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VIA ELECTRONIC AND U.S. MAIL

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Public Utility Commission of Oregon
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UM 1716 – In the Matter of PUBLIC UTILITY COMMISSION of OREGON, Investigation to Determine the Resource Value of Solar

Attention Filing Center:

Attached for filing in the above-referenced docket is an electronic copy of Idaho Power Company's Comments..

Please contact this office with any questions.

Very truly yours,

Wendy McIndoo

Wendy McIndoo
Office Manager

Enclosure

cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1716

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation to Determine the Resource Value of Solar.	**IDAHO POWER COMPANY'S COMMENTS**

I. Introduction

Pursuant to Administrative Law Judge ("ALJ") Sarah Rowe's ruling of July 1, 2015, Idaho Power Company ("Idaho Power" or "Company") submits these comments for consideration by the Public Utility Commission of Oregon ("Commission") regarding the scope of this proceeding and which elements should be properly considered by the Commission in establishing the resource value of solar energy. Idaho Power maintains that the Commission's selection of elements relevant to the resource value of solar must be informed by the Commission's *purpose* and *authority* in so doing. The Commission's need to establish an accurate and agreed-upon methodology for calculating the resource value of solar arises from—and is limited by—its performance of the tasks expressly delegated to the Commission by the Oregon legislature.

By legislation first enacted in 2009 and amended in 2013, Oregon's "solar energy" statutes direct the Commission to, among other things, create a solar volumetric incentive rate pilot program ("VIR Pilot Program") and establish a solar photovoltaic capacity standard.[1] As specifically relevant to this docket and explained below, several key

[1] ORS 757.360 through 757.385.

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provisions regarding the VIR Pilot Program employ the term "resource value," a statutorily defined term at ORS 757.360(5). Accordingly, the Commission's successful implementation of the VIR Pilot Program requires it to develop a method for calculating the "resource value" of solar *consistent with the statutory definition*. In Idaho Power's view, the Commission has no need in this docket to develop a methodology for valuing solar that does not serve this singular purpose. In the alternative, Idaho Power maintains that regardless of whether the Commission develops a methodology for resource value of solar for the VIR Pilot Program or for some other purpose, it may not value for inclusion in rates external social and environmental costs. For this reason, and as explained in greater detail below, Idaho Power requests that the Commission issue an order narrowing any further investigation or exploration in this docket to (1) only those elements relevant to the resource value of solar as defined by ORS 757.360(5); or (2) alternatively, excluding from further consideration all external environmental and societal costs that a utility is not legally required to bear.

II. BACKGROUND

A full understanding of the proper scope of this docket and the Commission's approach to determining a "resource value" for solar requires a review of both the governing law and the Commission's efforts to date.

<u>The VIR Pilot Program</u>

In May 2010, as directed by 2009 legislation codified at ORS 757.365,[2] the Commission established the VIR Pilot Program.[3] The program establishes production-

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[2] *See* ORS 757.635(1), providing that "[t]he Public Utility Commission shall establish a pilot program for each electric company to demonstrate the use and effectiveness of volumetric incentive rates and payments for electricity delivered from solar photovoltaic energy systems that are permanently installed in this state by retail electricity consumers and that first become operational after the program begins."

[3] *Re Investigation into Pilot Programs to Demonstrate the use and effectiveness of Volumetric Incentive Rates for Solar Photovoltaic Energy Systems*, Docket UM 1452, Order No. 10-198 (May 28, 2010) (deciding "policy issues related to the development and implementation of the pilot programs required under ORS 757.365").

