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IDAHO PUBLIC  
UTILITIES COMMISSION



**DONOVAN E. WALKER**  
Lead Counsel  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)

September 8, 2011

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

Re: Case No. IPC-E-11-14  
*IN THE MATTER OF THE PETITION OF IDAHO POWER COMPANY FOR  
A DECLARATORY ORDER REGARDING PURPA JURISDICTION*

Dear Ms. Jewell:

Enclosed for filing please find an original and seven (7) copies of the Comments of Idaho Power Company in the above matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Donovan E. Walker".

Donovan E. Walker

DEW:csb  
Enclosures

DONOVAN E. WALKER (ISB No. 5921)  
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UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF	)	
IDAHO POWER COMPANY FOR A	)	CASE NO. IPC-E-11-14
DECLARATORY ORDER REGARDING	)	
PURPA JURISDICTION.	)	COMMENTS OF IDAHO POWER
	)	COMPANY
	)	

---

Idaho Power Company ("Idaho Power" or "Company"), pursuant to the Idaho Public Utilities Commission's ("Commission") Notice of Petition and Notice of Comment Deadline, Order No. 32332, in the above-referenced case, hereby files the following Comments:

**I. INTROCUCTION**

On July 8, 2011, Idaho Power filed a Petition for Declaratory Order requesting that the Commission issue an Order determining that the Commission will exercise jurisdiction over the proposed Public Utility Regulatory Policies Act of 1978 ("PURPA") qualifying facility ("QF") transactions proposed by Western Desert Energy 1, LLC ("Western Desert") and Tumbleweed Energy II, LLC ("Tumbleweed"). Specifically, Idaho Power asks the Commission to find that a QF located in Idaho Power's service

territory in the state of Idaho, interconnecting with Idaho Power's system in the state of Idaho, must contract with Idaho Power pursuant to the Idaho Commission's PURPA rules, rates, and regulations.

On July 29, 2011, Western Desert and Tumbleweed (the "Projects") filed a "collective" Answer and Motion to Dismiss. The Projects argue that Idaho Power's Petition is fatally flawed because it fails to cite any Order, law, or rule upon which it is based. The Projects further maintain that the Commission is prohibited by federal law from regulating QFs and, therefore, does not have authority to restrict its access to markets. The Projects state that granting the Petition would violate the Commerce Clause of the United States Constitution by restricting QFs from access to markets outside of Idaho's borders. The Projects ask that the Commission dismiss Idaho Power's Petition with prejudice. See Notice of Petition and Notice of Comment Deadline, Order No. 32332.

On August 8, 2011, both Western Desert and Tumbleweed filed Complaints against Idaho Power with the Public Utility Commission of Oregon ("Oregon Commission") seeking the Oregon Commission to require Idaho Power to tender Oregon Tariff Schedule 85 power purchase agreements to the Projects. Case Nos. UM 1552 (Tumbleweed) and UM 1553 (Western Desert). These Complaints are attached hereto as Attachment No. 1. On August 30, 2011, Idaho Power filed Answers to both Complaints asking the Oregon Commission to dismiss the Complaints, as the issues are more properly before the Idaho Commission in this proceeding. Idaho Power's Answers are attached hereto as Attachment No. 2. No other proceedings have been ordered or are pending in the Oregon dockets.

## **II. COMMENTS**

In these Comments, Idaho Power will: (1) clarify its request and (2) address the issues raised by Western Desert and Tumbleweed in their Answer and Motion to Dismiss.

**A. Clarification of Request: Where the Projects Have Chosen to Contract With Idaho Power, They Must Do So Pursuant to the Idaho Commission's Rates, Rules, and Procedures, and Not Those of the Oregon Commission.**

In their Answer and Motion to Dismiss the Projects completely misconstrue what it is that Idaho Power has asked the Commission to do. The Projects' first two substantive arguments are: "The Idaho Public Utilities Commission does not have jurisdiction over QFs and hence cannot order QFs to sell their electric output to a utility of Idaho Power's choosing." Answer and Motion, p. 4, and "The Commission is prohibited from regulating QFs." Answer and Motion, p. 7. Both of these arguments are red-herring issues. They are based entirely upon the Projects' misconstrued understanding of what it is that Idaho Power is asking of the Commission.

First of all, nowhere in Idaho Power's Petition, does Idaho Power assert that it is directing the Projects to sell their output to a utility of its choosing, nor does Idaho Power ask the Commission to make such direction. In its Petition for Declaratory Order, Idaho Power asks the Commission: ". . . to issue an Order determining that the Commission will exercise its jurisdiction over the proposed Public Utility Regulatory Policies Act of 1978 ("PURPA") Qualifying Facility ("QF") transactions proposed by Western Desert Energy 1, LLC ("Western Desert") and Tumbleweed Energy II, LLC ("Tumbleweed")." Petition, p. 1. Additionally, Idaho Power stated:

Idaho Power respectfully requests that the Commission issue a Declaratory Order finding that under the facts of these two proposed PURPA QF transactions, the Idaho Commission will exercise its jurisdiction in implementing PURPA regulations and require that such transactions be conducted pursuant to Idaho's PURPA rules, rates, and regulations. More specifically, Idaho Power requests findings by the Commission stating that a QF located in Idaho Power's service territory in the state of Idaho, interconnecting with Idaho Power's system in the state of Idaho, must contract with Idaho Power pursuant to the Idaho Commission's PURPA rules, rates, and regulations.

Petition, p. 12.

The Projects have misconstrued Idaho Power's statement above, ". . . must contract with Idaho Power . . ." to mean that Idaho Power is directing QFs "to sell their electric output to a utility of Idaho Power's choosing." This is obviously not the case. Idaho Power's statements above are clearly qualified and limited to ". . . under the facts of these two proposed PURPA QF transactions . . . ." These two PURPA projects have already chosen to sell their output to Idaho Power. Idaho Power is not directing them, nor asking the Commission to direct them, to sell their output to Idaho Power regardless of where their project is located or where their interconnection may be. What is clearly meant by the above language is that if these Projects choose to sell their output to Idaho Power, which they have done, that they must sell to Idaho Power pursuant to the Idaho Commission's PURPA rules, rates, and regulations, and not those of the Oregon Commission.

Consequently, the entire sections of the Projects' substantive arguments related to establishing that the Commission has no jurisdiction over a QF, Answer and Motion pp. 4-7, and that the Commission is prohibited from regulating QFs, Answer and Motion pp. 7-8, are completely without merit.

**B. Clarification of Request: Idaho Power Has Not Asked that the Projects Be Prohibited from Selling their Output in Other States, Nor That They Be Prohibited from Wheeling their Output to Third-Party Purchasers.**

The next substantive arguments put forth by the Projects are that, “Prohibiting QFs from selling their output in other states violates the interstate commerce clause.” Answer and Motion, p. 8, and “FERC rules specifically require utilities to wheel QF output to third party purchasers.” Answer and Motion, p. 10. These also are red-herring issues, and based upon the Project’s misconstrued understanding of what Idaho Power has asked of the Commission.

The Projects claim, “Idaho Power is asking this Commission to prohibit an Idaho based wind QF from transmitting its output across state lines.” Answer and Motion, p. 10. Nothing could be further from the truth. Idaho Power has not asked the Commission in any way, shape, or form to prohibit the Projects from transmitting their power anywhere they want/or can transmit it to. However, what Idaho Power is asking the Commission to do, is to order that if the Projects choose to sell their output to Idaho Power, that they must do so under the Idaho Commission’s rules, rates, and procedures. One key to this difference is best stated by the Projects themselves in the last substantive section of their Answer and Motion: “FERC rules specifically require utilities to wheel QF output to third party purchasers.” Answer and Motion, p. 10 (emphasis added). That may be the case, the problem here is that the Projects have not asked to wheel their output to a third-party purchaser, they have asked to wheel power to a different location on Idaho Power’s system in an attempt to manipulate their eligibility for avoided cost rates.

In fact, the authority cited in their Answer and Motion, 18 C.F.R. § 292.303(d) is titled, “*Transmission to other electric utilities.*” Answer and Motion, p. 10 (emphasis added). That federal regulation states, “If a qualifying facility agrees, an electric utility which would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit the energy or capacity to any other electric utility.” *Id.* (emphasis added). The intent of this provision is clearly not meant to enable a QF to accomplish what the Projects here propose: to require the interconnecting utility where the Projects are cited to wheel the power to a different point on that same utility’s system in another state, in order to avoid the pricing applicable to that utility set by the jurisdiction in which the Projects chose to cite themselves and interconnect with such utility. If the Projects desire Idaho Power to wheel their output across its system, Idaho Power will accommodate such request in a non-discriminatory manner according to the provisions of its Open Access Transmission Tariff (“OATT”) as it is required to do. This, however, is an entirely different issue and question than whether Idaho Power is required to purchase the Project’s output pursuant to the Oregon Commission’s rates and rules. The Projects are located in Idaho, interconnect with Idaho Power’s system in Idaho, and have chosen to contract for the sale of their output with Idaho Power. Under this scenario, the proposed PURPA transaction is under the jurisdiction of the Idaho Commission.

