariffs, the
8 type of sale contemplated here is prohibited. Idaho Power’s Rule C, governing “Service and
9 Limitations,” specifically prohibits customers from reselling electricity received from Idaho
10 Power unless the customer does so under a submetering arrangement for multi-family
11 dwellings and the submetering billing is at the same rates the Company would charge for
12 service, unless the Commission authorizes other procedures.²⁷ This prohibition is long-
13 standing. The current Rule C language has been in effect since 1982, although the
14 Company’s tariffs have included a general prohibition on reselling since at least the 1940’s.

15 Although this type of submetering arrangement is arguably a wholesale transaction
16 (*i.e.* the landlord is selling electricity to its tenants), FERC has consistently disclaimed
17 jurisdiction noting that,

18 any customer that traditionally has purchased its power under
19 a state-regulated retail tariff, and that has provided primarily a
20 submetering function, is not reselling power and thus . . . the
sale to the customer is not a jurisdictional sale for resale.²⁸

21 In an order relating to a military base, FERC disclaimed jurisdiction over the
22 submetering arrangement after noting that the redistribution of power delivered to the base

23 ²⁵ *Id.* at 3.

24 ²⁶ *Id.* at 12.

25 ²⁷ *Rule C Service and Limitations*, PUC Ore. No. E-27 at Original Sheet No. C-2 (Mar. 1, 2010).

26 ²⁸ *Re Southern California Edison Company*, 95 FERC P 61003 (Apr. 2, 2001).

1 constituted only a small portion of the power the base receives and the base “does not resell
2 the power for a profit.”²⁹

3 Here, EV charging stations clearly do not fall under the submetering exception in
4 Idaho Power’s tariff. Therefore, an EV charging station taking power under a retail tariff and
5 selling that power to its EV customers violates Idaho Power’s Rule C. Moreover, it is
6 unlikely that FERC would disclaim jurisdiction over an EV charging station on these same
7 grounds. EV charging stations are not engaged in a traditional submetering arrangement,
8 they will resell nearly all of the power they purchase, and they will resell the power
9 specifically to make a profit.

10 Resale prohibitions align with general regulatory policy relating to territorial allocation
11 and the regulatory compact. Under the regulatory compact, utilities are granted a monopoly
12 to provide essential services to their customers. In exchange for this monopoly status,
13 utilities are subject to pervasive regulation related to their service, rates, and entry into the
14 market.³⁰ To this end, Oregon has territorial allocation statutes, ORS 758.400 *et. seq.*, that
15 are designed to prevent the duplication of utility facilities and promote efficient, economic
16

17 ²⁹ *El Paso Electric Company*, 114 FERC P 61175 (Feb. 17, 2006).

18 ³⁰ *See Re Application of Portland General Electric Company for an Investigation into Least-Cost Plan*
19 *Plant Retirement*, Dockets DR 10, UE 88, UM 989, Order No. 08-487 at 4 (Sept. 30, 2008) (“As
20 monopoly providers of essential services, public utilities are subject to government control over entry,
21 service, and rates.”); *see also U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 797 (Ind. 2000)
22 (regulatory compact “arises out of a ‘bargain’ struck between the utilities and the state. As a quid pro
23 quo for being granted a monopoly in a geographical area for the provision of a particular good or
24 service, the utility is subject to regulation by the state to ensure that it is prudently investing its
25 revenues in order to provide the best and most efficient service possible to the consumer.”);
26 *PacifiCorp v. Public Service Comm’n of Wyoming*, 103 P.3d 862, 871 (Wyo. 2004) (“the compact is a
theoretical agreement between the utilities and the state in which, as a quid pro quo for being granted
a monopoly in a geographical area for the provision of a particular good or service, the utility is
subject to regulation by the state to ensure that it is prudently investing its revenues in order to
provide the best and most efficient service possible to the consumer.”); *Office of Public Utility*
Counsel v. Public Utility Comm’n of Texas, 104 S.W.3d 225, 227-28 (Tex. App. 2003) (“Under a fully
regulated system, an electricity utility enters into a “regulatory compact” with the public: in return for a
monopoly over electricity service in a given area; the utility agrees to provide service to all requesting
customers and to charge only the retail rates set by the Commission.”).