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based rates and incentives for electricity delivered from solar photovoltaic energy systems within the Portland General Electric, PacifiCorp, and Idaho Power service territories. While certain details are fleshed out by the Commission's rules[4] the following aspects of the VIR Pilot Program are set forth in the statute:

- For the first 15 years of an eligible system's participation in the VIR Pilot Program, the utility is required to purchase electricity generated from a solar photovoltaic energy system at the incentive rates established at the time of enrollment; after 15 years, the consumer "may receive payments based upon electricity generated from the qualifying system at a rate equal to the **resource value**."[5]
- If rates paid under the VIR Pilot Program "exceed the **resource value**,"[6] qualifying systems participating in the program are not eligible for expenditures and tax credits.
- The Commission shall submit a report to the Legislative Assembly by January of each odd-numbered year and the report must evaluate the effectiveness of the VIR Pilot Program, as well as estimating the "cost of the program to retail electricity consumers and **the resource value of solar energy**."[7]

For purposes of implementing each of the statutory provisions noted above, the statutory definition of the term "resource value" is controlling. ORS 757.360(5) defines the "resource value" as the:

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[4] OAR Chapter 860, Division 84 addresses aspects of the VIR Pilot Program such as the criteria for system eligibility, the interconnection process, and contract requirements.

[5] ORS 757.365(4) (emphasis added).

[6] ORS 757.365(9) (emphasis added).

[7] ORS 757.365(13) (emphasis added).

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> [E]stimated value to an electric company of the electricity delivered from a solar photovoltaic energy system associated with:
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> (a) The avoided cost of energy, including avoided fuel price volatility, minus the costs of firming and shaping the electricity generated from the facility; and
>
> (b) Avoided distribution and transmission costs.

The Commission also adopted administrative rules to implement the VIR Pilot Program, and those administrative rules include a provision regarding resource value that requires each utility to develop estimates of "resource value" for both the short-term and long-term.[8]

UM 1559

In September 2011, parties raised concerns about the resource value calculation in the Commission's then-new administrative rule, and the Commission ordered Staff to open a generic investigation. Accordingly, the Commission opened Docket UM 1559 captioned "Investigation into the Appropriate Calculation of Resource Value for Solar PV systems."[9] In October 2012, after briefing by all parties, the Commission issued an order concluding that "it is not necessary at this time for us to determine which analytical approach should be

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[8] OAR 860-084-0370 provides that:

(1) On November 1 of 2010, 2012, and 2014, each electric company must file, for review in a Commission proceeding, its estimate of the 15-year levelized resource value for the company, along with supporting work papers.

(2) For the purpose of determining payments to retail electricity consumers at the end of the 15-year contract term, each electric utility must file, beginning January 1, 2025, and every January 1 thereafter, its estimates of the annual resource value for the company for each of the next five years.

(3) A resource value may be established for small-scale, medium-scale, and large-scale systems and may be differentiated by remote location or location central to the system load, as directed by the Commission."

[9] *Re Investigation into the Appropriate Calculation of Resource Value for Solar PV Systems*, Docket UM 1559.

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used to determine the resource value of SPV systems."[10] Instead, the Commission chose to "use the next reporting windows to compare the results of a variety of methods" and "direct the utilities to report a range of [resource] values in their November 1 reports."[11]

House Bill 2893

In 2013, the Legislative Assembly enacted the following changes to ORS 757.360 *et seq.*:[12]

- Section (3) of HB 2893 included a revision to ORS 757.365(13) adding a new requirement that the Commission's bi-annual report to the legislature must estimate the resource value of solar energy."[13]
- Section (4) of HB 2893 set forth a one-time requirement that the Commission perform a comprehensive study of issues relating to solar energy[14] and submit the results of its study by July 1, 2014.
- Section (5) of HB 2893 included a sunset provision repealing the Section (4) study requirement effective January 2, 2015.[15]

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[10] *Re Investigation into the Appropriate Calculation of Resource Value for Solar PV Systems*, Docket UM 1559, Order No. 12-396 (October 18, 2012) ("Order No. 12-396").

[11] Order No. 12-396 at 3. With regard to the need for a determination of resource value under ORS 757.365(4), the Commission reasoned that that it would not be called upon to determine the "resource value" rates that kick in after 15 years until systems enrolled in the VIR Pilot Program are approaching their 15th year under contract. With regard to the need for a determination of resource value for tax credit/public purpose fund eligibility under ORS 757.365(9), the Commission concluded that it could defer making a definitive decision "because all parties agreed that the resource value does not exceed the VIR regardless of which method for calculating resource value is adopted." *Id.*

[12] H.B. 2893, 77th Leg., Regular Session (Oregon 2013) ("HB 2893").

