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November 1, 2011

VIA ELECTRONIC AND U.S. MAIL

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

Re: UM 1182 – Comments of Idaho Power on the Order No. 11-340 Straw Proposal

Enclosed for filing in Docket UM 1182 is an original and five copies of the Comments of Idaho Power on the Order No. 11-340 Straw Proposal. 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,

Handwritten signature of Wendy McIndoo in cursive script.

Wendy McIndoo
Office Manager

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1182 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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14 DATED: November 1, 2011

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1182(1)

In the Matter of
PUBLIC UTILITY COMMISSION OF
OREGON,
Investigation Regarding Competitive
Bidding.

**Comments of Idaho Power Company on
the Order No. 11-340 Straw Proposal**

Pursuant to Administrative Law Judge (“ALJ”) Sarah K. Wallace’s Prehearing Conference Memorandum of September 28, 2011, Idaho Power Company (“Idaho Power” or “Company”) submits the following Comments addressing the straw proposal set forth in Order No. 11-340 (“Straw Proposal”). The Straw Proposal is intended to clarify when multiple small projects should be considered a Major Resource for the purposes of the Competitive Bidding Guidelines.¹ The Company appreciated the opportunity to participate in the workshop on this issue held on October 25, 2011, and appreciates the opportunity to file these comments.

I. INTRODUCTION

The Public Utility Commission of Oregon’s (“Commission”) Competitive Bidding Guidelines, set forth in Order No. 06-446, require utilities to issue Requests for Proposals (“RFPs”) for all Major Resource acquisitions.² Major Resources are defined as resources with a nameplate capacity greater than 100 MW. At issue in Phase I of the re-opened Docket UM 1182 was whether the Commission should lower that 100 MW threshold to require RFPs for a broader category of resources. In Order No. 11-340 issued in Phase I

¹ *Re Investigation Regarding Competitive Bidding*, Docket UM 1182, Order No. 06-446 (Aug. 10, 2006).

² Order No. 06-446 at 3.

1 the Commission maintained the current 100 MW threshold, concluding that this threshold
2 "ensures that the competitive bidding guidelines apply to most major resource acquisitions."³
3 However, the Commission also concluded that the definition of Major Resource "needs to be
4 modified to address the problem of a utility sizing projects to avoid competitive bidding
5 requirements."⁴ To that end, the Commission provided the Straw Proposal setting forth
6 criteria to clarify when multiple smaller projects should be considered a Major Resource.

7 The Straw Proposal states:

8 If multiple small generating projects totaling 100 MW or more
9 meet the following criteria, then there is a rebuttable
10 presumption that the multiple projects are a "major resource"
and the competitive bidding guidelines apply:

11 (1) The generating plants are located on one or more adjacent
parcels of land or on parcels within a five-mile radius; and

12 (2) Construction of the plants is performed by the same
13 contractor, or under the same contract, or under multiple
contracts entered into within two years of each other.

14 The utility bears the burden of rebutting this presumption. If
15 multiple small projects meet these criteria, but the utility
believes that other factors show that each plant is a separate
16 and distinct facility, then the utility may request that the
Commission find that the projects do not qualify as a major
17 resource. If the utility proceeds without making this request
and without following the competitive bidding guidelines, then
18 the utility may attempt to rebut the presumption that it should
have followed the guidelines when the utility seeks recovery of
19 the costs of the project in rates.

20 At the October 25, 2011, workshop, Portland General Electric Company ("PGE")
21 provided a proposal largely mirroring the Staff proposal, altering only the criteria addressing
22 construction contracts (item 2.). Whereas Staff has proposed only one requirement (whether
23 the plants are designed by the same contractor, or under the same contract, or under

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25 ³ *Re Investigation Regarding Competitive Bidding*, Docket UM 1182, Order No. 11-340 at 5 (Sept. 1,
2011).

26 ⁴ Order No. 11-340.

