



**BLUE PLANET
ENERGY LAW**

Portland, OR

Annapolis, MD

Carl Fink

628 SW Chestnut Street
Portland, OR 97219
CMFINK@Blueplanetlaw.com
971.266.8940
Admitted in Oregon, Pennsylvania
and Washington, DC

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Commission Chair Lisa Hardie
Commissioner John Savage
Commissioner Stephen Bloom
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

RE: Northwest and Intermountain Power Producers Coalition *Supplementary* Comments on Pacific Power's Advice No. 16-012/ Docket ADV 386, Changes to Renewable Energy Rider Optional Bulk Purchase Option.

Dear Commissioners:

I write on behalf of the Northwest and Intermountain Power Producers Coalition ("NIPPC")¹ to reiterate our express opposition to PacifiCorp's proposed changes to its Schedule 272, Renewable Energy Rider Optional Bulk Purchase Option.

NIPPC continues to believe that the proposed changes are unnecessary and inappropriate, and should be rejected, as further detailed below. Moreover, PacifiCorp's January 19, 2017 filing of replacement sheets does not address NIPPC's fundamental concern that those tariff sheets represent a **Voluntary Renewable Energy Tariff ("VRET") product that does not meet the Oregon Public Utility Commission's (the "Commission") clear requirements as stated in Docket UM 1690.**² The sale of renewable energy certificates ("RECs") from a specifically identified source attached to the PacifiCorp system is a bundled REC for all intents and purposes, and the sale of RECs from specifically identified sources clearly was contemplated as a VRET product in Docket UM 1690. PacifiCorp's attempt to offer this product now, just a few months removed from its decision not to offer a VRET alternative consistent with the Commission's requirements, should be rejected.

¹ NIPPC is a trade association whose members include independent power producers and electricity service providers active in the Pacific Northwest and Western energy markets. The purpose of NIPPC is to represent the interests of its members in developing rules and policies that help achieve a competitive electric power supply market, including rules affecting the procurement and sale of renewable energy. A current list of NIPPC members can be found at <http://nippc.org/about/members/>.

² In particular, the Commission required that "VRET terms and conditions (including the timing and frequency of VRET offerings), as well as transition costs, must mirror those for direct access. PGE and PacifiCorp may propose VRET terms and conditions that differ from current direct access provisions but must proposed changes to their respective direct access programs to match those changes." Order No. 15-405, Condition 6.

Brief Background:

Pacific Power's Schedule 272, Renewable Energy Rider Optional Bulk Purchase Option, is part of PacifiCorp's "Blue Sky" program. Under its existing Blue Sky program, PacifiCorp only is allowed to offer for sale undifferentiated and unbundled RECs in combination with cost-of-service energy. PacifiCorp's Schedule 272 is materially identical to its Schedule 270, with the primary distinction that Schedule 272 requires a minimum purchase of 121.2 Megawatt-hours/year, at a substantially lower charge than offered under Schedule 270, which has just a 100 kWh minimum. As far back as 2002, the Commission acknowledged Staff's belief that these services were competitive services, subject to the Code of Conduct and the provisions of OAR 860-038-0500 through 0640, and the Commission allowed PacifiCorp to offer these services only through grant of a waiver "while further discussions regarding the applicability of the Code of Conduct continue."³

More recently, in 2014, the legislature passed HB 4126, which directed the Commission to consider whether, and under what conditions, it is reasonable and in the public interest to allow electric companies to provide a VRET to nonresidential customers. After close to two years of protracted proceedings in Docket UM 1690, the Commission determined that it would consider allowing the utilities to offer a VRET, subject to a number of express conditions, including ensuring that any VRET offered was subject to similar terms, conditions and restrictions as service under Direct Access.⁴ Faced with these conditions, Pacific Power declined to offer a VRET alternative.⁵

Now, just a few months later, PacifiCorp is back before the Commission seeking to sell RECs from specifically-identified sources to customers – exactly the type of service contemplated in the VRET proceeding – but without any of the protections required by the Commission. The service PacifiCorp is proposing to offer is in direct competition with competitive retail services, but PacifiCorp tariff sheets do not allow any competitive entities to offer similar services, in contravention to the requirements of the Commission's order in UM 1960, that competitive entities must be allowed to offer VRET services, if such programs are offered by the utility.

Discussion:

1. Sale of RECs from Specifically Identified Sources Was Clearly Contemplated as a VRET Service.

NIPPC believes that purchase of specifically-identified RECs by a utility from an entity delivering its power into the utility's system is, by definition, a bundled REC; whether or not

³ *In the Matter of Pacific Power & Light*, Docket UE 151, Order No. 03-392, July 3, 2002.

⁴ *Voluntary Renewable Energy Tariffs for Non-Residential Customers*, Order No. 15-405, December 15, 2015.

⁵ *See April 16, 2016 Letter filing*, Pacific Power, Docket UM 1690 ("Based on the Company's discussions and research, Pacific Power is not able to develop a tariff-based program that meets the needs of customers while conforming to the narrow constraints of the VRET guidelines established by the Commission.").