**C. The Petition Complies With the Commission’s Procedural Requirements.**

The Projects claim that Idaho Power’s Petition is somehow procedurally insufficient, alleging that it fails to cite to a statute or rule, and further making the inflammatory and dramatic claim that, “none of the four cited legal authorities provide

even a modicum of support for the incredible request that the Commission close Idaho's borders to exported wholesale electric power." Answer and Motion, pp. 3-4. The Projects even question the way in which the Petition cites to the Commission's Rules of Procedure in footnote 1 of the Answer and Motion, p. 3.<sup>1</sup> Idaho Power has not requested that the Commission "close Idaho's borders to exported wholesale electric power" and thus would not expect its cited legal authorities to stand for that proposition either. However, the Petition does contain cited legal authorities in the form of Commission Rules and Orders, all of which are based upon statutory and other legal authority including Federal Energy Regulatory Commission ("FERC") and the Idaho Supreme Court, as well as citation to Idaho Supreme Court case law, and the Code of Federal Regulations. Petition, pp. 1, 4, 5, 6, 7, 8, 9, and 11.

RP 101 states:

Form of Petition. Any person petitioning for a declaratory ruling must substantially follow this form. . . . Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which petitioner relies to support the petition. Legal assertions in these paragraphs may be accompanied by citations of cases and/or statutory provisions.

(emphasis added). To claim that citation to over eight different Commission Orders from at least four different cases, as well as to four Idaho Supreme Court cases is insufficient to substantially indicate the applicable statutes, orders, rules, or other controlling law that are relied upon by the Petitioner is disingenuous at best. The Petition contains over six pages of discussion and citation to Commission Orders and Idaho Supreme Court case law discussing PURPA. The cases are examined,

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<sup>1</sup> See RP 6, IDAPA 31.01.01.006, "In documents submitted to the Commission or issued by the Commission, these rules may be cited as Idaho Public Utilities Commission Rule of Procedure (IPUCRP or RP). For example, this rule may be cited as RP 6."



analyzed, and decided in reference to Idaho Code, Title 61, Sections 201 and 210 of PURPA, as well as the implementing rules and regulations of FERC, included and cited here for the record. Idaho Code, Title 61, 16 U.S.C. § 824, 18 C.F.R. § 292.

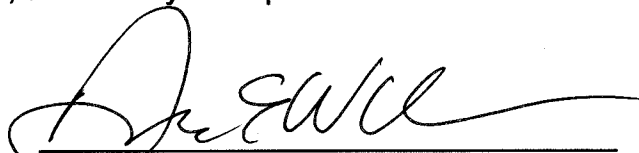
The legal authorities cited and discussed in the Petition, (*Earth Power Energy and Minerals, Inc. vs. Idaho Power Company*, Case No. IPC-E-92-29, Order Nos. 25174, 25249 (1993); *Island Power Company, Inc. vs. PacifiCorp, dba Utah Power & Light Company*, Case No. UPL-E-93-4, Order Nos. 25245 (1993), 25528 (1994); *Vaagen Bros. Lumber, Inc. vs. The Washington Water Power Company*, Case No. WWP-E-94-6, Order No. 25176 (1994); Case No. GNR-E-11-01, Order No. 32262; Order No. 32176; Order No. 32212; *The Public Utility Regulatory Policies Act of 1978*, 16 U.S.C. § 824; and 18 C.F.R. § 292), are more than sufficient to substantially indicate the applicable statutes, orders, rules, or other controlling law that are relied upon by the Petitioner and to meet the procedural requirements of RP 101.

### **III. CONCLUSION**

Idaho Power respectfully requests that the Commission issue a Declaratory Order finding that under the facts of these two proposed PURPA QF transactions, the Idaho Commission will exercise its jurisdiction in implementing PURPA regulations and require that such transactions be conducted pursuant to Idaho's PURPA rules, rates, and regulations if the Projects choose to sell their output to Idaho Power. More specifically, Idaho Power requests findings by the Commission stating that a QF located in Idaho Power's service territory in the state of Idaho, interconnecting with Idaho Power's system in the state of Idaho, if it chooses to contract with Idaho Power must do so pursuant to the Idaho Commission's PURPA rules, rates, and regulations, and not

those of the Oregon Commission. Such a QF project cannot avoid the application of Idaho's rates, rules, and regulations by proposing to wheel its power across Idaho Power's system purportedly to make a delivery back to Idaho Power in Idaho Power's Oregon service territory, and demand different PURPA rates, rules, and regulations established by the Oregon Commission. To allow such a circumstance to take place would allow a gross manipulation and avoidance of the Idaho Commission's rules and regulations designed and implemented to protect the customers of Idaho Power and the public interest.<sup>2</sup>

Respectfully submitted at Boise, Idaho, this 8<sup>th</sup> day of September 2011.

A handwritten signature in black ink, appearing to read "Don Walker", written over a horizontal line.

DONOVAN E. WALKER  
Attorney for Idaho Power Company

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<sup>2</sup> Power supply expenses for Idaho and Oregon PURPA projects are not directly assigned, but are jurisdictionalized. Both are paid approximately 95 percent by Idaho customers and 5 percent by Oregon customers.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8<sup>th</sup> day of July 2011 I served a true and correct copy of the within and foregoing COMMENTS OF IDAHO POWER COMPANY upon the following named parties by the method indicated below, and addressed to the following:

### Commission Staff

Kristine Sasser  
Deputy Attorney General  
Idaho Public Utilities Commission  
472 West Washington  
P.O. Box 83720  
Boise, Idaho 83720-0074

☐ Hand Delivered  
☒ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [Kris.Sasser@puc.idaho.gov](mailto:Kris.Sasser@puc.idaho.gov)

Sandy Sanderson, Consultant  
Western Desert Energy 1, LLC  
1770 West State Street #317  
Boise, Idaho 83702

☐ Hand Delivered  
☒ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [sandy@greenenergywest.com](mailto:sandy@greenenergywest.com)

Richard Hansen, Manager  
Tumbleweed Energy II, LLC  
7154 W. State Street #330  
Boise, Idaho 83714

☐ Hand Delivered  
☒ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [engrwevr@hotmail.com](mailto:engrwevr@hotmail.com)

Peter J. Richardson  
RICHARDSON & O'LEARY, PLLC  
515 North 27<sup>th</sup> Street  
P.O. Box 7218  
Boise, Idaho 83702

☐ Hand Delivered  
☒ U.S. Mail  
☐ Overnight Mail  
☐ FAX  
☒ Email [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)

  
Donovan E. Walker

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-14**

**IDAHO POWER COMPANY**

**ATTACHMENT NO. 1**

Peter J. Richardson (OSB# 06668)  
Gregory M. Adams (OSB# 101779)  
Richardson & O'Leary, PLLC  
515 N. 27<sup>th</sup> Street  
P.O. Box 7218  
Boise, Idaho 83702  
Telephone: (208) 938-7901  
Fax: (208) 938-7904  
[peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
[greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

Attorneys for Complainant

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON**

Tumbleweed Energy II, LLC, Complainant,	)	Case No. _____
	)	
vs.	)	FORMAL COMPLAINT
	)	OF TUMBLEWEED ENERGY, LLC
IDAHO POWER COMPANY,	)	AGAINST IDAHO POWER
Defendant.	)	COMPANY

---

**PARTIES**

This is a formal complaint filed by Tumbleweed Energy, LLC with the Public Utility Commission of Oregon (the "Commission") pursuant to Oregon Administrative Rules and Oregon Revised Statutes. Tumbleweed Energy II, LLC ("Tumbleweed") requested that Idaho Power Company ("Idaho Power") execute a standard Public Utility Regulatory Policies Act of 1978 ("PURPA") power purchase agreement ("PPA") for qualifying facilities ("QFs") under ten megawatts pursuant to Idaho Power's Tariff Schedule 85. It has an anticipated on line date in the summer of 2012.

Because Tumbleweed's project happens to be located in Idaho, and will be interconnected to Idaho Power's electric system in Idaho, Idaho Power has refused to offer a contract or accept

1 contract or accept deliveries of Tumbleweed's electrical output in its Oregon service territory  
2 pursuant to Oregon's avoided cost rules and regulations.

3 **PRELIMINARY MATTERS**

4 Copies of all pleadings and other correspondence in this matter should be served upon  
5 counsel for Tumbleweed Energy II LLC at:

6 Peter J. Richardson  
7 Gregory M. Adams  
8 Richardson & O'Leary, PLLC  
9 515 N. 27<sup>th</sup> Street  
10 P.O. Box 7218  
11 Boise, Idaho 83702  
12 Telephone: (208) 938-7901  
13 Fax: (208) 938-7904  
14 [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
15 [greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

16 **In support of this Complaint, Tumbleweed alleges as follows:**

17 **IDENTITY OF PARTIES**

18 1. Idaho Power is an Idaho Corporation with its principal place of business at 1221  
19 West Idaho Street, Boise, Idaho 83702. Idaho Power Company is an electric company and a  
20 public utility subject to the jurisdiction and regulation of the Oregon Public Utility Commission.  
21 In addition to the Oregon Public Utility Commission, Idaho Power is subject to the jurisdiction  
22 the Idaho Public Utilities Commission and the Federal Energy Regulatory Commission.

