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December 12, 2008

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 1394

Enclosed for filing in the above-referenced docket are an original and one copy of Idaho Power's Opening Comments on Joint Issues List.

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". The signature is written in black ink and is positioned above the typed name.

Wendy McIndoo
Legal Assistant

cc: Service List

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UM 1394 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: December 12, 2008



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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1394

In the Matter of
PUBLIC UTILITY COMMISSION OF
OREGON
Open an Investigation Into Electric
Companies Providing Qualified Reporting
Entity Services For Certification of
Renewable Energy Certificates by the
Western Renewable Energy Generation
Information System

**IDAHO POWER'S OPENING COMMENTS
ON JOINT ISSUES LIST**

Pursuant to the ALJ's Prehearing Conference Report and Ruling dated October 22, 2008, as modified by the ALJ's Ruling dated December 2, 2008, Idaho Power ("Company") hereby submits to the Oregon Public Utility Commission ("Commission") its Opening Comments on the Joint Issues List.

I. INTRODUCTION

At the October 7, 2008 Public Meeting, the Commission opened this investigation into the provision by electric companies of Qualified Reporting Entity ("QRE") services for the certification of renewable energy certificates ("REC") by the Western Renewable Energy Generation Information System ("WREGIS"). On Staff's motion, contained in the September 30, 2008 Staff Report ("Staff Report"), the Commission also directed each electric utility to file draft tariffs with estimated costs of providing such service. The order was consistent with Staff's view, expressed in the Staff Report, that the Commission has the authority to order

1 the utilities to (a) offer QRE services to any generator that requests them; and (b) file tariffs
2 for such QRE services.¹

3 Idaho Power acknowledges that utilities with balancing authority are well-situated to
4 provide QRE service for generation units within their individual control areas. This fact,
5 however, does not grant the Commission the authority to order the utilities to do so. On the
6 contrary, QRE service is a competitive business-to-business service that is not provided to
7 the utilities' retail customers and is not necessary to the provision of safe and reliable
8 energy. For these reasons, the Commission lacks legal authority to order the utilities to
9 either offer or file tariffs for QRE service.

10 On the other hand, Idaho Power is willing to work with Staff to design and offer a
11 voluntarily QRE service to generators within its control area. Idaho Power is currently
12 providing QRE services for two renewable energy projects from which it acquires both
13 energy and RECs and believes that it could provide the same or similar service to other
14 generators. This offer, however, is conditioned on the requirement that the requesting
15 generators absorb all costs associated with the service, and thereby ensure that the
16 Company's retail customers are not saddled with the expense of providing what is truly a
17 competitive, commercial service.

18 II. COMMENTS IN RESPONSE TO JOINT ISSUES LIST

19 1. **Does the Commission have authority to require a public utility to provide QRE
20 service to all generators over 360 kilowatts (kW) upon request if:**

21 a. **The generator is located in the public utility's Oregon service territory
22 and is interconnected to the public utility's distribution or transmission
23 system under a valid interconnection agreement?**

24 b. **The generator is located in Oregon and the public utility serves as its
25 Balancing Authority, but the generator is not located in the public
26 utility's allocated service territory?**

¹ Staff Report, p. 4.

1 **c. The generator is located in the public utility's allocated service territory**
2 **or control area, or both, but is not interconnected to the public utility's**
3 **distribution or transmission system?**

4 Requiring utilities to provide QRE service is beyond the scope of the Commission's
5 regulatory authority regardless of the location of the generator or the relationship of the
6 generator to the public utility. For this reason, the following discussion is applicable to
7 Issues 1(a)-(c).

