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VIA ELECTRONIC AND U.S. MAIL

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

Re: UM 1182 – Closing Comments of Idaho Power

Enclosed for filing in docket UM 1182 is an original and five copies of the Closing Comments of Idaho Power. 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,

Wendy McIndoo
Legal Assistant

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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DATED: April 22, 2011



Wendy McIndoo
Legal Assistant

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **UM 1182(1)**

4 In the Matter of

5 PUBLIC UTILITY COMMISSION OF
6 OREGON,

7 Investigation Regarding Competitive
8 Bidding.

**Closing Comments of Idaho Power
Company**

9 Pursuant to Administrative Law Judge Sarah K. Wallace’s Prehearing Conference
10 Memorandum, Idaho Power Company (“Idaho Power” or “Company”) submits the following
11 Closing Comments in response to the Opening Comments filed by the parties on March 31,
12 2011. The Company appreciates this opportunity to file comments with the Public Utility
13 Commission of Oregon (“Commission”) and looks forward to working with the Commission
14 and the parties in the second phase of this docket.

15 **I. INTRODUCTION**

16 This phase of UM 1182 is limited to addressing two specific issues: (1) whether the
17 role of the independent evaluator (“IE”) should be expanded by retaining the IE through the
18 utility’s negotiations and final resource selection; and (2) whether the threshold for a major
19 resource should be lowered.¹

20 Idaho Power’s positions on these issues can be summarized as follows: First, the
21 Company believes that expanding the role of the IE will add significant costs to the
22 competitive bidding process without providing commensurate benefits, and for this reason
23 opposes the proposed modification. Moreover, Idaho Power believes the Commission’s

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25 ¹ *Re Public Utility Commission of Oregon Investigation Regarding Performance-Based Ratemaking*
26 *Mechanisms to Address Potential Build-vs.-Buy Bias*, Docket UM 1276, Order No. 11-001 at 6 (Jan.
3, 2011); Prehearing Conference Memorandum at 1.

1 existing IE process strikes a sufficient balance between ensuring a transparent bidding
2 process without being overly burdensome or costly. Second, no party has offered a
3 convincing argument for why the threshold for a “major resource” should be lowered and
4 therefore the Company opposes that proposed modification as well. Moreover, the
5 Company supports the adoption of specific and clear guidelines to determine whether
6 separate facilities must be combined for purposes of applying the 100 megawatt (“MW”)
7 threshold.

8 II. DISCUSSION

9 A. The Role of IE Should Not Be Expanded.

10 Several parties have supported the proposal to expand the role of the IE through the
11 final negotiations.² Idaho Power continues to believe that the additional costs associated
12 with the expanded IE’s role, which are real and concrete, do not justify the potential benefits
13 that may be provided by an expanded IE role. This position is informed by the Company’s
14 experiences and the evidence provided in the Opening Comments; it is not based upon a
15 predisposed “dislike for the Guidelines,” as suggested by the Northwest and Intermountain
16 Power Producers Coalition (“NIPPC”).³ As noted in the Idaho Power’s Opening Comments,
17 the Company is generally supportive of the Commission’s guidelines because they provide
18 the necessary balance to ensure a transparent and fair bidding process without being overly

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20 ² See e.g. Opening Comments of Renewable Northwest Project; Opening Comments of the
Northwest and Intermountain Power Producers Coalition.

21 ³ Opening Comments of the Northwest and Intermountain Power Producers Coalition at 11. NIPCC
22 supports this contention by referencing one example where Idaho Power sought a waiver of the
23 guidelines and thereafter proceeded to conduct competitive bidding without receiving a Commission
24 waiver. In that docket, UM 1378, the Company sought a partial waiver because proceeding under the
25 full guidelines would jeopardize the Company’s ability to timely obtain the resource necessary to
26 serve its growing load. The guidelines specifically contemplate waivers when there is a time-limited
resource opportunity of unique value to customers. Staff opposed the waiver, and after discussions
with Staff and other parties, the Company realized the delay that would be required by litigating the
issue would cause the Company to lose important benefits for its customers. Idaho Power would
point out that the subsequent RFP process conducted by Idaho Power was nonetheless subject to
extensive oversight by the Idaho Public Utilities Commission.

1 burdensome to bidders or overly costly to customers. The Company agrees with Staff's
2 assessment that, to the extent a utility self-build bias may exist, it "has been significantly
3 mitigated with the adoption of the current guidelines," and that extending the "role of the IE
4 will provide limited benefit beyond the current measures and it is not worth the additional
5 costs."⁴

6 The Company also believes that the IE's role, as limited under the current guidelines
7 to the initial phases of the RFP process, supports the Commission's underlying competitive
8 bidding goals. In particular, allowing the utility and counterparties to negotiate a final
9 agreement without the oversight and participation of an IE supports the flexibility the
10 Commission seeks by "allowing the contracting parties to negotiate mutually beneficial
11 exchange agreements."⁵ The Company believes that this flexibility may be lost if an IE is
12 involved in the final negotiations.