23 2. Tumbleweed LLC is an Idaho limited liability company. Tumbleweed has the  
24 rights to develop and dispose of the output of the Tumbleweed Wind project, which is a  
25 qualifying facility under the Public Utility Regulatory Policies Act of 1978. Its QF number is  
26 QF11-380.

27 **JURISDICTION**

3. This case involves PURPA's avoided cost provisions and FERC's implementing regulations thereto, which PURPA directs states to implement. *See* 16 U.S.C. § 824a-3 (a)-(g); *FERC v. Mississippi*, 456 U.S. 742, 751 (1982). In Oregon, the Commission possesses jurisdiction over complaints regarding the obligation of utilities to enter into PURPA contracts at avoided cost rates. *See* Oregon Revised Statutes Title 57, Chapter 758.

## FACTUAL BACKGROUND

4. Tumbleweed, has been actively engaged in the development of a wind electric generating project in Elmore County, Idaho, East of Boise, Idaho that is designed to generate 10 MW of nameplate capacity.

5. Tumbleweed will be physically interconnected to Idaho Power's electric system in Elmore County, Idaho.

6. Tumbleweed has requested, and Idaho Power has refused to offer, Idaho Power's standard Oregon Schedule 85 power purchase agreement.

7. Tumbleweed is in the process of obtaining a wheeling agreement with Idaho Power's transmission business unit for the delivery of all of the output from the project to Idaho Power's service territory in Oregon. Tumbleweed intends to pay to wheel its output to Idaho Power's Oregon service territory for sale in Oregon.

8. Tumbleweed has made substantial investments in development of the project. The project is mature and entitled to obligate itself to a long-term PPA for a PURPA QF pursuant to Idaho Power's Schedule 85, according to contract terms contained in the tariff contract.

1           9.     Tumbleweed is ready and willing to enter into the standard PURPA PPA with  
2 Idaho Power pursuant to Schedule 85.

3  
4                                   **LEGAL CLAIM**

5                                   **Complainant's Claims for Relief**

6           **Idaho Power is in violation of PURPA, FERC's regulations and orders, and the**  
7 **Commission's orders and regulations by refusing to offer a power purchase agreement to**  
8 **Tumbleweed.**

9           10.    Tumbleweed re-alleges and incorporates all preceding paragraphs.

10          11.    Tumbleweed has attempted in good faith to engage in negotiations to obtain Idaho  
11 Power's standard Schedule 85 power purchase agreement.

12          12.    Idaho Power is very familiar with the specifics of the project and possesses all  
13 information necessary to complete and execute a standard tariff PPA.

14          13.    Tumbleweed's interconnection and wheeling arrangements are not under the  
15 jurisdiction of the Oregon Commission.

16          14.    Idaho Power's obligation to purchase the output of Tumbleweed's QF project  
17 arises upon Tumbleweed's commitment to sell and deliver its output to Idaho Power in Oregon.

18          15.    It is not a requirement of PURPA or the Oregon implementing rules that a QF sell  
19 its output to the utility to which it interconnects.

20          16.    It is not a requirement of PURPA or the Oregon implementing rules that a QF  
21 sell its output under the implementing rules of the state in which it is located.

22          17.    The State of Idaho has not implemented PURPA in a manner that encourages the  
23 development of wind energy QFs.



18. The State of Oregon has implemented PURPA in a manner that encourages the development of wind energy QFs, and therefore it is reasonable and in the public interest to order Idaho Power to comply with its tariff and offer a Schedule 85 power purchase agreement to Tumbleweed.

## PRAAYER FOR RELIEF

WHEREFORE, Tumbleweed LLC respectfully requests that the Commission issue an

Order:

1. Declaring that Idaho Power is in violation of PURPA, FERC's implementing regulations, and this Commission's orders.

2. Requiring Idaho Power to tender its standard Tariff Schedule 85 power purchase agreement to Tumbleweed.

3. Granting any other relief that the Commission deems necessary.

Respectfully submitted this 8 day of August, 2011

**RICHARDSON AND O'LEARY, PLLC**


Per J. Richard

Peter J. Richardson (OSB# 06668)  
Gregory M. Adams (OSB# 101779)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of August, 2011, a true and correct copy of the within and foregoing COMPLAINT OF TUMBLEWEED ENERGY AGAINST IDAHO POWER was served by ELECTRONIC MAIL and US MAIL, to:

Donovan E. Walker  
Lisa Nordstrom  
Idaho Power Company  
1221 West Idaho Street  
Boise, Idaho 83707-0070  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

  
\_\_\_\_\_  
Nina Curtis

Peter J. Richardson (OSB# 06668)  
Gregory M. Adams (OSB# 101779)  
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[greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

Attorneys for Complainant

**BEFORE THE  
PUBLIC UTILITY COMMISSION OF OREGON**

Western Desert Energy, LLC, Complainant,	)	Case No. _____
	)	
vs.	)	FORMAL COMPLAINT
	)	OF WESTERN DESERT ENERGY I,
IDAHO POWER COMPANY,	)	LLC AGAINST IDAHO POWER
Defendant.	)	COMPANY

---

**PARTIES**

This is a formal complaint filed by Western Desert Energy, LLC with the Public Utility Commission of Oregon (the "Commission") pursuant to Oregon Administrative Rules and Oregon Revised Statutes. Western Desert Energy, LLC ("Western Desert") requested that Idaho Power Company ("Idaho Power") execute a standard Public Utility Regulatory Policies Act of 1978 ("PURPA") power purchase agreement ("PPA") for qualifying facilities ("QFs") under ten megawatts pursuant to Idaho Power's Tariff Schedule 85. It has an anticipated on line date in the summer of 2012.

Because Western Desert's project happens to be located in Idaho, and will be interconnected to Idaho Power's electric system in Idaho, Idaho Power has refused to offer a

1 contract or accept deliveries of Western Desert's electrical output in its Oregon service territory  
2 pursuant to Oregon's avoided cost rules and regulations.

3 **PRELIMINARY MATTERS**

4 Copies of all pleadings and other correspondence in this matter should be served upon  
5 counsel for Western Desert LLC at:

6 Peter J. Richardson  
7 Gregory M. Adams  
8 Richardson & O'Leary, PLLC  
9 515 N. 27<sup>th</sup> Street  
10 P.O. Box 7218  
11 Boise, Idaho 83702  
12 Telephone: (208) 938-7901  
13 Fax: (208) 938-7904  
14 [peter@richardsonandoleary.com](mailto:peter@richardsonandoleary.com)  
15 [greg@richardsonandoleary.com](mailto:greg@richardsonandoleary.com)

16 **In support of this Complaint, Western Desert LLC alleges as follows:**

17 **IDENTITY OF PARTIES**

18 1. Idaho Power is an Idaho Corporation with its principal place of business at 1221  
19 West Idaho Street, Boise, Idaho 83702. Idaho Power Company is an electric company and a  
20 public utility subject to the jurisdiction and regulation of the Oregon Public Utility Commission.  
21 In addition to the Oregon Public Utility Commission, Idaho Power is subject to the jurisdiction  
22 the Idaho Public Utilities Commission and the Federal Energy Regulatory Commission.

23 2. Western Desert LLC is an Oregon limited liability company. Western Desert  
24 has the rights to develop and dispose of the output of the Western Desert Wind project, which is  
25 a qualifying facility under the Public Utility Regulatory Policies Act of 1978. Its QF number is  
26 QF11-387.

27 **JURISDICTION**

3. This case involves PURPA's avoided cost provisions and FERC's implementing regulations thereto, which PURPA directs states to implement. *See* 16 U.S.C. § 824a-3 (a)-(g); *FERC v. Mississippi*, 456 U.S. 742, 751 (1982). In Oregon, the Commission possesses jurisdiction over complaints regarding the obligation of utilities to enter into PURPA contracts at avoided cost rates. *See* Oregon Revised Statutes Title 57, Chapter 758.

## FACTUAL BACKGROUND

4. Western Desert, has been actively engaged in the development of a wind electric generating project in Owyhee County, Idaho, West of Jordan Valley, Oregon that is designed to generate 5 MW of nameplate capacity.

5. Western Desert will be physically interconnected to Idaho Power's electric system in Owyhee County, Idaho.

6. Western Desert has requested, and Idaho Power has refused to offer, Idaho Power's standard Oregon Schedule 85 power purchase agreement.