[13] HB 2893 at § 3.

[14] HB 2893 at § 4.

[15] HB 2893 at § 5.

The Commission's 2014 and 2015 Reports to the Legislative Assembly

Consistent with Section (4) of HB 2893, the Commission prepared and submitted to the legislature a comprehensive "Investigation into the Effectiveness of Solar Programs in Oregon" on July 1, 2014 ("2014 Report"). The 2014 Report addressed five substantive issues relating to solar energy in Oregon.[16] It also identified next steps, including that the Commission will "open a formal proceeding to determine the resource value of solar and the extent of cost-shifting, if any from net metering" because "we believe that such an investigation is necessary before offering specific recommendations on programs."[17]

On January 1, 2015, the Commission submitted its 2015 Report to the Legislative Assembly" regarding the Solar Photovoltaic Volumetric Incentive Program ("2015 Report"). With regard to the resource value of solar energy, the 2015 Report stated that the "Commission will be conducting a comprehensive study of this subject in the future."[18]

Docket UM 1716

On January 27, 2015, the Commission opened this docket to fulfill the commitments it made in the 2014 and 2015 studies to investigate and determine the resource value of solar in a future proceeding.[19] Numerous parties have intervened, and the Commission held two scoping conferences on May 15 and June 19, 2015. According to Commission Staff's Comments filed July 15, 2015 ("Staff's Comments"), "the purpose of UM 1716 is to create

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[16] Specifically, the Commission was directed to: (a) investigate the resource value of solar energy; (b) investigate the costs and benefits of the existing solar incentive programs; (c) forecast future costs for solar energy systems; (d) identify barriers to the development of solar energy systems; and (e) recommend new programs or program modifications that encourage solar development in a way that is cost-effective and protects ratepayers. HB 2893 at § 4.

[17] 2014 Report at page iv.

[18] 2015 Report at page 4.

[19] Commission Staff's initial filing in this docket consisted of the 2014 Report and the 2015 Report, suggesting that this docket arises from the next steps identified in those reports.

methodologies that are transparent, predictable, and lead to the development of standardized calculations of the resource value of solar."[20] Staff anticipates that, based on these comments and those from other parties, the Commission will issue an order approving a list of elements relevant to the resource value of solar.[21] Following the Commission's determination, Staff contemplates that "the Commission will hire a consultant to conduct an investigation of the resource value of solar based on the list of elements" approved by the Commission.[22] The consultant's work will result in a report informing PUC Staff, and Staff will in turn present final recommendations to the Commission in 2016. The other investigations to determine fixed cost recovery and reliability impacts will occur concurrently with the results being incorporated in the resource value of solar later in the process. According to Staff's Comments, the resulting values would "serve as an Oregon-specific catalog of elements that would be used, as appropriate, for different rate-making processes and policy exploration. Each element would not necessarily be used for every rate-making purpose."[23] The 26 elements that Staff has compiled for comment are set forth at Attachment C to Staff's Comments, as follows:

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[20] Staff's Comments at 3. Staff's Comments explain that Investigation 2 (explore and determine to what extent the fixed cost recovery is an issue for Oregon) and Investigation 3 (determine at what penetration level reliability impacts from solar affect Oregon) will initiate scoping in August 2015 and will be led by Commission Staff. *Id.*

[21] Staff's Comments at 5.

[22] *Id.* at 4-5.

[23] *Id.* at 4.