13 **1. The Additional Costs are Significant**

14 Parties acknowledge that expanding the role of the IE will result in additional costs.
15 PacifiCorp indicated that based on its actual experiences, expanding the role of the IE would
16 likely lead to an overall increase in the IE's costs of 15 to 20 percent.⁶ In terms of actual
17 dollar amounts, this represents approximately \$30,000 to \$50,000 in additional costs.⁷
18 Although Idaho Power did not quantify the expected cost increase in its Opening Comments,
19 the Company finds that PacifiCorp's estimate is reasonable. These increased costs are
20 particularly concerning for Idaho Power because the costs will be borne by the Company's
21 relatively small Oregon customer base.

22 _____
23 ⁴ Staff's Opening Comments and Recommendations at 3.

24 ⁵ *Re Investigation Regarding Competitive Bidding*, Docket UM 1182, Order No. 06-446 at 2 (Aug. 10,
2006).

25 ⁶ Opening Comments of PacifiCorp at 7.

26 ⁷ Opening Comments of the Northwest and Intermountain Power Producers Coalition at 13, n. 7.

1 In order to minimize the impact on utility customers, some parties propose removing
2 the additional costs associated with the expanded IE's role from customer rates.⁸ The
3 Commission should reject these proposals for two reasons. First, these proposals are
4 outside the scope of this proceeding. When the Commission reopened this docket in Order
5 No. 11-001 it identified three specific issues to be addressed. Alternative modes of cost
6 recovery are not one of these three issues. Therefore, these proposals are outside the
7 scope of this proceeding and should be rejected.

8 Second, there is no reasonable justification for departing from the Commission's
9 decision in Order No. 06-446 with respect to cost recovery. In that order, the Commission
10 stated: "We agree that if an IE is useful to the process . . . then the cost of the IE should be
11 included in rates."⁹ The Company agrees with this assessment and if the Commission
12 chooses to expand the role of the IE in this proceeding it will be because the expanded
13 involvement is "useful to the process." Thus, these costs should be included in rates.

14 **2. An Expanded IE Role Provides Little Benefit to Subsequent Prudence**
15 **Determinations**

16 NIPPC argued in its comments that, "It is simply inadequate to leave participants in a
17 future ratemaking proceeding with no recourse but to obtain in discovery the utility's story of
18 why it closed an RFP without awarding a contract, or why it selected a utility ownership
19 option over a PPA in final negotiations."¹⁰ NIPPC's argument, however, was specifically
20 rejected by Staff. After having access to an IE report on final negotiations, Staff concluded
21 that the report was "informative," but "did not provide information that would have much
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24 ⁸ See e.g. Opening Comments of the Northwest and Intermountain Power Producers Coalition
NIPPC; Opening Comments of ICNU.

25 ⁹ Order No. 06-446 at 7.

26 ¹⁰ Opening Comments of the Northwest and Intermountain Power Producers Coalition 13.

1 evidentiary value in a subsequent ratemaking proceeding.”¹¹ Thus, Staff concluded that an
2 “IE report on final negotiations would likely provide limited benefit in a prudency
3 determination.”¹² Staff specifically noted that the information necessary to determine
4 prudency can be obtained through discovery, testimony, and workshops—without the need
5 for an IE report. Idaho Power agrees with Staff’s assessment.

6 **3. An Expanded IE Will Not Eliminate Any Perceived Bias.**

7 The Commission specifically reopened this docket to explore further improvements
8 to the competitive bidding guidelines designed to address utility self-build bias.¹³ As an
9 initial matter and one of extreme significance to Idaho Power, the Commission has
10 presumed that this bias exists but it has not reached this conclusion based upon evidence in
11 the record before it. Rather, in Docket UM 1276 the Commission instructed the parties to
12 assume that the bias exists.¹⁴ Idaho Power objects to the comments of any party in this
13 proceeding that assumes this Commission has made a finding that a build versus buy bias
14 exists. The Commission has not reached such a finding, and Idaho Power reserves the right
15 to submit evidence to the contrary.¹⁵

16 Notwithstanding this unsubstantiated assumption, including an IE in the final
17 negotiations would not address this bias, assuming the Commission finds that one exists.

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19 ¹¹ Staff’s Opening Comments and Recommendations at 2-3.

20 ¹² Staff’s Opening Comments and Recommendations at 2-3.

21 ¹³ Order No. 11-001 at 6.

22 ¹⁴ See *Re Public Utility Commission of Oregon Investigation Regarding Performance-Based*
23 *Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias*, Docket UM 1276, Staff’s Opening
Comments at n 1 (May 31, 2007) (“As directed by the Commission, for the purposes of this docket,
the parties assumed the existence of the bias.”).

24 ¹⁵ Idaho Power has acquired numerous resources over the last several year through a variety of
25 means, including having a third party construct and transfer to Idaho Power a simple cycle
26 combustion turbine natural gas plant, long-term power purchase agreements with third party
suppliers, and a self- build combined cycle combustion turbine natural gas plant. Thus, Idaho Power’s
actions do not evidence any assumed bias.