1 and safe use of those facilities, while providing adequate and reasonable service to all
2 Oregon customers.³¹ These statutes require Commission approval of all agreements
3 allocating service territory³² and they prohibit a person from offering, constructing, or
4 extending utility service in or into an allocated territory.³³

5 As discussed above, it is unlikely that EV charging stations are public utilities under
6 Oregon law or otherwise provide a utility service.³⁴ If the Commission concludes differently,
7 however, then these entities will likely violate Oregon's territorial allocation statutes if they
8 sell electricity at a per-kWh rate to their customers within an exclusive service territory
9 allocated to a different utility (and be subject to FERC's jurisdiction over "sale for resale"
10 transactions). Moreover, even if EV charging stations are not public utilities and do not fall
11 under Oregon's territorial allocation statutes, if they sell electricity to their customers within a
12 utility's service territory they undermine the regulatory compact. This is especially true if
13 they are subject to little or no regulation when they purchase electricity from a regulated
14 utility and then sell that same electricity at a per-kWh rate to its EV customers (who are likely
15 the utility's customers also) for a profit.

16 **5. Commission Likely Lacks Jurisdiction to Regulate Transaction**
17 **Between EV Charging Station and EV Owner.**

18 Because EV charging stations are not subject to Commission jurisdiction as either a
19 public utility or an ESS, it is unlikely that the Commission is authorized to regulate the sale
20 of electricity from the EV charging station to its end user, the EV owner. The *Honeywell*

21 _____
³¹ ORS 758.405.

22 ³² ORS 758.425.

23 ³³ ORS 758.450(2).

24 ³⁴ For purposes of the territorial allocation statutes, "utility service" is defined as service provided by
25 any equipment for the distribution of electricity to users through a connected and interrelated
distribution system. ORS 758.400(3); ORS 757.600(8) ("Distribution" means the delivery of electricity
to retail electricity consumers through a distribution system consisting of local area power poles,
transformers, conductors, meters, substations and other equipment.").

26

1 case offers some insight into this issue. In that case the Commission authorized Honeywell
2 to generate electricity using solar panels on a customer's premises and sell that electricity to
3 the customer.³⁵ Although the Commission found that the net metering arrangement
4 between the utility customer and the utility was subject to Commission jurisdiction under
5 ORS 757.300, it concluded that it could not regulate the sale of electricity between
6 Honeywell and the utility customer because Honeywell was neither a public utility nor an
7 ESS.³⁶ In that case, Honeywell was not a "public utility" because it generated electricity from
8 solar resources³⁷ and was not an ESS because it did not sell ancillary services. The
9 Commission noted that if Honeywell were using a fuel other than solar or wind, even an
10 otherwise net metering eligible fuel,³⁸ "it would presumably be a 'public utility' subject to the
11 Commission's regulation."³⁹ Like Honeywell, an EV charging station that is neither a public
12 utility nor an ESS is not subject to Commission jurisdiction.

13 Similarly, the sale from the EV charging station to the EV customer is a retail sale to
14 an end user and thus FERC also lacks jurisdiction.

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18 ³⁵ PacifiCorp, the utility in the *Honeywell* case, asked the Commission to rule specifically on whether
19 the transaction between Honeywell and the utility customer was a FERC-jurisdictional transaction.
20 Basing its ruling on the Oregon statute that authorizes the Commission to issue declaratory rulings,
the Commission declined to address this issue. *Id.* at 10. The Commission did note, however, that
"FERC would be unlikely to assert jurisdiction over the transactions" because they were part of a net
metering arrangement. *Id.*

21 ³⁶ See *Id.* at 10-16. The Commission noted, however, that if Honeywell was not using a net-metering
22 eligible fuel then it would not "speculate about the contracts, tariffs, or other agreements that might
validly govern the parties' relationships under this alternative factual scenario." *Id.* at 21.

23 ³⁷ See ORS 757.005(1)(b)(C)(iii) ("public utility" does not include entity providing power from solar or
wind resources to any number of customers).

24 ³⁸ See ORS 757.300(1)(d)(A) (net metering eligible fuels include solar, wind, fuel cells, hydroelectric,
25 landfill gas, digester gas, waste, dedicated energy crops available on a renewable basis or low-
emission, non-toxic biomass based on solid organic fuels from wood, forest, or field residues).

26 ³⁹ Order No. 08-388 at 21.

1 **C. Regulatory Policies and Guidelines.**

2 **1. Rate Schedules for Publicly Available EV Charging Stations.**

3 Because there are no public EV charging stations currently in Idaho Power's Oregon
4 service territory and there are none planned as a part of the EV project, it is premature for
5 Idaho Power to establish a separate rate class at this time. The load characteristics of a
6 new homogeneous group, as well as the cost to serve this group, have not yet been
7 established. However, since Idaho Power does have resource constraints in the summer
8 afternoon hours, a time variant pricing offer that sends the appropriate price signals to
9 encourage customers to charge their vehicles during lower-priced off-peak hours is likely in
10 the future.