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1. Avoided Energy Impacts
2. Avoided Capacity Additions
3. Line Losses
4. Avoided Transmission and Distribution
5. Compliance Value
6. Security/Reliability
7. Utility: Integration Impacts
8. Utility: Administration Impacts
9. Utility: Interconnection Impacts
10. Financial: Market Price Response
11. Ancillary Services and Grid Support
12. Financial: Fuel Price Hedge
13. Operational Impacts
14. Avoided Natural Gas Pipeline
15. Rate Impacts: Net Metering Credits
16. Societal: Economic Development
17. Health and Other Societal Impacts
18. Capital Risk
19. Utility: Production Impacts
20. Behind-the-Meter Production
21. Resource Need
22. Rate Impacts: Lost Revenue
23. Tax Credits
24. DSM Alternative Impacts
25. Environment: Compliance
26. Environment: Externalities

III. ARGUMENT

A. The Commission's Further Efforts and Investigation in this Docket Should be Strictly Limited to Those Elements Relevant to the Resource Value of Solar as that Term is Defined by ORS 757.360(5).

When the Oregon Assembly first enacted ORS 757.360 *et seq.* in 2009, it specifically defined the term "resource value" for purposes of the VIR Pilot Program. That definition, set forth above and repeated here, makes it explicit that the resource value of solar used in implementing the VIR Pilot Program should include *only those costs specifically enumerated in the statute.* ORS 757.360(5) defines the "resource value" as the [e]stimated value to an electric company of the electricity delivered from a solar photovoltaic energy system associated with:

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> (a) The avoided cost of energy, including avoided fuel price volatility, minus the costs of firming and shaping the electricity generated from the facility; and
>
> (b) Avoided distribution and transmission costs.

To the extent that this docket was opened to evaluate the resource value of solar for purposes of implementing the VIR Pilot Program, as suggested by the 2014 and 2015 Reports filed by Staff to open the docket, then the scope of the docket must be informed by the definition of "resource value" set forth at ORS 757.360(5). Pursuant to the plain language of that definition, the *only elements* that the Commission should consider in establishing a resource value of solar are the following, which are subsumed by the statutory categories:

- Element 1: Avoided Energy Impacts (corresponds to ORS 757.360(5)(a))
- Element 4: Avoided Transmission and Distribution (corresponds to ORS 757.360(5)(b))
- Element 9: Utility Interconnection Impacts (corresponds to ORS 757.360(5)(a))
- Element 12: Fuel Price Hedge (corresponds to ORS 757.360(5)(a))

The 2013 legislative amendments and the Commissions' own rules support the Company's position. The legislature could have amended the definition of "resource value" when it enacted the other amendments to ORS 757.360 *et seq.* in 2013, but it did not do so. Instead, it directed the Commission to consider the "resource value" of solar in both its one-time 2014 report and bi-annual reports to the legislature, without altering the statutory definition.[24] Moreover, the Commission's own rules appear to acknowledge that, for

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[24] To the extent that parties to UM 1716 would like the Commission to implement for the VIR program a broader notion of the resource value of solar than that permitted by the definition in ORS 757.360(5), that is an issue properly brought before the legislature not the Commission. Without a change to the statute, reading the definition of "resource value" out of the statute is prohibited by the most basic rules of statutory construction. *See* ORS 174.010 ("In the construction of a statute, the office of the

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purposes of the VIR Pilot Program, the resource value of solar should be determined in a manner consistent with the statutory definition. OAR 860-084-0240, the provision of the VIR Pilot Program rules relating to "Standard Contracts," requires a standard contract between the electric company and consumer to provide for VIR payments for a 15-year period, as required by ORS 757.365. However, instead of requiring payment of rates equal to the "resource value of solar" after the initial 15-year period, OAR 860-084-0240 provides that the electric company may pay "its *prevailing avoided cost for energy* generated by the solar photovoltaic systems."[25] In other words, the Commission's own rule interprets the resource value of solar to mean the "avoided cost of energy" in the context of post-VIR payments.[26]

Idaho Power therefore requests that the Commission issue an order narrowing the scope of this docket to investigation of only those elements relevant to the "resource value" of solar as defined by ORS 757.360(5). Indeed, there is no apparent need or authority for the Commission to establish a determination of the "resource value" of solar for any other purpose. It is also worth noting that, by narrowing the scope of this docket in a manner consistent with ORS 757.360(5), the Commission will obviate the need for the Commission to retain a consultant to assist Staff with its investigation; the statutory elements of "resource value" were established using the PURPA avoided cost methodologies, and are clearly within the Commission's expertise.