8 • **The Commission Lacks General Authority to Require the Provision of**
9 **QRE Services.**

10 The Commission's authority is limited to that specifically delegated by statute.²
11 Although the statutory grant of authority is broad and expansive, it is not unbounded.³ As
12 described in ORS 756.040(1) "the commission shall make use of the jurisdiction and powers
13 of the office to protect such customers, and the public generally, from unjust and
14 unreasonable exactions and practices and to obtain for them adequate service at fair and
15 reasonable rates." Accordingly, the Commission does not automatically have jurisdiction
16 over every activity undertaken or service offered by a public utility.⁴

17 In evaluating whether the Commission has jurisdiction to regulate a particular service
18 offered by a public utility, the courts look closely at the character and nature of the activity.
19 Only where there is a sufficiently close nexus between the service and the Commission's
20 statutory charge will the courts find that the Commission has authority to regulate the

21 ² *Pacific N.W. Bell Tel. Co. v. Katz*, 116 Or. App. 302, 311 (1992). ("An agency's . . . power
22 arises from and cannot go beyond that expressly conferred upon it [by the Legislature]") (citations
omitted).

23 ³ *Pacific N.W. Bell Tel. Co. v. Davis*, 43 Or. App. 999 (1979) (striking down Commission rule
regulating utilities' advertising because Commission action was beyond scope of statutory authority).

24 ⁴ *Id.* See also *In the Matter of the Suspension of Tariff P.U.C. Or. No. P-16 of Pac. N.W. Bell*
25 *Tel. Co.*, Docket No. UF 2679, Order No. 44607 (May 9, 1968) (finding Commission lacked authority
to regulate CATV service provided only for the convenience of a very select group of private
26 businesses).

1 service. For instance, services provided by a gas utility to retail customers to ensure the
2 safe and efficient provision of natural gas are subject to Commission regulation.⁵ Also, the
3 Commission properly exercised jurisdiction over services deemed essential to the adequate
4 provision of telephone service to retail customers.⁶ Even utility administrative services may
5 be regulated where the service is essential to the utility's ability to fulfill its core obligations to
6 customers.⁷ On the other hand, services provided by utilities to a very specific and small
7 private group of businesses may fall outside Commission jurisdiction unless the service is
8 dedicated to a public use.⁸ The QRE service at issue in this docket simply does not have a
9 close enough relationship to the Commission's authority or the utility's core mission to
10 implicate the Commission's authority. QRE services are not a retail offering and are not
11 provided to the "public" generally. It is simply a wholesale, business-to-business service that
12 is not necessary to the provision of retail electric service to utility customers. Thus, requiring
13 the provision of QRE services by a utility falls outside the general statutory authority of the
14 Commission.

15 • **The Renewable Portfolio Standards Do Not Provide the Commission**
16 **Authority to Regulate QRE Services.**

17 Staff has suggested that the Commission might have authority to order the utilities to
18 provide QRE services pursuant to its powers to implement Senate Bill 838, establishing the

19 ⁵ *N.W. Climate Conditioning Assn. et al. v. Lobdell*, 79 Or. App. 560 (1986) (utility service
20 provided directly to retail customers and related to the safe and efficient provision of natural gas was
a utility service subject to regulation under ORS 756.010(8)).

21 ⁶ *Re Pacific N.W. Bell Tel. Co.*, Docket No. UT 85, Order No. 89-1807, 110 P.U.R.4th 132,
22 140 (Dec. 29, 1989) (Commission had jurisdiction to regulate telephone directory advertising because
that service was integral to the provision of adequate phone service to retail customers).

23 ⁷ *May v. P.G.E.*, Docket No. UC 196, Order No. 92-1168, 137 P.U.R.4th 448 (August 14,
24 1992) (customer billings constituted a service as defined by ORS 756.010(8) because customer
billings were necessary for a utility to fulfill its obligations under ORS 757.225 and because regulation
of utility billing systems helped protect ratepayers).

25 ⁸ *In the Matter of the Suspension of Tariff P.U.C. Or. No. P-16 of Pac. N.W. Bell Tel. Co.*,
26 Docket No. UF 2679, Order No. 44607 (May 9, 1968).

1 Renewable Portfolio Standards (“RPS”). There is no basis for this position. SB 838 did not
2 substantively change the law except where the language in the act was explicit.⁹ The RPS
3 did expand the Commission’s authority in certain respects, but it does not provide a basis for
4 Commission regulation of QRE services.