11 For private EV chargers, Idaho Power supports the concept of time variant pricing for
12 its customers. Time variant pricing structures provide the appropriate price signal to
13 customers and encourage them to use energy efficiently. Customers using time variant
14 pricing would save money when they charged their vehicles during lower-priced off-peak
15 time periods. This also lessens the potential that new EV charging load will increase
16 system-wide load during on-peak hours, when the system is most constrained. Complete
17 installation of automatic metering infrastructure, as well as installation of billing and data
18 storage systems is necessary before any time variant rate offerings can be made.

19 Installing multiple meters at one site, one for the EV charger and one for the rest of
20 the residential load, increases the cost and does not appear to be necessary. Idaho Power
21 believes that a single time variant pricing option for the entire load at a residence would be
22 sufficient for providing the appropriate price signals to customers.

23 **2. Cost of Distribution Upgrades or Reconfigurations.**

24 The existing policies in Idaho Power's Rule H – New Service Attachments and
25 Distribution Line Installations or Alterations, could be appropriately applied to any new
26 emerging EV load. This rule addresses the allocation of costs for requests for electric

1 service under certain schedules that require the installation, alteration, relocation, removal,
2 or attachment of Company-owned distribution facilities. Because distribution upgrades
3 related to EV charging should receive the same treatment as upgrades related to other
4 services, Rule H should apply.

5 One issue that may arise as EV loads increase involves the appropriate allocation of
6 costs between early adopters and subsequent EV users. Under Rule H, early adopters,
7 whose charging will not trigger distribution upgrades, will pay nothing while subsequent
8 users, whose incremental use may trigger necessary upgrades, will bear the total costs for
9 the upgrades. This issue is unlikely to arise in the near term and the results of the EV
10 project will likely provide important insights into the extent and cost of distribution upgrades
11 that may be necessary as EV market penetration increases. Thus, while the Company
12 believes that Rule H is sufficient to address EV distribution upgrades now, the Company is
13 open to re-examining this issue in the future as more information is available.

14 Another concern related to the proliferation of EV charging involves the risk that
15 charging stations may create power quality issues due to the harmonics created by
16 rectifying single-phase voltage. Rectifying the single-phase alternating current ("AC")
17 current provided to the charging station by the utility's distribution system to a direct current
18 ("DC") necessary for these charging stations may cause unintended service interruptions to
19 other utility customers. If this occurs, the Company's Rule K will apply to ensure that
20 appropriate filtering is applied with the installation of the charging equipment. Rule K
21 authorizes the Company to require a customer to install at its own expense equipment
22 necessary to reasonably limit fluctuations and service interruptions to other customers
23 caused by the customer's load characteristics.

24 Finally, the proliferation of EV charging, in particular Level 3 charging, will likely
25 require increased monitoring by utilities of existing distribution facility loading. Multiple
26 customers "fast charging" their vehicles simultaneously using the same distribution facilities

1 may lead to system overloads. Automated metering infrastructure with short metering
2 intervals, e.g. 15 minute, or time of day demand recording may be required to prevent
3 equipment overload and subsequent failure.

4 **3. Utility Ability to Dispatch EV Charging.**

5 Once customers begin implementing and using EV charging stations, if the load
6 usage characteristics of charging stations, either public or private, show that there is a
7 potential cost-effective resource to the system of curtailing the usage (*i.e.* that the load is on
8 during the peak and that there is enough load to make a viable program), the appropriate
9 way to acquire the resource is likely through voluntary demand response programs. These
10 programs could be operated through an aggregator contracted to the utility or by the utility
11 itself. Idaho Power currently operates demand response programs in both these
12 configurations.

13 **4. Information On Emissions To Customers.**

14 Idaho Power currently provides all customers information regarding the Typical
15 Resource Mix and annual Resource Portfolio Fuel Mix for 2008 and 2009. This information
16 is available on the Idaho Power website.⁴⁰ Also provided are annual CO₂ data and goals.
17 Any customer interested in generation fuel mix can find this general information on the
18 Company web site. It is not clear at this time that this data will cause customers to alter their
19 usage or purchase electricity at any specific time period based upon the resource mix.
20 While this general resource mix information is currently available, the provision to customers
21 of more specific and detailed real time information is not something the Company can
22 currently provide. This is especially true if the information is intended for only one end-use
23 customer segment, such as EV chargers.

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26 ⁴⁰ <http://www.idahopower.com/AboutUs/CompanyInformation/Facts/fuelMix.cfm>

1 Idaho Power looks forward to working with Staff and interested parties in an effort to
2 resolve these challenging issues.

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