7. Western Desert is in the process of obtaining a wheeling agreement with Idaho Power's transmission business unit for the delivery of all of the output from the project to Idaho Power's service territory in Oregon. Western Desert intends to pay to wheel its output to Idaho Power's Oregon service territory for sale in Oregon.

8. Western Desert has made substantial investments in development of the project. The project is mature and entitled to obligate itself to a long-term PPA for a PURPA QF pursuant to Idaho Power's Schedule 85, according to contract terms contained in the tariff contract.

1           9.     Western Desert is ready and willing to enter into the standard PURPA PPA with  
2 Idaho Power pursuant to Schedule 85.

3  
4                                   **LEGAL CLAIM**

5                                   **Complainant's Claims for Relief**

6           **Idaho Power is in violation of PURPA, FERC's regulations and orders, and the**  
7 **Commission's orders and regulations by refusing to offer a power purchase agreement to**  
8 **Western Desert.**

9           10.    Western Desert LLC re-alleges and incorporates all preceding paragraphs.

10          11.    Western Desert Wind has attempted in good faith to engage in negotiations to  
11 obtain Idaho Power's standard Schedule 85 power purchase agreement.

12          12.    Idaho Power is very familiar with the specifics of the project and possesses all  
13 information necessary to complete and execute a standard tariff PPA.

14          13.    Western Desert's interconnection and wheeling arrangements are not under the  
15 jurisdiction of the Oregon Commission.

16          14.    Idaho Power's obligation to purchase the output of Western Desert's QF project  
17 arises upon Western Desert's commitment to sell and deliver its output to Idaho Power in  
18 Oregon.

19          15.    It is not a requirement of PURPA or the Oregon implementing rules that a QF sell  
20 its output to the utility to which it interconnects.

21          16.    It is not a requirement of PURPA or the Oregon implementing rules that a QF  
22 sell its output under the implementing rules of the state in which it is located.

17. The State of Idaho has not implemented PURPA in a manner that encourages the development of wind energy QFs.

18. The State of Oregon has implemented PURPA in a manner that encourages the development of wind energy QFs, and therefore it is reasonable and in the public interest to order Idaho Power to comply with its tariff and offer a Schedule 85 power purchase agreement to Western Desert.

## PRAYER FOR RELIEF

WHEREFORE, Western Desert respectfully requests that the Commission issue an Order:

1. Declaring that Idaho Power is in violation of PURPA, FERC's implementing regulations, and this Commission's orders.

2. Requiring Idaho Power to tender its standard Tariff Schedule 85 power purchase agreement to Western Desert.

3. Granting any other relief that the Commission deems necessary.

Respectfully submitted this 8 day of August, 2011

**RICHARDSON AND O'LEARY, PLLC**

Pat J. Richards

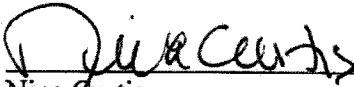
Peter J. Richardson (OSB# 06668)

**Gregory M. Adams (OSB# 101779)**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of August, 2011, a true and correct copy of the within and foregoing COMPLAINT OF WESTERN DESERT ENERGY AGAINST IDAHO POWER was served by ELECTRONIC MAIL and US MAIL, to:

Donovan E. Walker  
Lisa Nordstrom  
Idaho Power Company  
1221 West Idaho Street  
Boise, Idaho 83707-0070  
[dwalker@idahopower.com](mailto:dwalker@idahopower.com)  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

  
\_\_\_\_\_  
Nina Curtis



**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION**

**CASE NO. IPC-E-11-14**

**IDAHO POWER COMPANY**

**ATTACHMENT NO. 2**

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

3                                   **UM 1552**

4  
5   In the Matter of  
6   TUMBLEWEED ENERGY II, LLC,  
7                                   Complainant,  
8   v.  
9   IDAHO POWER COMPANY,  
10                                   Defendant.

**IDAHO POWER COMPANY'S ANSWER**

11  
12       1.     Pursuant to ORS 756.512(1), OAR 860-001-0400(3), and OAR 860-029-  
13   0100(7) Idaho Power Company ("Idaho Power" or "Company") hereby files with the Public  
14   Utility Commission of Oregon ("Commission") its Answer to the Complaint filed by  
15   Tumbleweed Energy II, LLC ("Tumbleweed Energy" or "Tumbleweed") on August 8, 2011,  
16   and served on Idaho Power on August 10, 2011.

17                                   **I.    INTRODUCTION**

18       2.     Tumbleweed Energy is an Idaho Limited Liability Company that is developing  
19   a proposed 10 megawatt ("MW") wind farm to be built in Elmore County, Idaho.  
20   Tumbleweed has certified the Elmore County wind farm as a Qualifying Facility ("QF")  
21   under the Public Utility Regulatory Policies Act ("PURPA"). Tumbleweed will be  
22   interconnected with Idaho Power in Idaho and proposes to deliver power to Idaho Power  
23   in Idaho. Despite these facts, Tumbleweed is asking the Commission to require Idaho  
24   Power to offer Tumbleweed an Oregon QF contract to purchase Tumbleweed's produced  
25   energy at Oregon avoided cost rates. The Commission should deny Tumbleweed's  
26   complaint.

3. Tumbleweed is located in Idaho Power's Idaho service territory, interconnects to Idaho Power's system in Idaho, and has no reason to request that Idaho Power transport the project's output to itself in Oregon and purchase that power under an Oregon contract—except in order to exploit the current, and Idaho power believes temporary, difference between avoided cost rates in Oregon and Idaho. The Commission should not allow Tumbleweed to game the system in this fashion. If Tumbleweed wishes to take advantage of its QF status to obtain a PURPA contract for this project with Idaho Power, it must do so according to the procedures required in the Company's Idaho jurisdiction. For this reason the Commission should deny Tumbleweed's complaint.

## II. BACKGROUND

11 **A. The Idaho Public Utilities Commission ("IPUC") Recently Modified Its**  
12 **Approved Methods for Calculating the Avoided Cost.**

4. On June 8, 2011, the IPUC issued Order No. 32262. In that order the IPUC made permanent its temporary reduction in the eligibility cap for the published avoided cost rate from 10 average MW ("aMW") to 100 kilowatts ("kW") for wind and solar QFs.<sup>1</sup> Thus, all wind QFs with a capacity greater than 100 kW must enter into a negotiated avoided cost rate that is based on the Integrated Resource Plan ("IRP")-based avoided cost methodology. Wind QFs with a capacity of less than 100 kW remain eligible for the published avoided cost rate, which is determined using the Surrogate Avoidable Resource ("SAR") avoided cost methodology. As a result of the IPUC's recent ruling, Tumbleweed's 10 MW QF would be ineligible for the SAR based avoided cost rate in Idaho and instead, it would be obligated to negotiate a rate based upon the IRP-based methodology. Currently,

24 <sup>1</sup> *Re the Commission's Investigation into Disaggregation and an Appropriate Published Avoided Cost*  
25 *Rate Eligibility Cap Structure for PURPA Qualifying Facilities*, Case No. GNR-E-11-01, Order No.  
32262 at 8 (June 8, 2011). In Order No. 32176 in the GNR-E-10-04 case the IPUC temporarily  
26 reduced the eligibility cap for wind and solar QFs from 10 aMW to 100 kW. The IPUC affirmed this  
decision in Order No. 32212 in that same case.

1 the IRP-based methodology results in a lower avoided cost rate for wind projects. As  
2 described in detail in the Company's Reply Comments in Docket UM 1396, this is largely  
3 because the IRP-based methodology considers a wind project's lower peak-hour capacity  
4 factor when determining the capacity cost and considers the energy quantity and supply  
5 shape that a specific wind project provides when determining the energy costs.<sup>2</sup> Because  
6 the IRP-based methodology is more comprehensive than the SAR methodology, it results  
7 in a more accurate avoided cost.

8 **B. Idaho Power Has Requested that the Commission Adopt Similar Modifications**  
9 **to Those Adopted by the IPUC.**

10 5. The avoided cost calculation in Oregon is very similar to that in Idaho, with  
11 the exception of the eligibility caps for QFs to receive the published rate. Currently in  
12 Oregon all QFs with a capacity of less than 10 MW are eligible for the Company's  
13 published avoided cost rate. Like the published rate in Idaho, the Oregon published rate is  
14 based on the SAR avoided cost methodology. Unlike Idaho, however, because the  
15 eligibility cap is much greater in Oregon, many more QFs qualify for the SAR-based  
16 published rates. For QF projects with a capacity greater than 10 MW, the IRP-based  
17 methodology forms the basis for the Company's negotiated avoided cost rates. Under the  
18 current system, in Oregon a 10 MW wind QF is eligible for the Company's SAR-based  
19 published avoided cost, which is higher than the IRP-based avoided cost it would receive  
20 in Idaho.

21 6. In Docket UM 1396, the Company has requested that the Commission  
22 authorize it to use its IRP-based methodology to calculate its avoided costs for all  
23  
24

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25  
26 <sup>2</sup> See *Re Investigation into Resource Sufficiency*, Docket UM 1396, Idaho Power's Reply Comments  
(June 28, 2011).