5 First, the RPS grants the State Department of Energy (“DOE”)—not the
6 Commission—the authority to establish substantive rules regarding the standards for
7 RECs.¹⁰ The Legislature did not grant the Commission explicit or implicit authority to require
8 utilities to provide any services related to RECs—including QRE services.

9 Second, the authority granted to the Commission by the RPS is limited primarily to
10 the impact of the RPS on customer rates.¹¹ This grant of authority goes hand-in-hand with
11 the Commission’s general ratemaking authority and does not expand the general scope of
12 the Commission’s jurisdiction.¹² The Commission also has the authority to administer the
13 program and establish the procedural rules to implement the RPS.¹³ Neither grant of limited
14 authority expands the scope of Commission jurisdiction to allow for regulation of otherwise
15 unregulated utility services.

16

17

18 ⁹ See *In the Matter of PacifiCorp*, Docket No. UE 200, Order No. 08-548, at 18 (November
19 14, 2008) (SB 838 did not create new law with respect to the recovery of prudently incurred costs or
the Commission’s prudence standard because the Act did not expressly do so).

20 ¹⁰ See ORS 469A.130(1)

21 ¹¹ See ORS 469A.100(2) (Commission granted authority to establish annual revenue
requirements); ORS 469A.120(3) (Commission granted authority to establish automatic adjustment
clauses to allow for the timely recovery of utility costs); ORS 469A.180 (Commission granted authority
22 to establish alternative compliance rates for each utility).

23 ¹² See ORS 756.040(1)

24 ¹³ See ORS 469A.065 (Commission directed to establish procedures for implementation of
RPS); ORS 469A.075 (RPS implementation plans must be filed with the Commission); ORS
469A.150 (Commission directed to establish process for allocation of RECs); ORS 469A.170
(Commission directed to receive compliance reports from utilities, promulgate rules regarding the
25 contents of the compliance reports, and ensure the compliance reports meet the substantive
requirements as established by the statutes and DOE rules).

26

1 • **The “Qualifying Facilities” Statute Does Not Grant Commission**
2 **Authority to Regulate QRE Services.**

3 Staff has also suggested that the Commission has jurisdiction to order utilities to
4 provide QRE services under the Public Utilities Regulatory Policy Act (“PURPA”). There is,
5 however, no support for this view. There is nothing in either PURPA or Oregon’s
6 implementing statutes, ORS 758.505 *et. seq.*, that would explicitly require electric utilities to
7 provide QRE services. Nor is the provision of QRE services to generators essential for the
8 utilities to fulfill their obligations under these laws.

9 Moreover, it is worth noting that if the Commission truly did receive authority to
10 regulate QRE services from PURPA or ORS 758.505 *et. seq.*, then that authority would be
11 limited to QRE service provided to “Qualifying Facilities” under PURPA, and the Commission
12 would further be required to ensure that utility customers do not bear any of the costs of
13 providing the service to the QFs.¹⁴

14 **2. To the extent the Commission has authority to require the public utilities to**
15 **provide QRE service, should the service be provided through a Commission-**
16 **approved rate schedule?**

17 Utilities are required to file tariffs only for services that fall within the regulatory
18 authority of the Commission.¹⁵ Because the Commission lacks the authority to require the
19 provision of QRE services, the Commission similarly lacks the authority to require the
20 utilities to file tariffs for the service.

21 **3. If QRE service is provided through a Commission-approved rate schedule,**
22 **what types of terms and conditions should be specified:**

23 **a. In the rate schedule?**

24 ¹⁴ See ORS 758.525.

25 ¹⁵ See ORS 757.205(1); *In the Matter of P.G.E.*, Docket No. UE 101/DR 20, Order No. 97-
26 408 (Oct. 17, 1997) (utilities required to file tariffs even for provision of competitive services so long
as the service falls within the regulatory jurisdiction of the Commission).