1 multiple contracts entered into within two years of each other) PGE's proposal adds
2 additional requirements to further refine the inquiry. Thus, PGE proposes that multiple
3 projects be aggregated if they satisfy the Straw Proposal's proximity standard and:

- 4 (2) The generating plants:
- 5 a. Are designed and constructed by the same contractor; and
 - 6 b. Share supporting facilities; and
 - 7 c. Have obtained or made application for siting or land use
8 approval and other applicable permits, licenses or site
9 certificates as a single facility, on a single application, or on
10 applications that are substantially identical except for the
11 site descriptions; and
 - 12 d. Obtained or share one or more sources of financing,
13 revenue, grants and other financial resources for the
14 development, construction, operation and maintenance of
15 the generating plants and associated equipment; and
 - 16 e. Are connected to the grid through a single connection; and
 - 17 f. The output from the generating plants is sold (whether by
18 PPA or ownership) in an amount greater than or equal to
19 100 MW to a single utility by a single developer; and
 - 20 g. Has been recognized as a single facility by a federal, state,
21 county, city, or local authority including, but not limited to,
22 the siting council, state or local boards, or commissions.

23 Although Staff provided some proposed revisions to clarify the Straw Proposal, at the
24 workshop no other party provided substantive proposals to modify the Straw Proposal.

25 II. DISCUSSION

26 A. Idaho Power Generally Supports the Straw Proposal.

Idaho Power believes that the adoption of meaningful and useable criteria for
determining whether multiple projects require aggregation will provide necessary guidance
to utilities and stakeholders alike. These criteria will provide clarification to prevent future
litigation on this issue and ensure that RFPs are issued when required. The Company

1 believes that the Straw Proposal (subject to the proposed modifications discussed below)
2 satisfy these objectives and should be adopted.

3 The Straw Proposal includes a provision allowing a utility to seek a Commission
4 finding on whether multiple projects qualify as a Major Resource. Idaho Power supports the
5 inclusion of this provision. However, the Company believes that utilities should have to
6 resort to case-by-case Commission determinations in only rare instances.

7 The Straw Proposal is also narrowly tailored and will result in the aggregation of only
8 those types of projects that the Commission intended to aggregate—utility-built projects
9 sized to avoid the Competitive Bidding Guidelines.⁵ Broader criteria may result in utilities
10 issuing RFPs in circumstances where they are not necessary. This may result in a de facto
11 lowering of the 100 MW threshold—a result the Commission just rejected. The Company
12 believes that the Straw Proposal will maintain the integrity of the 100 MW threshold.

13 While the Company supports the Straw Proposal, it does so subject to the two
14 modifications discussed below.

15 **1. The Criteria Should Clearly Define the Proximity Standard.**

16 Both the Straw Proposal and PGE’s proposed criteria and the Straw Proposal
17 include a proximity standard. While the Company agrees that the proposed proximity
18 standard is appropriate, the standard should be better defined.

19 *First*, the term “adjacent,” as used in the phrase “adjacent parcels of land,” should be
20 a defined term. OAR 860-039-0005(3)(d) provides a useful definition for “contiguous” as
21 that term is used in the direct access and net metering rules and the Company believes that
22 this same definition can be used for “adjacent” here. OAR 860-039-0005(3)(d) provides:

23 “Contiguous” means a single area of land that is considered to
24 be contiguous even if there is an intervening public or railroad
25 right of way, provided that rights of way land on which

26 ⁵ See Order No. 11-340 at 5.

1 municipal infrastructure facilities exist (such as street lighting,
2 sewerage transmission, and roadway controls) are not
3 considered contiguous.

4 The Company believes that using this definition to define “adjacent” (or replacing “adjacent”
5 with “contiguous” and then including this definition) will provide needed clarity.