1 resource types and sizes.<sup>3</sup> Allowing the Company to use the IRP-based methodology  
2 more broadly would better align the avoided cost rates in Idaho and Oregon and would  
3 likely make type of scheme Tumbleweed proposes here unnecessary.<sup>4</sup> A decision on the  
4 Company's request in Docket UM 1396 is currently pending.

5 **C. Tumbleweed's Proposed Transaction is Regulatory Arbitrage.**

6 7. On June 24, 2011, Tumbleweed hand delivered to Idaho Power its  
7 Certification of QF Status for a Small Power Production or Cogeneration Facility along with  
8 a request for a PURPA QF contract in Oregon. Simultaneously, Tumbleweed also  
9 requested firm point-to-point transmission service for 10 MW of capacity from its  
10 interconnection with Idaho Power in the state of Idaho for delivery to Idaho Power at an  
11 unspecified point in Idaho Power's Oregon jurisdiction. Tumbleweed has requested that  
12 Idaho Power engage in a largely fictitious transaction whereby the Company is required to:  
13 (1) interconnect with Tumbleweed in Idaho; (2) wheel Tumbleweed's power to itself at a  
14 location somewhere in the Company's Oregon jurisdiction; and (3) buy Tumbleweed's  
15 power not at the Idaho point of delivery but at the unspecified point in Oregon to which the  
16 Company is expected to transmit the power. This scheme is a clear and unapologetic  
17 attempt to game the system to the detriment of Idaho Power's ratepayers and results in  
18 system inefficiencies resulting from the Company "wheeling" the QFs output to itself in  
19 another jurisdiction.

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23 <sup>3</sup> See *Re Investigation into Resource Sufficiency*, Docket UM 1396, Idaho Power's Opening  
24 Comments (May 13, 2011); *Re Investigation into Resource Sufficiency*, Docket UM 1396, Idaho  
Power's Reply Comments (June 28, 2011).

25 <sup>4</sup> Oregon PURPA expenses are not directly assigned to Oregon customers; approximately 95 percent  
26 are paid by the Company's Idaho customers. Thus, approval of the project's proposed transaction  
would place the Company in an untenable position whereby it must request rate recovery from the  
IPUC for PURPA expenses that the IPUC has already determined to be excessive.

1  
2 **D. A Petition for Declaratory Order Is Currently Pending before the IPUC Related to Tumbleweed's Proposed Transaction.**

3 8. In response to Tumbleweed's requests for point-to-point transmission and an  
4 Oregon QF contract, on July 8, 2011, the Company filed a Petition for Declaratory Order  
5 with the IPUC ("Petition").<sup>5</sup> In the Petition, Idaho Power requested that the IPUC issue an  
6 order declaring that the IPUC would exercise jurisdiction over this proposed PURPA  
7 transaction because the QF is located in the Company's Idaho service territory and  
8 interconnected with the Company's system in Idaho, and further that if Tumbleweed  
9 wanted to enter into a PURPA transaction with the Company it must do so pursuant to its  
10 Idaho PURPA procedures and contracts.

11 9. On July 29, 2011, Tumbleweed filed an answer to the Petition.<sup>6</sup> In its answer  
12 Tumbleweed asserted that because of the IPUC's recent decision to lower the eligibility  
13 cap for wind projects and because the IRP-based methodology results in a lower avoided  
14 cost rate than the SAR method, "Tumbleweed has decided not to sell the output from its  
15 QF wind project to any utility that is operating under the jurisdiction of the [IPUC]."<sup>7</sup>

16 10. Idaho Power's Petition is currently pending before the IPUC.

17 **III. ANSWER**

18 11. Idaho Power hereby answers Tumbleweed's Complaint as follows. Idaho  
19 Power denies any allegation not specifically admitted above and reserves the right to  
20

21 <sup>5</sup> *Re Idaho Power Company's Petition for Declaratory Order Regarding PURPA Jurisdiction*, Case No.  
22 IPC-E-11-14, Petition for Declaratory Order (July 8, 2011). The Company's Petition addressed both  
23 this transaction with Tumbleweed and a similar transaction with Western Desert Energy, LLC.  
Western Desert Energy, LLC filed a complaint with the Commission that is nearly identical to  
Tumbleweed's. That complaint has been docketed as UM 1553.

24 <sup>6</sup> *Re Idaho Power Company's Petition for Declaratory Order Regarding PURPA Jurisdiction*, Case No.  
25 IPC-E-11-14, Answer and Motion to Dismiss by Western Dessert [sic] Energy and Tumbleweed  
Energy (July 29, 2011).

26 <sup>7</sup> *Id.* at 2.

1 supplement this Answer if Tumbleweed amends its Complaint. With respect to the  
2 particular paragraphs of the Complaint, Idaho Power answers as follows:

3 **IDENTITY OF THE PARTIES**

4 12. The factual allegations in the first sentence of paragraph 1 are admitted. The  
5 remaining legal conclusions require no response. That said, Idaho Power admits that it is  
6 a public utility subject to the jurisdiction of the Commission, the IPUC, and the Federal  
7 Energy Regulatory Commission ("FERC").

8 13. Idaho Power has insufficient information or knowledge regarding the truth of  
9 the allegations in paragraph 2 of the Complaint, which relate to the identity and corporate  
10 structure of Tumbleweed. The Company acknowledges that Tumbleweed has provided to  
11 it a certification of its QF status and the Company does not dispute this status.

12 **JURISDICTION**

13 14. The allegations in paragraph 3 identify the applicable provisions of PURPA,  
14 FERC's implementing regulations, and Oregon's PURPA-implementing statutes. The  
15 allegations in this paragraph are conclusions of law and require no response.<sup>8</sup>

16 **FACTUAL BACKGROUND**

17 15. Idaho Power has insufficient information or knowledge regarding the truth of  
18 the allegations in paragraph 4 of the Complaint, which describe Tumbleweed's  
19 development efforts. The Company stipulates, however, that it has been advised by  
20 Tumbleweed that Tumbleweed is in the process of developing a wind electric generating  
21 project that is located entirely within Elmore County, Idaho. The Company also stipulates

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23 <sup>8</sup> The Company notes that this paragraph of the Complaint fails to reference OAR 860-029-0100,  
24 which "applies to a complaint, filed pursuant to ORS 756.500, regarding the negotiation of a  
25 Qualifying Facility power purchase agreement." It appears that the Complaint is procedurally  
26 deficient for failing to include all of the information required by this rule and does not appear to comply  
with the other procedural requirements of the rule, e.g. the 60 day waiting period. While the  
Company believes that this Complaint is subject to the requirements of that rule, it does not intend to  
seek a remedy for the Complaint's alleged procedural deficiencies.

1 that Tumbleweed has indicated to it that the project is designed to have a 10 MW  
2 nameplate capacity. The Company stipulates that no part of the project is located in  
3 Oregon.

4 16. The Company admits the allegations in paragraph 5 that Tumbleweed's wind  
5 QF will be interconnected to the Idaho Power electric system in Idaho.

6 17. The allegations in paragraph 6 are admitted. Idaho Power refused to offer  
7 Tumbleweed its standard Oregon QF contract because Tumbleweed is a QF located in  
8 the Company's Idaho service territory and interconnected to the Company's system in the  
9 Company's Idaho service territory. As such, the Company maintains that if Tumbleweed  
10 wants to enter into a PURPA contract with Idaho Power it must do so in accordance with  
11 the terms and conditions dictated by Idaho law and subject to the jurisdiction of the IPUC.

12 18. The allegations in paragraph 7 are admitted in that the Company agrees that  
13 Tumbleweed has requested point-to-point transmission from the point of interconnection in  
14 Idaho to an unspecified location in the Company's Oregon service territory. The Company  
15 admits that Tumbleweed has indicated that it intends to pay for the wheeling expense  
16 associated with its request.

17 19. Idaho Power has insufficient information or knowledge regarding the truth of  
18 the allegations in first sentence of paragraph 8 of the Complaint. With respect to the  
19 second sentence of paragraph 8, the Company has insufficient information or knowledge  
20 regarding the truth of the allegations related to the maturity of Tumbleweed's QF. The  
21 remaining allegations in paragraph 8 are conclusions of law that require no response.  
22 However, the Company disputes the claim that Tumbleweed is entitled to a "long-term  
23 [power purchase agreement] for a PURPA QF pursuant to Idaho Power's [Oregon tariff]  
24 Schedule 85." Because Tumbleweed is located in Idaho and intends to deliver its output  
25 in Idaho, the Company maintains that Tumbleweed is entitled to a long-term PPA for a  
26 PURPA QF pursuant to the Company's *Idaho* contract.



1       20.     Idaho Power has insufficient knowledge and information to admit or deny the  
2     allegations in paragraph 9 relating to willingness of Tumbleweed to enter into a standard  
3     PURPA contract.

