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March 14, 2014

Via E-Mail and Federal Express

Public Utility Commission of Oregon
Attn: Filing Center
3930 Fairview Industrial Drive SE
Salem OR 97302

Re: Renewable Energy Coalition
Petition for Declaratory Ruling
Docket No. DR 48

Dear Filing Center:

Enclosed for filing in the above-referenced matter, please find the original and one (1) copy of the Renewable Energy Coalition's Reply to PacifiCorp's Response.

Thank you for your assistance with this matter, and please do not hesitate to contact our office with any questions.

Sincerely,



Jesse O. Gorsuch

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the attached **Renewable Energy Coalition's Reply to PacifiCorp's Response** upon all parties in this proceeding by sending a copy via electronic mail to the following parties at the following addresses.

Dated at Portland, Oregon, this 14th day of March, 2014.

Sincerely,



Jesse O. Gorsuch

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PROJECT**

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

DR 48

| | | |
|------------------------|---|-----------------------|
| In the Matter of |) | |
| |) | |
| THE RENEWABLE ENERGY |) | THE RENEWABLE ENERGY |
| COALITION Petition for |) | COALITION'S REPLY TO |
| Declaratory Ruling, |) | PACIFICORP'S RESPONSE |
| |) | |
| Petitioner. |) | |
| _____ |) | |

I. INTRODUCTION

In its Response to the Renewable Energy Coalition's (the "Coalition") Petition for Declaratory Ruling ("Petition") in the above-referenced docket, PacifiCorp (or the "Company") makes a number of misleading arguments in an attempt to encourage the Oregon Public Utility Commission (the "Commission") to refuse to consider the Coalition's Petition. Specifically, PacifiCorp: (1) suggests that only one qualifying facility ("QF") is implicated by the Coalition's Petition; (2) states that the issue raised by the Coalition's Petition can be resolved as part of the Commission's investigation in Docket No. UM 1610; (3) argues that a declaratory ruling would only be effective as between the Commission and the Coalition; and (4) asserts that Schedule 37, attached to its standard Power Purchase Agreement for Qualifying Facilities with 10,000 kW Facility Capacity Rating, or Less, and not an Intermittent Resource ("Small Firm Contract"), is "clear" with regard to when PacifiCorp may terminate due to resource deficiency. The Coalition addresses each of these issues below.

II. ARGUMENT

A. A Number of QFs May be Impacted by a Ruling on the Coalition's Petition.

PacifiCorp, in its Response, states that “the Coalition has authorization from only one QF project to negotiate or act on their behalf” and that this authorization “is limited to the issue raised in the Petition” PacifiCorp Response at 6. PacifiCorp’s statement gives the false impression that only one QF is affected by PacifiCorp’s interpretation of the resource deficiency termination provision of its Small Firm Contract.^{1/} In fact, the Coalition is aware of between three and five hydro and geothermal QFs that may be impacted, and there may be more. Most of them, however, are currently choosing to remain anonymous. These QFs may be reluctant to identify themselves because PacifiCorp has stated that it can, but has not yet elected to, terminate their PPAs. These QFs may not want to risk PacifiCorp terminating their contracts by publicly identifying themselves. Additional QFs could, of course, be impacted at later dates without Commission action.

To understand how many QFs are currently at risk of contract termination because of PacifiCorp’s interpretation of the resource deficiency termination provision of its Small Firm Contract, the Commission should require the Company disclose the number of QFs that are, or will be, affected. Specifically, PacifiCorp should identify all QFs that have, or are expected to

^{1/} As discussed in detail in the Coalition’s Petition, the resource deficiency termination provision in PacifiCorp’s Small Firm Contract prevents the Company from terminating the contract for a QF’s failure to meet the contract’s Commercial Operation Date “unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed” Small Firm Contract § 11.3.1.

have, a delayed commercial operation date, including all QFs that PacifiCorp has sent a notice of default related to a delay in commercial operation.