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judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, *or to omit what has been inserted*") (emphasis added).

[25] OAR 860-084-0240(1)(a) (emphasis added).

[26] While the statutory definition would also permit the consideration of avoided fuel price volatility and avoided transmission and distribution costs, the Commission's narrower interpretation of the "resource value of solar" makes sense in the context of this rule because it is unlikely that a utility would have those types of avoided costs 15 years into purchasing from a VIR Pilot Program system.

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B. In Any Event, the Commission May Not Establish a Methodology for Calculating the Resource Value of Solar that Incorporates External Social and Environmental Costs Into Rates.

Absent specific legislative direction, the Commission may not incorporate into rates external costs that the utility is not, by law, required to bear. Thus, even if the Commission determines that it may properly consider elements beyond those listed in the statutory definition of "resource value" in ORS 757.360(5) in this docket, there are certain social and environmental costs that should be excluded as a matter of law.

This Commission has been clear that it cannot impose external costs, such as environmental costs, on a utility or its ratepayers. In 1991, Commission Staff identified the need for the Commission to open a docket to develop guidelines regarding the treatment of external environmental costs in a number of contexts, including least-cost planning and resource acquisition.[27] In the order adopting new guidelines, the Commission explained that "external costs in this context are costs that a utility is not legally required to bear."[28] With regard to external environmental costs, the Commission explained its authority with the following language: "The Commission does not have clear statutory authority to impose such costs on a utility, either directly or by requiring the utility or its customers to pay the external costs or indirectly by penalizing the utility for choosing a resource with higher external costs."[29] In the final order in UM 424, the Commission also noted that it does not have authority to consider "such factors as economic development and job creation in

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[27] *Re Guidelines for the Treatment of External Environmental Costs*, Docket UM 424, Order No. 93-695 (May 17, 1993).

[28] Order No. 93-695 at 2 (relying on advice provided to the Commission by the Oregon Department of Justice on April 16, 1992).

[29] *Id.*

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reviewing least-cost plans or resource decisions."[30] Over the years, the Commission has consistently adhered to this interpretation of its own authority.[31]

Here, parties have suggested that the Commission develop a methodology for quantifying the benefits of a range of health, economic, and environmental benefits from solar energy that would then be incorporated into the "resource value" rates that utilities pay and ultimately recover from ratepayers. Commission precedent is clear that, without express statutory authority, the Commission may not incorporate such external costs into rates. Without express direction from the legislature, which is absent here, the Commission may not incorporate the following elements into its methodology for determining the resource value of solar for rate-making purposes:

- Element 16: Societal: Economic Development
- Element 17: Health and Other Societal Impacts
- Element 25: Compliance Impacts (*future* only)
- Element 26: Environmental Externalities

Accordingly, it does not make sense for the Commission to consider (or direct a consultant to explore) the above-referenced external social and environmental elements.[32]

The Commission and Commission Staff have consistently agreed with Idaho Power on this point. The Commission's 2014 Report, for example, states that "the resource value of solar refers to the value of the benefits that solar generation brings to the utility system and electricity ratepayers in general. It does not include potential social benefits such as

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[30] *Id.* at 7 (quoting Order No. 89-507 at 11).

[31] *See Re Guidelines for the Treatment of External Environmental Costs*, Docket UM 424, Order No. 93-1119 (August 10, 1993) (denying a petition for reconsideration and reiterating that "DOJ advised the Commission that it does not have clear statutory authority to impose, directly or indirectly, such costs on a utility."); *Re Investigation into Integrated Resource Planning*, Docket UM 1056, Order No. 07-002 at 17 (January 8, 2007) (citing Order No. 93-695).

[32] Idaho Power also respectfully notes that the Commission is not the public entity best suited to evaluating and modeling the costs related to environmental, economic, or health issues.