4                   **ANSWER TO COMPLAINANT'S CLAIM FOR RELIEF**

5     **(Idaho Power is in violation of PURPA, FERC's regulations and orders, and the**  
6     **Commission's orders and regulations by refusing to offer a power purchase**  
7                   **agreement to Tumbleweed.)**

8       21.     See answers to paragraphs 1 through 20 above.

9       22.     The allegations in paragraph 11 are admitted in that the Company  
10    acknowledges that Tumbleweed has made a formal request for an offer of a standard  
11    Schedule 85 power purchase agreement. The Company lacks sufficient knowledge to  
12    admit or deny whether "Tumbleweed has attempted in good faith to engage in  
13    negotiations" to obtain an Oregon contract.

14    23.     The allegations in paragraph 12 are admitted to the extent that Tumbleweed  
15    has provided the Company with its completed FERC Form 556, which is the Certification  
16    of QF Status for Small Power Production or Cogeneration Facility. The Company also  
17    admits that Tumbleweed provided to it on June 24, 2011, a formal request for a standard  
18    Schedule 85 contract. That request included the information required by Schedule 85.

19    24.     The allegations of paragraph 13 are legal conclusions that require no  
20    response. The Company agrees, however, that the interconnection and wheeling  
21    arrangements proposed by Tumbleweed that would require Idaho Power to transmit the  
22    QF's output to itself and then "buy" the power at some unspecified location in Oregon are  
23    not subject to the Commission's jurisdiction.

24    25.     The allegations of paragraph 14 are legal conclusions that require no  
25    response. The Company agrees that it has an obligation to purchase the output of a QF  
26    subject to the terms of PURPA and its implementing regulations and Oregon's PURPA

1 implementation statutes and regulations. The Company disagrees with Tumbleweed's  
2 legal conclusion that it is obligated to purchase in Oregon the output of a QF located in  
3 Idaho that interconnects with the Company's system in Idaho. The Company maintains  
4 that its purchase obligations in this case are subject to the jurisdiction of the state of Idaho  
5 and the IPUC.

6 26. The allegations of paragraph 15 are legal conclusions that require no  
7 response. The Company agrees that neither PURPA nor the implementing regulations or  
8 Oregon's implementing statutes require that a QF sell its output to the interconnecting  
9 utility. Indeed, FERC's rules specifically allow a QF to interconnect to one utility and sell  
10 its output to another utility.<sup>9</sup> But that is not the issue presented in this case. Here,  
11 Tumbleweed is asking the Commission to require Idaho Power to wheel the QFs output  
12 out of the state of Idaho and then "buy" the output in Oregon. Tumbleweed proposes an  
13 entirely fictional transaction designed to exploit the differences between the avoided cost  
14 rates in Oregon and Idaho. FERC's rules are clear: interconnecting utilities are obligated  
15 to "transmit the energy or capacity [from an interconnected QF] to *any other electric*  
16 *utility*."<sup>10</sup> Idaho Power is not "any other electric utility," it is the same utility to which the QF  
17 is directly connected. Here, Tumbleweed is supplying its energy and capacity directly to  
18 Idaho Power in Idaho. Therefore, the transaction should be subject to the jurisdiction of  
19 the state of Idaho and the IPUC.

20 27. The allegations of paragraph 16 are legal conclusions that require no  
21 response. See the response to paragraph 15 above.

22 28. The allegations of paragraph 17 are legal conclusions that require no  
23 response. That said, Tumbleweed's legal conclusion is incomplete to the extent that it

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25 <sup>9</sup> See 18 C.F.R. § 292.303(d).

26 <sup>10</sup> 18 C.F.R. § 292.303(d).

1 suggests that the purpose of PURPA is to encourage the development of QFs. When  
2 describing its obligations arising under PURPA, the Commission noted: "We seek to  
3 provide maximum incentive for the development of QFs of all sizes, *while ensuring that*  
4 *ratepayers remain indifferent to QF power by having utilities pay no more than their*  
5 *avoided costs.*"<sup>11</sup> The Commission has made clear that when determining the avoided  
6 cost, the overriding goal is to ensure that a utility's customers are unaffected by the  
7 purchase of the QF's output and that QF transactions create no additional costs for the  
8 ratepayer.<sup>12</sup> This requirement ensures that a utility's customers remain indifferent to the  
9 purchase of QF power and that QFs are not subsidized at ratepayers' expense.<sup>13</sup>  
10 Authorizing Tumbleweed to engage in regulatory arbitrage in an attempt to game the  
11 system is detrimental to ratepayers because it imposes an obligation on ratepayers that  
12 would not otherwise exist and it creates a dangerous precedent going forward if the  
13 current differences between the Oregon and Idaho avoided cost methodologies continue.

14 29. The allegations of paragraph 18 are legal conclusions that require no  
15 response. The Company disagrees with Tumbleweed's assertion that it is "reasonable  
16 and in the public interest" to allow QFs to exploit potentially temporary differences  
17 between the avoided cost rates in Idaho and Oregon and require a multijurisdictional utility  
18 to engage in fictitious transactions to the detriment of ratepayers. The Commission has  
19

20 \_\_\_\_\_  
21 <sup>11</sup> *Re Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases*  
22 *from Qualifying Facilities*, Docket UM 1129, Order No.0 5-584 at 11 (May 13, 2005).; *see also In the*  
23 *Matter of Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket  
24 UM 1129, Order No. 07-360 at 1 (Aug. 20, 2007) (PURPA is designed "to encourage the  
economically efficient development of QFs, while protecting ratepayers by ensuring that utilities incur  
costs no greater than they would have incurred in lieu of purchasing QF power.").

24 <sup>12</sup> See Order No. 07-360 at 1.

25 <sup>13</sup> *Independent Energy Producers Association v. California Public Utilities Comm'n*, 36 F.3d 848, 858  
26 (9th Cir. 1994) ("If purchase rates are set at the utility's avoided cost, consumers are not forced to  
subsidize QFs because they are paying the same amount they would have paid if the utility had  
generated energy itself or purchased energy elsewhere.").

1 been critical of regulatory arbitrage in the past and this transaction is no different.<sup>14</sup>  
2 Moreover, the regulatory arbitrage proposed by Tumbleweed is not authorized by PURPA,  
3 FERC's regulations, FERC's orders, Oregon statutes, the Commission's regulations, or  
4 the Commission's orders. Indeed, Tumbleweed's Complaint fails to identify a single  
5 authority specifically supporting its proposed transaction.

6 THEREFORE, the Commission should deny the relief sought by Tumbleweed in its  
7 Prayer for Relief and dismiss the Complaint.

8 Respectfully submitted this 30<sup>th</sup> day of August, 2011.

9

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**MCDOWELL RACKNER & GIBSON PC**

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Lisa F. Rackner  
Adam Lowney

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**IDAHO POWER COMPANY**

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Donovan Walker  
Lead Counsel  
1221 West Idaho Street  
P.O. Box 70  
Boise, Idaho 83707

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Attorneys for Idaho Power Company

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25 <sup>14</sup> *Re Portland General Electric Co.*, Docket UE 102, Order No. 99-033, 191 P.U.R.4th 87, 115-116  
26 (Jan. 27, 1999) (Commission rejected allowing industrial and commercial customers to switch back  
and forth between cost-of-service rates and direct access because it constituted "tariff arbitrage  
based on gaming rather than efficiencies" and would hurt both customers and the utility).

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document on the following parties of record in Docket UM 1552, on the date indicated below, by email addressed to said person(s) at his or her last-known address(es) indicated below.

Gregory Marshall Adams  
Richardson & O'Leary  
greg@richardsonandoleary.com

Peter J. Richardson  
Richardson & O'Leary  
peter@richardsonandoleary.com

DATED: August 30, 2011

  
Wendy McIndoo  
Office Manager

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

3                                   **UM 1553**

4  
5       In the Matter of

**IDAHO POWER COMPANY'S ANSWER**

6       WESTERN DESERT ENERGY, LLC,

7                                   Complainant,

8       v.

9       IDAHO POWER COMPANY,

10                                  Defendant.

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12       1.       Pursuant to ORS 756.512(1), OAR 860-001-0400(3), and OAR 860-029-  
13       0100(7) Idaho Power Company ("Idaho Power" or "Company") hereby files with the Public  
14       Utility Commission of Oregon ("Commission") its Answer to the Complaint filed by Western  
15       Desert Energy, LLC ("Western Desert") on August 8, 2011, and served on Idaho Power on  
16       August 10, 2011.

17                                   **I.    INTRODUCTION**

18       2.       Western Desert is an Oregon Limited Liability Company that is developing a  
19       proposed 5 megawatt ("MW") wind farm to be built in Owyhee County, Idaho. Western  
20       Desert has certified the Owyhee County wind farm as a Qualifying Facility ("QF") under  
21       the Public Utility Regulatory Policies Act ("PURPA"). Western Desert will be  
22       interconnected with Idaho Power in Idaho and proposes to deliver power to Idaho Power  
23       in Idaho. Despite these facts, Western Desert is asking the Commission to require Idaho  
24       Power to offer Western Desert an Oregon QF contract to purchase Western Desert's  
25       produced energy at Oregon avoided cost rates. The Commission should deny Western  
26       Desert's complaint.