1 As noted by PGE in its Opening Comments, the final negotiations do not involve a
2 comparison of a benchmark resource with a power purchase agreement from a third-party
3 producer.¹⁶

4 Staff indicated that a potential bias may manifest itself if the utility selects a self-build
5 option over a higher rated power purchase agreement when both are included on the short-
6 list.¹⁷ However, the presence of an IE during negotiations is not required to mitigate this
7 risk. As Staff pointed out, if the utility does select a self build option, Staff (and presumably
8 other intervenors) will scrutinize the utility's decision during the prudence determination.
9 Thus, Staff concluded that an IE report would provide "little benefit" in a ratemaking context.
10 Idaho Power agrees.

11 **4. NIPPC's Proposed Role for the IE Conflicts with the Commission's**
12 **Goals.**

13 NIPPC argued that the IE should "act[] independently and promote[] customers'
14 interests as more than a mere observer."¹⁸ This type of participation in the final
15 negotiations, however, likely runs afoul of two of the Commission's competitive bidding
16 goals: 1) that the competitive bidding process should not unduly constrain utility
17 management's prerogative to acquire new resources; and 2) the process should be flexible
18 and allow the contracting parties to negotiate a mutually beneficial exchange agreement.¹⁹
19 If the final negotiations now include the utility, the bidder, and the IE as an active participant,
20 both these goals will be frustrated. It is also unclear why it is necessary for the IE to act as a
21 customer advocate at this phase of the bidding process because when the utility is
22 negotiating with third-party generators the utility's interests are firmly aligned with customers'

23 ¹⁶ Opening Comments of Portland General Electric at 3.
24 ¹⁷ Staff's Opening Comments and Recommendations at 3.
25 ¹⁸ Opening Comments of the Northwest and Intermountain Power Producers Coalition at 13.
26 ¹⁹ Order No. 06-446 at 2.

1 interest. Both want to acquire the resource with the least cost and least risk. And including
2 the IE in final negotiations will unnecessarily prolong the process, potentially chill
3 negotiations, impede the ability of the parties to freely negotiate, increase costs, and, most
4 importantly, result in a report that provides "little benefit."

5 **5. Comparisons to California's Renewable Portfolio Standard Process are**
6 **Inappropriate.**

7 Renewable Northwest Project ("RNP") describes the role it envisions for the IE based
8 largely upon the role IE's assume in the California Public Utilities Commission's ("CPUC")
9 Renewable Portfolio Standard ("RPS") resource procurement proceedings.²⁰ Those
10 proceedings are fundamentally different from this Commission's competitive bidding
11 proceedings and therefore this comparison is inapt. Most importantly, the California RPS
12 proceedings result in the CPUC pre-approving contracts involving renewable generation
13 resources.²¹ Therefore, the RPS contracts are never subjected to a subsequent prudence
14 determination where parties have an opportunity to investigate the resource acquisition
15 process. That is not the case here. As Staff pointed out, Oregon's subsequent prudence
16 determination allows parties to investigate the final negotiations to determine if the resource
17 acquisition was imprudent and whether that imprudence was caused by a utility self-build
18 bias.

19 Accordingly, Idaho Power asserts that Commission should not look to the California
20 RPS procurement process to draw any comparisons for the purposes of this docket. The
21 intent of the California process, pre-approval of renewable generation resources, is entirely
22 different than the alleged build versus buy bias that is the issue before this Commission.

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25 ²⁰ Opening Comments of Renewable Northwest Project at 3.

26 ²¹ See e.g. *Re Southern California Edison Company*, Resolution E-4293 (Dec. 17, 2009)
http://docs.cpuc.ca.gov/PUBLISHED/FINAL_RESOLUTION/111516.htm.

1 **B. The Major Resource Threshold Should Not Be Lowered.**

2 Idaho Power maintains that the Commission should not lower the current 100 MW
3 threshold for major resources. This threshold captures the majority of utility-scale projects
4 and lowering it to allow the competitive bidding guidelines to apply to more projects will likely
5 lead to inefficiencies in the competitive bidding process. RNP is the only party that
6 recommends lowering the threshold for solar or geothermal resources to 20 or 30 MW.
7 There is no basis to lower the threshold for these types of resources, and doing so would
8 unnecessarily increase the costs of procuring these types of resources without providing any
9 demonstrable value.

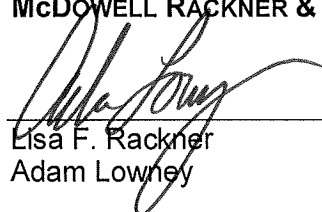
10 With respect to the application of the 100 MW threshold to multiple projects, the
11 Company continues to support its proposed standards set forth in its Opening Comments.
12 The Company also agrees with RNP that whatever standards are ultimately adopted must
13 provide clear guidance to the utilities.

14 **III. CONCLUSION**

15 Idaho Power appreciates the opportunity to file these comments and looks forward to
16 continuing to work with Staff and stakeholders in the second phase of this docket.

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18 DATED: April 22, 2011.

McDOWELL RACKNER & GIBSON PC



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