1 **b. In the QRE contract between the public utility and generator?**

2 Idaho Power does not believe it is appropriate for the Commission to require the
3 utilities to file tariffs for QRE service. However, assuming for the sake of argument that the
4 Commission does have authority to order the utilities to file tariffs, those tariffs should
5 specify the following:

- 6 1. The service is available to all requesting generators for which the Company acts
7 as the Balancing Authority, served by the Company in the State of Oregon;
- 8 2. The generator must be registered with an established account with WREGIS.
- 9 3. The generator must execute the Company's Standard QRE Agreement
10 containing provisions regarding term and termination of the service,
11 interconnection and metering requirements, reporting procedures, service
12 payment schedules and limitations on liability.

13 The Company will be filing a draft Standard QRE Agreement with the
14 Commission on January 7, 2009 which will contain all the terms and conditions
15 the Company believes are appropriate.

- 16 **4. Regardless of whether the Commission possesses the authority to require the**
17 **public utilities to provide QRE service, are the public utilities willing to**
18 **voluntarily provide such service? If so, to whom and under what conditions? If**
19 **utilities voluntarily provide QRE service and associated costs are allowed in**
20 **rates, what types of terms and conditions should be specified in the QRE**
21 **contract between the public utility and the generator?**

22 Idaho Power is willing to offer QRE services upon request to third party generators
23 pursuant to reasonable terms and conditions, as will be described more fully in the draft
24 Standard QRE Agreement to be filed with the Commission on January 7.

- 25 **5. Would the following public utility activities be prohibited as discriminatory**
26 **under relevant law or otherwise be prohibited by any other law:**

- a. **Acting as a QRE for owned or contracted facilities from which the utility**
 is receiving renewable energy certificates (RECs), but not offering QRE
 service for other generators interconnected to the utility or for which
 the utility is a Balancing Authority ("Third Party Generators")

- 1 **b. Charging Third Party Generators for QRE service if the cost of**
2 **providing such service for owned or contracted facilities from which the**
3 **utility is receiving RECs is included in retail rates**
- 3 **c. Charging Third Party Generators a different rate for QRE service than**
4 **the internal cost the utility incurs for owned or contracted facilities from**
5 **which the utility is receiving RECs.**
- 5 **d. Charging Third Party Generators an amount for QRE service in excess**
6 **of an amount charged to contracted facilities from which the utility is**
7 **receiving RECs.**

7 The prohibitions on public utilities against unjust discrimination are articulated in
8 ORS 757.310 and ORS 757.325. These statutes are not applicable to utility provided QRE
9 services because the statutes prohibit discrimination by utilities against customers. ORS
10 757.310(2) prohibits a utility from charging a customer a different rate or amount from the
11 rate or amount charged to other customers for the same service. ORS 757.325(1) prohibits
12 utilities from giving an undue or unreasonable preference or advantage to a particular
13 person or locality. These statutes together have “been taken to prohibit unreasonable
14 differences in rates between customer classes and to prohibit unreasonable differences in
15 area rates.”¹⁶ Third-party generators are not customers of the utility.¹⁷ The statutes do not
16 apply to an unregulated utility service negotiated at arms length between a utility and a
17 generator. Therefore, ORS 757.310 and ORS 757.325 do not apply.

- 18 **a. Acting as a QRE for owned or contracted facilities from which the utility**
19 **is receiving renewable energy certificates (RECs), but not offering QRE**
20 **service for other generators interconnected to the utility or for which**
21 **the utility is a Balancing Authority (“Third Party Generators”)**

22 ¹⁶ *Re N.W. Nat. Gas Co.*, Docket No. DR 11, Order No. 93-1273, 1993 WL 417547 (Sept. 7,
23 1993) (citations omitted). See *Re Exchange Carrier Toll Rates*, 101 P.U.R.4th 228, 244 (Or. P.U.C.
24 1989) (ORS 757.325 prohibits discrimination among customer classes while ORS 757.310 prohibits
25 discrimination within customer classes); *Chase Gardens Inc. v. Or. Pub. Util. Comm’n.*, 131 Or. App.
602, 607 (1994) (ORS 757.325 applies to discrimination with respect to utility customers); *May v.*
P.G.E., Docket No. UC 196, Order No. 92-1168, 137 P.U.R.4th 448 (August 14, 1992) (ORS 757.325
prohibits difference between customer rate classes).