1 Currently, the IRP-based methodology results in a lower avoided cost rate for wind  
2 projects. As described in detail in the Company's Reply Comments in Docket UM 1396,  
3 this is largely because the IRP-based methodology considers a wind project's lower peak-  
4 hour capacity factor when determining the capacity cost and considers the energy quantity  
5 and supply shape that a specific wind project provides when determining the energy  
6 costs.<sup>2</sup> Because the IRP-based methodology is more comprehensive than the SAR  
7 methodology, it results in a more accurate avoided cost.

8 **B. Idaho Power Has Requested that the Commission Adopt Similar Modifications**  
9 **to Those Adopted by the IPUC.**

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11 the exception of the eligibility caps for QFs to receive the published rate. Currently in  
12 Oregon all QFs with a capacity of less than 10 MW are eligible for the Company's  
13 published avoided cost rate. Like the published rate in Idaho, the Oregon published rate is  
14 based on the SAR avoided cost methodology. Unlike Idaho, however, because the  
15 eligibility cap is much greater in Oregon, many more QFs qualify for the SAR-based  
16 published rates. For QF projects with a capacity greater than 10 MW, the IRP-based  
17 methodology forms the basis for the Company's negotiated avoided cost rates. Under the  
18 current system, in Oregon a 10 MW wind QF is eligible for the Company's SAR-based  
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20 in Idaho.

21 6. In Docket UM 1396, the Company has requested that the Commission  
22 authorize it to use its IRP-based methodology to calculate its avoided costs for all  
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<sup>2</sup> See *Re Investigation into Resource Sufficiency*, Docket UM 1396, Idaho Power's Reply Comments (June 28, 2011).



1 resource types and sizes.<sup>3</sup> Allowing the Company to use the IRP-based methodology  
2 more broadly would better align the avoided cost rates in Idaho and Oregon and would  
3 likely make type of scheme Western Desert proposes here unnecessary.<sup>4</sup> A decision on  
4 the Company's request in Docket UM 1396 is currently pending.

5 **C. Western Desert's Proposed Transaction is Regulatory Arbitrage.**

6 7. On June 27, 2011, Western Desert hand delivered to Idaho Power its  
7 Certification of QF Status for a Small Power Production or Cogeneration Facility along with  
8 a request for a PURPA QF contract in Oregon. Simultaneously, Western Desert also  
9 requested firm point-to-point transmission service for 5 MW of capacity from its  
10 interconnection with Idaho Power in the state of Idaho for delivery to Idaho Power at an  
11 unspecified point in Idaho Power's Oregon jurisdiction. Western Desert has requested  
12 that Idaho Power engage in a largely fictitious transaction whereby the Company is  
13 required to: (1) interconnect with Western Desert in Idaho; (2) wheel Western Desert's  
14 power to itself at a location somewhere in the Company's Oregon jurisdiction; and (3) buy  
15 Western Desert's power not at the Idaho point of delivery but at the unspecified point in  
16 Oregon to which the Company is expected to transmit the power. This scheme is a clear  
17 and unapologetic attempt to game the system to the detriment of Idaho Power's  
18 ratepayers and results in system inefficiencies resulting from the Company "wheeling" the  
19 QFs output to itself in another jurisdiction.

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23 <sup>3</sup> See *Re Investigation into Resource Sufficiency*, Docket UM 1396, Idaho Power's Opening  
24 Comments (May 13, 2011); *Re Investigation into Resource Sufficiency*, Docket UM 1396, Idaho  
Power's Reply Comments (June 28, 2011).

25 <sup>4</sup> Oregon PURPA expenses are not directly assigned to Oregon customers; approximately 95 percent  
26 are paid by the Company's Idaho customers. Thus, approval of the project's proposed transaction  
would place the Company in an untenable position whereby it must request rate recovery from the  
IPUC for PURPA expenses that the IPUC has already determined to be excessive.

1           **D. A Petition for Declaratory Order Is Currently Pending before the IPUC Related**  
2           **to Western Desert's Proposed Transaction.**

3           8. In response to Western Desert's requests for point-to-point transmission and  
4 an Oregon QF contract, on July 8, 2011, the Company filed a Petition for Declaratory  
5 Order with the IPUC ("Petition").<sup>5</sup> In the Petition, Idaho Power requested that the IPUC  
6 issue an order declaring that the IPUC would exercise jurisdiction over this proposed  
7 PURPA transaction because the QF is located in the Company's Idaho service territory  
8 and interconnected with the Company's system in Idaho, and further that if Western  
9 Desert wanted to enter into a PURPA transaction with the Company it must do so  
10 pursuant to its Idaho PURPA procedures and contracts.

11          9. On July 29, 2011, Western Desert filed an answer to the Petition.<sup>6</sup> In its  
12 answer Western Desert asserted that it had not asked Idaho Power to determine its  
13 avoided cost based on the IPR methodology because "Western Desert understands that  
14 IRP modeling results are not favorable for the development of wind projects in Idaho."<sup>7</sup>  
15 Thus, Western Desert "has decided not to sell the output from its QF wind project to any  
16 utility that is operating under the jurisdiction of the [IPUC]."<sup>8</sup>

17          10. Idaho Power's Petition is currently pending before the IPUC.  
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21 <sup>5</sup> *Re Idaho Power Company's Petition for Declaratory Order Regarding PURPA Jurisdiction*, Case No.  
22 IPC-E-11-14, Petition for Declaratory Order (July 8, 2011). The Company's Petition addressed both  
23 this transaction with Western Desert and a similar transaction with Tumbleweed Energy II, LLC.  
Tumbleweed Energy II, LLC filed a complaint with the Commission that is nearly identical to Western  
Desert's. That complaint has been docketed as UM 1552.

24 <sup>6</sup> *Re Idaho Power Company's Petition for Declaratory Order Regarding PURPA Jurisdiction*, Case No.  
IPC-E-11-14, Answer and Motion to Dismiss by Western Dessert [sic] Energy and Tumbleweed  
25 Energy, LLC (July 29, 2011).

26 <sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2.

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### III. ANSWER

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11. Idaho Power hereby answers Western Desert's Complaint as follows. Idaho Power denies any allegation not specifically admitted above and reserves the right to supplement this Answer if Western Desert amends its Complaint. With respect to the particular paragraphs of the Complaint, Idaho Power answers as follows:

#### IDENTITY OF THE PARTIES

12. The factual allegations in the first sentence of paragraph 1 are admitted. The remaining legal conclusions require no response. That said, Idaho Power admits that it is a public utility subject to the jurisdiction of the Commission, the IPUC, and the Federal Energy Regulatory Commission ("FERC").

13. Idaho Power has insufficient information or knowledge regarding the truth of the allegations in paragraph 2 of the Complaint, which relate to the identity and corporate structure of Western Desert. The Company acknowledges that Western Desert has provided to it a certification of its QF status and the Company does not dispute this status.

#### JURISDICTION

14. The allegations in paragraph 3 identify the applicable provisions of PURPA, FERC's implementing regulations, and Oregon's PURPA-implementing statutes. The allegations in this paragraph are conclusions of law and require no response.<sup>9</sup>

#### FACTUAL BACKGROUND

15. Idaho Power has insufficient information or knowledge regarding the truth of the allegations in paragraph 4 of the Complaint, which describe Western Desert's

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<sup>9</sup> The Company notes that this paragraph of the Complaint fails to reference OAR 860-029-0100, which "applies to a complaint, filed pursuant to ORS 756.500, regarding the negotiation of a Qualifying Facility power purchase agreement." It appears that the Complaint is procedurally deficient for failing to include all of the information required by this rule and does not appear to comply with the other procedural requirements of the rule, e.g. the 60 day waiting period. While the Company believes that this Complaint is subject to the requirements of that rule, it does not intend to seek a remedy for the Complaint's alleged procedural deficiencies.

1 development efforts. The Company stipulates, however, that it has been advised by  
2 Western Desert that Western Desert is in the process of developing a wind electric  
3 generating project that is located entirely within Owyhee County, Idaho. The Company  
4 also stipulates that Western Desert has indicated to it that the project is designed to have  
5 a 5 MW nameplate capacity. The Company stipulates that no part of the project is located  
6 in Oregon.

7 16. The Company admits the allegations in paragraph 5 that Western Desert's  
8 wind QF will be interconnected to the Idaho Power electric system in Idaho.

9 17. The allegations in paragraph 6 are admitted. Idaho Power refused to offer  
10 Western Desert its standard Oregon QF contract because Western Desert is a QF located  
11 in the Company's Idaho service territory and interconnected to the Company's system in  
12 the Company's Idaho service territory. As such, the Company maintains that if Western  
13 Desert wants to enter into a PURPA contract with Idaho Power it must do so in  
14 accordance with the terms and conditions dictated by Idaho law and subject to the  
15 jurisdiction of the IPUC.