6 *Second*, the five-mile radius rule needs to be clarified. The Company proposes
7 using a definition for this measurement similar to that adopted by the Commission in Docket
8 UM 1129. In Docket UM 1129 the Commission approved a similar five-mile radius standard
9 to determine whether two Qualifying Facilities (“QFs”) were on the same site for purposes of
10 determining the QF’s eligibility for the standard avoided cost rate. That standard states:

11 . . . generating facilities are considered to be located at the
12 same site as the QF for which qualification for the standard
13 rates and standard contract is sought if they are located within
14 a five-mile radius of any generating facilities or equipment
15 providing fuel or motive force associated with the QF for which
16 qualification for the standard rates and standard contract is
17 sought.⁶

18 Importantly, this five-mile measurement is not based on the parcels of land, but on the
19 generators themselves. It is possible that a resource with a relatively small footprint will be
20 sited on a significantly larger parcel of land. In that case, the five mile radius should be
21 measured from the site boundary of the resource and not the perimeter of the land parcel.
22 Otherwise, two generating facilities that are many miles apart may be on parcels of land
23 within five miles of one another, resulting in the distant generators potentially being
24 aggregated.

25 **2. The Process to Determine Whether Multiple Projects are a Major
26 Resource Should be Expedited.**

27 As noted above, both the Straw Proposal and PGE’s proposed criteria include the
28 same provision that allows a utility to seek a Commission determination on a case-by-case

29 ⁶ *Re Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket UM
30 1129, Order No. 06-586 at Appendix B at 11 (Oct. 19, 2006).

1 basis if it is unclear whether multiple projects should be aggregated. The Company
2 supports the inclusion of this type of provision but believes that the process should be
3 expedited because of the potentially time-sensitive nature of resource acquisitions. When
4 utilities have sought a general waiver of the Competitive Bidding Guidelines under
5 Guidelines 2(a) for a time-limited opportunity the Commission has frequently resolved the
6 request within four months.⁷ The Company believes the same general type of process and
7 expedited schedule should apply to requests for a determination of a Major Resource.

8 **B. Idaho Power Prefers PGE's Proposed Criteria.**

9 Idaho Power supports the Straw Proposal but also believes that PGE's proposed
10 criteria may be preferable because they are more comprehensive. The specificity and detail
11 included in PGE's proposal will provide more meaningful guidance to determine whether
12 aggregation (and the resulting RFP) is required. The inclusion of additional criteria in PGE's
13 proposal results in a more narrowly tailored criteria that will likely result in less litigation and
14 less case-by-case determinations required by the Commission. Thus, PGE's proposal offers
15 advantages to the Straw Proposal.

16 While the Company supports PGE's proposal, it believes that the last criterion, (g)
17 which addresses recognition as a single facility, should be set apart with an "or" rather than
18 an "and." It is unclear whether every project will receive this type of recognition. Therefore,
19 in the event projects do not receive this recognition but otherwise meet all the criteria, (a) to
20 (f), aggregation will be required.

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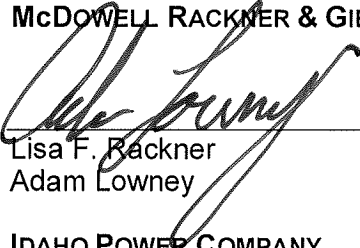
24 ⁷ In Docket UM 1499 PGE sought a waiver and the schedule adopted in the docket called for a
25 Commission decision within approximately 3.5 months. PGE ultimately withdrew the waiver request.
26 In Docket UM 1433 Idaho Power sought a waiver and the Commission approved it within
approximately two months. And in Docket UM 1374 PacifiCorp sought a waiver that was approved
within approximately 3.5 months.

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III. CONCLUSION

Idaho Power appreciates the opportunity to file these comments and looks forward to continuing to work with Staff and stakeholders in Phase II of this docket to ensure the competitive bidding process provides the greatest net benefits to customers.

DATED: November 1, 2011.

McDOWELL RACKNER & GIBSON PC


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