26 ¹⁷ See ORS 757.010(3) and OAR 860-021-0008(3).

1 No. It appears that all of the utilities are willing to offer QRE services to a Third Party
2 Generator for which they are the Balancing Authority, so this question may be moot. That
3 said, it would violate no relevant law or Commission policy for a utility to choose to act as a
4 QRE for owned or contracted facility while choosing not to do so for Third Party Generators.

5 **b. Charging Third Party Generators for QRE service if the cost of**
6 **providing such service for owned or contracted facilities from which the**
7 **utility is receiving RECs is included in retail rates**

8 No. It would violate no relevant law or Commission policy for a utility to choose to
9 charge Third Party Generators for QRE service, even if the cost of providing the service for
10 owned or contracted facilities from which the utility was receiving RECs was included in
11 retail rates. Under the scenario described customers will be receiving the benefit of the
12 RECs for which the costs are included in rates, whereas they will receive no benefit from the
13 cost of providing QRE service for the Third Party Generator...

14 **c. Charging Third Party Generators a different rate for QRE service than**
15 **the internal cost the utility incurs for owned or contracted facilities from**
16 **which the utility is receiving RECs.**

17 No. See response to (b) above. However, this issue may be moot because the
18 utilities have stated that they are willing to provide QRE service to Third Party Generators at
19 cost (including a reasonable profit).

20 **d. Charging Third Party Generators an amount for QRE service in excess**
21 **of an amount charged to contracted facilities from which the utility is**
22 **receiving RECs.**

23 No. it would violate no relevant law or Commission policy for a utility to choose to
24 charge a Third Party Generator an amount for QRE service in excess of what it may charge
25 to contracted facilities from which the utility is receiving RECs. As discussed above, the
26 utility's customers benefit from the provision of the QRE service for which the utility is
receiving the RECs. See also response to (b) above.

27 **6. What are the requirements to be a QRE under the Western Renewable Energy**
28 **Generation System?**

1 See the WREGIS Interface Document.

2 **7. Can third parties compete effectively with public utilities to provide QRE**
3 **service for generators over 360 kW?**

4 Yes. The Company is aware of at least two independent third parties providing QRE
5 services—Fat Spaniel, and Viasyn. Both represent that they are certified QREs with
6 WREGIS and can take responsibility for reporting customer renewable energy generation for
7 the creation of RECs for use for verification of compliance with state regulatory programs.
8 For more information on these companies see <http://www.viasyn.com/index-3.html> (Viasyn)
9 and <http://www.fatspaniel.com> (Fat Spaniel).

10 **8. What are the estimated costs for providing QRE service to Third Party**
11 **Generators and what is the basis for these costs?**

12 See Confidential Exhibit A, attached.

13 **9. Assuming costs associated with QRE service are allowed in retail rates,**
14 **should the public utilities charge generators the fully allocated cost or the**
15 **incremental cost for QRE services?**

16 To ensure that customers bear no costs associated with QRE service provided to
17 Third Party Generators, the utilities should charge their fully allocated costs of providing the
18 service.

19 **10. Would charges for either fully allocated or incremental costs of QRE service be**
20 **prohibitively expensive for generators?**

21 Idaho Power has seen no evidence that it would be prohibitively expensive for Third
22 Party Generators to pay the real cost of QRE service. However, regardless of the answer to
23 this question, the Commission has no authority to require either the utilities or their
24 customers to absorb the cost of such service provided to Third Party Generators.

25 **11. Does the Commission have authority to order that QRE services provided by**
26 **Third Party Generators be subsidized by ratepayers on a pilot program basis?**
If so, what are the bases and standards for such authority? Should QRE
services to Third Party Generators be subsidized?