16 18. The allegations in paragraph 7 are admitted in that the Company agrees that  
17 Western Desert has requested point-to-point transmission from the point of  
18 interconnection in Idaho to an unspecified location in the Company's Oregon service  
19 territory. The Company admits that Western Desert has indicated that it intends to pay for  
20 the wheeling expense associated with its request.

21 19. Idaho Power has insufficient information or knowledge regarding the truth of  
22 the allegations in first sentence of paragraph 8 of the Complaint. With respect to the  
23 second sentence of paragraph 8, the Company has insufficient information or knowledge  
24 regarding the truth of the allegations related to the maturity of Western Desert's QF. The  
25 remaining allegations in paragraph 8 are conclusions of law that require no response.  
26 However, the Company disputes the claim that Western Desert is entitled to a "long-term

1 [power purchase agreement] for a PURPA QF pursuant to Idaho Power's [Oregon tariff]  
2 Schedule 85." Because Western Desert is located in Idaho and intends to deliver its  
3 output in Idaho, the Company maintains that Western Desert is entitled to a long-term  
4 PPA for a PURPA QF pursuant to the Company's *Idaho* contract.

5 20. Idaho Power has insufficient knowledge and information to admit or deny the  
6 allegations in paragraph 9 relating to willingness of Western Desert to enter into a  
7 standard PURPA contract.

8 **ANSWER TO COMPLAINANT'S CLAIM FOR RELIEF**

9 (Idaho Power is in violation of PURPA, FERC's regulations and orders, and the  
10 Commission's orders and regulations by refusing to offer a power purchase  
11 agreement to Western Desert.)

12 21. See answers to paragraphs 1 through 20 above.

13 22. The allegations in paragraph 11 are admitted in that the Company  
14 acknowledges that Western Desert has made a formal request for an offer of a standard  
15 Schedule 85 power purchase agreement. The Company lacks sufficient knowledge to  
16 admit or deny whether "Western Desert has attempted in good faith to engage in  
17 negotiations" to obtain an Oregon contract.

18 23. The allegations in paragraph 12 are admitted to the extent that Western  
19 Desert has provided the Company with its completed FERC Form 556, which is the  
20 Certification of QF Status for Small Power Production or Cogeneration Facility. The  
21 Company also admits that Western Desert provided to it on June 27, 2011, a formal  
22 request for a standard Schedule 85 contract. That request included the information  
23 required by Schedule 85.

24 24. The allegations of paragraph 13 are legal conclusions that require no  
25 response. The Company agrees, however, that the interconnection and wheeling  
26 arrangements proposed by Western Desert that would require Idaho Power to transmit the

1 QF's output to itself and then "buy" the power at some unspecified location in Oregon are  
2 not subject to the Commission's jurisdiction.

3 25. The allegations of paragraph 14 are legal conclusions that require no  
4 response. The Company agrees that it has an obligation to purchase the output of a QF  
5 subject to the terms of PURPA and its implementing regulations and Oregon's PURPA  
6 implementation statutes and regulations. The Company disagrees with Western Desert's  
7 legal conclusion that it is obligated to purchase in Oregon the output of a QF located in  
8 Idaho that interconnects with the Company's system in Idaho. The Company maintains  
9 that its purchase obligations in this case are subject to the jurisdiction of the state of Idaho  
10 and the IPUC.

11 26. The allegations of paragraph 15 are legal conclusions that require no  
12 response. The Company agrees that neither PURPA nor the implementing regulations or  
13 Oregon's implementing statutes require that a QF sell its output to the interconnecting  
14 utility. Indeed, FERC's rules specifically allow a QF to interconnect to one utility and sell  
15 its output to another utility.<sup>10</sup> But that is not the issue presented in this case. Here,  
16 Western Desert is asking the Commission to require Idaho Power to wheel the QFs output  
17 out of the state of Idaho and then "buy" the output in Oregon. Western Desert proposes  
18 an entirely fictional transaction designed to exploit the differences between the avoided  
19 cost rates in Oregon and Idaho. FERC's rules are clear: interconnecting utilities are  
20 obligated to "transmit the energy or capacity [from an interconnected QF] to any other  
21 electric utility."<sup>11</sup> Idaho Power is not "any other electric utility," it is the same utility to which  
22 the QF is directly connected. Here, Western Desert is supplying its energy and capacity  
23 directly to Idaho Power in Idaho. Therefore, the transaction should be subject to the  
24 jurisdiction of the state of Idaho and the IPUC.

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25 <sup>10</sup> See 18 C.F.R. § 292.303(d).

26 <sup>11</sup> 18 C.F.R. § 292.303(d).

1        27. The allegations of paragraph 16 are legal conclusions that require no  
2 response. See the response to paragraph 15 above.

3        28. The allegations of paragraph 17 are legal conclusions that require no  
4 response. That said, Western Desert's legal conclusion is incomplete to the extent that it  
5 suggests that the purpose of PURPA is to encourage the development of QFs. When  
6 describing its obligations arising under PURPA, the Commission noted: "We seek to  
7 provide maximum incentive for the development of QFs of all sizes, *while ensuring that*  
8 *ratepayers remain indifferent to QF power by having utilities pay no more than their*  
9 *avoided costs.*"<sup>12</sup> The Commission has made clear that when determining the avoided  
10 cost, the overriding goal is to ensure that a utility's customers are unaffected by the  
11 purchase of the QF's output and that QF transactions create no additional costs for the  
12 ratepayer.<sup>13</sup> This requirement ensures that a utility's customers remain indifferent to the  
13 purchase of QF power and that QFs are not subsidized at ratepayers' expense.<sup>14</sup>  
14 Authorizing Western Desert to engage in regulatory arbitrage in an attempt to game the  
15 system is detrimental to ratepayers because it imposes an obligation on ratepayers that  
16 would not otherwise exist and it creates a dangerous precedent going forward if the  
17 current differences between the Oregon and Idaho avoided cost methodologies continue.

18        29. The allegations of paragraph 18 are legal conclusions that require no  
19 response. The Company disagrees with Western Desert's assertion that it is "reasonable

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21 <sup>12</sup> *Re Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases*  
22 *from Qualifying Facilities*, Docket UM 1129, Order No.0 5-584 at 11 (May 13, 2005).; see also *In the*  
23 *Matter of Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*, Docket  
24 UM 1129, Order No. 07-360 at 1 (Aug. 20, 2007) (PURPA is designed "to encourage the  
economically efficient development of QFs, while protecting ratepayers by ensuring that utilities incur  
costs no greater than they would have incurred in lieu of purchasing QF power.").

24 <sup>13</sup> See Order No. 07-360 at 1.

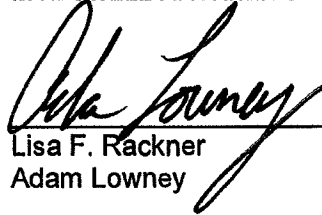
25 <sup>14</sup> *Independent Energy Producers Association v. California Public Utilities Comm'n*, 36 F.3d 848, 858  
26 (9th Cir. 1994) ("If purchase rates are set at the utility's avoided cost, consumers are not forced to  
subsidize QFs because they are paying the same amount they would have paid if the utility had  
generated energy itself or purchased energy elsewhere.").

1 and in the public interest" to allow QFs to exploit potentially temporary differences  
2 between the avoided cost rates in Idaho and Oregon and require a multijurisdictional utility  
3 to engage in fictitious transactions to the detriment of ratepayers. The Commission has  
4 been critical of regulatory arbitrage in the past and this transaction is no different.<sup>15</sup>  
5 Moreover, the regulatory arbitrage proposed by Western Desert is not authorized by  
6 PURPA, FERC's regulations, FERC's orders, Oregon statutes, the Commission's  
7 regulations, or the Commission's orders. Indeed, Western Desert's Complaint fails to  
8 identify a single authority specifically supporting its proposed transaction.

9 THEREFORE, the Commission should deny the relief sought by Western Desert in  
10 its Prayer for Relief and dismiss the Complaint.

11 Respectfully submitted this 30<sup>th</sup> day of August, 2011.

12  
13 McDOWELL RACKNER & GIBSON PC

14   
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17  
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25 <sup>15</sup> *Re Portland General Electric Co.*, Docket UE 102, Order No. 99-033, 191 P.U.R.4th 87, 115-116  
26 (Jan. 27, 1999) (Commission rejected allowing industrial and commercial customers to switch back  
and forth between cost-of-service rates and direct access because it constituted "tariff arbitrage  
based on gaming rather than efficiencies" and would hurt both customers and the utility).




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**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing document on the following parties of record in Docket UM 1553, on the date indicated below, by email addressed to said person(s) at his or her last-known address(es) indicated below.

Gregory Marshall Adams	Peter J. Richardson
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DATED: August 30, 2011

  
Wendy McIndoo  
Office Manager