B. The Commission Cannot Resolve the Issue in the Coalition’s Petition in UM 1610.

PacifiCorp states that the issue raised in the Coalition’s Petition “is most appropriately done as part of a general investigation” and that “in the event the Commission wishes to consider the broader policy issues raised by the Petition, the Company proposes that the issue be considered [] in Phase II of UM 1610.” PacifiCorp Response at 5. As the Commission made clear in its order in Phase I of UM 1610, however, “[o]ur consideration of any proposal to revise the rates, terms, and conditions for QF standard contracts is done on a prospective basis only. To the extent issues were raised regarding reformation of existing PURPA contracts, we decline to address them in this forum.” Docket No. UM 1610, Order No. 14-058 at 1. Thus, UM 1610 cannot resolve the issue raised by the Coalition in its Petition, which relates to the interpretation of a provision in existing contracts.

C. A Declaratory Ruling Will Impact PacifiCorp and the QFs That Have Executed the Small Firm Contract.

PacifiCorp states that “it is unclear how a decision by the Commission on the merits of the Petition would be applicable to the Coalition” because, under ORS § 756.450, a declaratory ruling “is binding between the commission and the petitioner” PacifiCorp Response at 5-6. Yet, any “interested person” may petition for a declaratory ruling. ORS § 756.450. The Commission routinely allows organizations to participate in proceedings in which those organizations’ members would be impacted by a Commission decision.

Indeed, PacifiCorp's position in its Response contravenes its own petition in DR 40, where the Company and Honeywell International, Inc. ("Honeywell") petitioned for – and the Commission issued – a declaratory ruling regarding the interpretation of net metering statutes that potentially impacted numerous parties who were not “petitioners.” The Commission found that a customer of Honeywell was a “customer-generator” under the assumed facts, that such customers may be required to bear certain costs, and that a Honeywell facility is a “net-metering facility.” DR 40, Order No. 08-388. Yet, PacifiCorp's position now appears to be that the Commission's ruling in DR 40 would have no legal effect on the customers described in that order, nor would it have any effect on an entity that wanted to install facilities identical to Honeywell's.

The Coalition requests a ruling as to the proper interpretation of a contractual provision in a standard QF contract that the Commission approved and oversees in light of regulatory and statutory policies encouraging QF development. As with PacifiCorp's and Honeywell's previous request, any ruling will necessarily impact entities that are subject to this contractual provision. Such impacts are inherent in the declaratory ruling process where the Commission must interpret broadly applicable rules and laws and are not a valid justification for denying a petition.

D. The Resource Sufficiency and Deficiency Periods in the Small Firm Contract Are Not Clear.

PacifiCorp states that the “resource sufficiency and deficiency periods and corresponding rates [are] clearly identified in the Small Firm Contract.” PacifiCorp Response at 7-8. In support, PacifiCorp points to pages 37-3, 37-5 and 37-6 of Schedule 37, attached to the

Small Firm Contract. Id. at 7. None of these pages make any reference to PacifiCorp's ability to terminate the contract based on resource sufficiency or deficiency. For example, pages 37-5 and 37-6 list avoided cost prices with a line between the years 2013 and 2014 without any indication that this is the line of demarcation between resource sufficiency and resource deficiency. With regard to PacifiCorp's ability to terminate the Small Firm Contract, any reference or information from Schedule 37 regarding PacifiCorp's resource position at the time the Commission approved avoided cost prices does not trump the specific termination provisions that point to PacifiCorp's actual position during the delay in commercial operation. An oblique reference in a rate schedule attached to the contract makes it far from "clear" and does not provide any indication that PacifiCorp may terminate the Small Firm Contract based on forecasts rather than based on the Company's actual resource position, as provided in the Termination section of the contract. If PacifiCorp wished to make clear its ability to terminate based on its projections of resource deficiency, it could have done so in the Termination section of the Small Firm Contract.

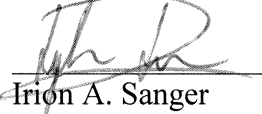
III. CONCLUSION

For the foregoing reasons, the Commission should substantively consider the Coalition's Petition for Declaratory Ruling.

Dated this 14th day of March, 2014.

Respectfully submitted,

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