1 See response to Issue Nos. 1 and 10.

2 **12. Should public utilities provide a service comprised of reporting generation**
3 **data that the utility has to a third party upon the generator's request, thus**
4 **giving the generator the additional option of choosing an alternative QRE? If**
5 **so, what are the costs of providing such a service, and what are:**

6 **a. The bases for those costs?**

7 The costs of providing this reporting service would be very close to identical to the
8 costs of providing QRE service. Regardless of to whom the utility was responsible for
9 reporting data, the utility would need to (a) enter into a contract with the generator to provide
10 the service; (b) ensure that the generator maintained a revenue quality meter; collect and
11 verify the data. Accordingly, the initial set up fee would be the same as for QRE service, as
12 presented in Exhibit A. However, the Company estimates that the monthly activity would
13 require 1 hour as opposed to the 1.5 hours estimated for QRE service. The hourly fee is
14 shown on Exhibit A.

15 **b. The liabilities of providing meter data to an alternative QRE?**

16 As Idaho Power understands the service, the liabilities would be similar to those of
17 QRE service.

18 **c. The responsibilities of providing meter data to an alternative QRE?**
19 **What if the generator wants corrections/adjustments?**

20 In order to operate its control area, Idaho Power must have some form of metering
21 on all generation within its control area. However, this metering may or may not conform to
22 the WREGIS metering requirements. As Idaho Power understands this proposed meter data
23 service, , Idaho Power would simply supply the current meter data to the third party. As this
24 meter data is the meter data used for control area operations, any corrections or
25 adjustments to this data would need to conform to the routine processes associated with
26 being the control area operator.

1 **13. Under what conditions might additional metering be needed to provide QRE**
2 **service for generators, and who should bear the cost?**

3 WREGIS has very specific meter and telemetry equipment requirements. All new
4 and existing metering and telemetry equipment and metering points would need to be
5 reviewed, modified and/or installed to meet the WREGIS requirements. In all
6 circumstances, the generator would be responsible for all costs incurred by the utility to enable
7 the utility to collect and report meter data to meet the WREGIS requirements.

8 Some examples of metering installations that do not meet WREGIS metering
9 requirements:

- 10 • WREGIS requires metering on the high voltage side of transformers. The
11 metering for many of our smaller generators is located on the low voltage
12 side of the transformers.
- 13 • WREGIS requires metering data be collected via an automated telemetry
14 method. Many of our smaller generators (less than 1 MW) do not have
15 automated telemetry capabilities
- 16 • WREGIS requires that metering data be actual metered values (no calculated
17 transformer or line losses included). Many of our smaller generator energy
18 delivery calculations include transformer and line loss calculations because
19 the generator elected to save money by installing the metering at a point
20 not at the actual point of interconnection to the Idaho Power electrical system.

21 Net metering type applications – Idaho Power metering measures only the net
22 energy that is delivered to our system. Thus if a customer consumes a portion of the
23 generator's output for its own needs, Idaho Power is not receiving meter data on the
24 generator's actual output.

25

26

1 14. Does the Federal Energy Regulatory Commission (FERC) have jurisdiction
2 over Qualified Reporting Entity (QRE) service provided public utilities? Does
3 the answer depend on the design of this service and which function of the
4 utility provides the service?

5 Idaho Power has found no authority to suggest that FERC has jurisdiction over QRE
6 services.

7 15. What are the responsibilities and liabilities of the utility providing QRE
8 service?

9 The QRE function and responsibilities are defined by WREGIS, therefore the obvious
10 responsibilities of the utility (QRE) will be to abide by the WREGIS rules as specified for a
11 QRE. That said, all written rules require interpretation, and the QRE will be exposed to the
12 liability associated with the interpretation of these QRE rules.

13 III. CONCLUSION

14 Idaho Power looks forward to continue to work with the parties to this docket towards
15 a resolution consistent with these Comments.

16 DATED: December 12, 2008

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