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improved environmental quality."[33] Similarly, the 2015 Report states that "[s]ocietal and environmental benefits, though perhaps important, are beyond the scope of normal utility regulation and have not been investigated by the Commission."[34] Staff's Comments are also consistent with Idaho Power's position regarding elements to be excluded from this docket; Staff has recommended exclusion of Elements 16 (Societal: Economic Development), 17 (Health and Other Societal Impacts), 25 (Environment: Compliance Impacts, certain future), and 26 (Environment: Externalities), citing its perspective that these issues are "outside the normal scope of the Commission's activities"[35] and "not considered in OPUC's rate making process."[36]

C. Without A Clear Sense About How the Commission Proposes to Use the Information, Idaho Power Cannot Meaningfully Evaluate or Comment on the Proposed Elements.

Even assuming that the Commission does have authority to establish a methodology for calculating the resource value of solar for purposes other than the VIR Pilot Program and based on a broad set of elements, Idaho Power is unable to evaluate or comment on these elements in a meaningful way without a clearer understanding of how the Commission intends for the information to be used. Staff's Memo states that "there was a general understanding amongst all parties that," among other things, "the resultant values would serve as an Oregon-specific catalog of elements that would be used, as appropriate, for different rate-making processes and policy exploration."[37] For the record, Idaho Power does not in fact understand, much less agree with, Staff's statement. For example, does the

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[33] 2014 Report at iii.

[34] 2015 Report at 15.

[35] Staff's Memo at 8 (regarding Economic Development element).

[36] *Id.*

[37] Staff's Memo at 2.

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Commission contemplate using the methodology for determining the resource value of solar for reporting purposes only? for QF contracts? for IPR purposes? for fixed cost recovery/net metering? for distributed generation? Without a more detailed explanation, Idaho Power cannot comment on which elements are appropriate for consideration.

D. Idaho Power's Position on Each of the 26 Elements Proposed for Consideration in Staff's Memo

The following section sets forth Idaho Power's comments and position on each of the 26 elements proposed for consideration in Attachment C of Staff's Comments. Generally speaking, Idaho Power's comments on the elements fall into three categories: (1) the element should clearly be included in the resource value of solar because it falls within the statutory definition of "resource value" at ORS 757.360(5) (green); (2) the element should clearly be excluded because the Commission lacks authority to consider it or impose costs related to it (orange); or (3) to the extent that the Commission determines that these elements should be considered in establishing a resource value of solar, Idaho Power is

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unable to formulate a comment without more information, including a definition of the element and the purpose for which it is proposed (white).

1. Avoided Energy Impacts	*Include – expressly authorized by ORS 757.360(5).*
2. Avoided Capacity Additions	
3. Line Losses	
4. Avoided Transmission and Distribution	*Include – expressly authorized by ORS 757.360(5).*
5. Compliance Value	
6. Security/Reliability	
7. Utility: Integration Impacts	*Include – expressly authorized by ORS 757.360(5).*
8. Utility: Administration Impacts	
9. Utility: Interconnection Impacts	
10. Financial: Market Price Response	
11. Ancillary Services and Grid Support	
12. Financial: Fuel Price Hedge	*Include – expressly authorized by ORS 757.360(5).*
13. Operational Impacts	
14. Avoided Natural Gas Pipeline	
15. Rate Impacts – Net Metering Credit	
16. Societal: Economic Development	*Exclude.*
17. Health and Other Societal Impacts	*Exclude.*
18. Capital Risk	
19. Utility: Production Impacts (IRP)	
20. Behind-the-Meter Production	
21. Resource Need	
22. Rate Impacts: Lost Revenue	
23. Tax Credits	
24. DSM Alternative Impacts	
25. Environment: Compliance	*Exclude, with regard to future regulation.*
26. Environment: Externalities	*Exclude.*

IV. CONCLUSION

For this reasons explained above, Idaho Power requests that the Commission issue an order narrowing any further investigation or exploration in this docket to (1) only those elements relevant to the resource value of solar as defined by ORS 757.360(5); or alternatively, (2) to exclude from further consideration all external environmental and societal costs that may not lawfully be incorporated into rates.

Respectfully submitted this 20th day of July, 2015.

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