PacifiCorp's tariff uses the word "bundled" does not change this fact.⁶ But whether they are technically "bundled" or are a hybrid "on-system" REC as discussed in the VRET proceeding,⁷ there can be no dispute that consideration whether to allow the utilities to offer the sale of RECs from specified sources was clearly contemplated to be a VRET product in the VRET Docket. Indeed, Staff found that "*The idea of a VRET contemplates the premise that specific resources are built and used to meet specific customer preferences.*"⁸ Staff also indicated that the ability to purchase RECs from a specified resource was the primary benefit noted in stakeholder comments in the VRET process, noting that "The VRET meets a need no other existing option is fully able to address for them. This need could include, for example, *purchasing renewable energy from a specific resource*, not just unbundled RECs."⁹ In discussing this issue, Staff expressly noted its awareness of PacifiCorp Schedule 272, and PacifiCorp's existing ability to sell unbundled RECs.¹⁰ The record further reflects that potential corporate participants for a VRET were "clearly interested in *claiming the output of specific renewable resources*" as a major goal of the VRET. For example, as stated in the "Corporate Renewable Energy Buyer's Principles," compiled by World Resource Institute: "We are increasingly interested in access to bundled energy and REC products. Unbundled RECs do not deliver the same value and impact *as directly procured renewable energy from a specific project or facility.*"¹¹

The record in Docket UM 1690 is replete with numerous additional references to parties discussing the ability of a party to claim the output of a specific renewable resource. At the conclusion of that proceeding, the Commission encouraged the utilities to propose a VRET subject to specified protections; PacifiCorp elected not to do so. If PacifiCorp has changed its mind about offering VRET products to its customers, it should be required to do so subject to the guidelines outlined by the Commission in Order No. 15-405. There is no basis, however, to allow PacifiCorp to simply ignore the Commission's express terms and do an end run around the protections put in place, as it attempts to do here.

2. Allowing PacifiCorp to Offer this Service would directly harm competition.

Sale of RECs – bundled or unbundled -- is a competitive service. Unbundled RECs can be purchased from a variety of sources, including from PacifiCorp, pursuant to its existing rate schedule. As described above, Staff previously concluded that such service is subject to the

⁶ See ORS 469A.005(3) ("Bundled renewable energy certificate means a renewable energy certificate for qualifying electricity that is acquired (a) by an electric utility or electricity service supplier by a trade, purchase or other transfer of electricity that includes the certificate that was issued for the electricity.").

⁷ See, e.g., Order No. 15-258, Docket UM 1690, Attachment 1, page 21. NIPPC submits this is a distinction without a difference. The suggestion that a utility could gain an advantage by simply separately purchasing from the same counterparty RECs and power through separate transactions is not consistent with the intent of the regulations, especially given the obligation by the utility to purchase power from a QF under specified terms.

⁸ Order No. 15-405, Docket UM 1690, Staff Report, page 21.

⁹ November 20, 2015 Staff Report, Docket UM 1690, at 5; adopted by the Commission in Order No. 15-405.

¹⁰ *Id.*, Staff Report p. 8.

¹¹ *Id.*, Staff Report p. 7.

Code of Conduct and the provisions of OAR 860-038-0500 through 0640 that were adopted following the passage of SB 1149, and PacifiCorp is only providing such service under a waiver pending further developments.

In its current proposal, by contrast, *PacifiCorp seeks permission to offer a regulated product not available for sale by any entity other than the utility itself, but which directly competes with products that could be offered by competitive service providers*. By allowing a customer to specify a REC resource that is delivering power into the PacifiCorp system, PacifiCorp is offering for sale something that an Electricity Service Supplier¹² (“ESS”) cannot provide. Specifically, PacifiCorp will be able to sell both energy and RECs from a specific, enumerated renewable resource, which can provide the customers with the opportunity to say that they are purchasing bundled renewable power from a specific renewable resource. This is essentially a VRET, and PacifiCorp is able to do so solely because of the investments paid for by other ratepayers to fund its distribution system. Either PacifiCorp or an ESS can procure RECs from a specified resource. But only PacifiCorp (under its tariff proposal) would be able to offer a bundled type product, and only because the specified resource was already selling into PacifiCorp’s system.

This is particularly easy to see with respect to qualifying facility (“QF”) projects, the most likely source for RECs available from specified projects. At the January 9, 2017 workshop held by PacifiCorp with interested parties and Staff to discuss its proposed filing, PacifiCorp indicated that it anticipated that the primary use of this tariff would be with respect to new QF Projects. PacifiCorp is legally obligated to purchase power from QFs, and that power is paid for by its general system customers. Either PacifiCorp or a third party can purchase RECs from those QFs. But only PacifiCorp can “rebundle” RECs from QFs with system power, allowing a general system user to claim a VRET-type benefit.

The legislature, via SB 1149, has directed the Commission to develop policies to eliminate barriers to the development of a competitive retail market structure, expressly including that Commission policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies.¹³ The legislature reiterated its concern for development of a competitive retail market in HB 4126, where it directed the Commission to actively consider impacts on the development of a competitive retail market in considering whether to allow utilities to apply for a VRET.¹⁴ The Commission has not authorized utilities to sell renewable power from specified sources outside of the context of a VRET.

¹² See ORS 757.600.

¹³ Senate Bill 1149, Section 6(1), codified at ORS 757.646 (“The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive.”).

¹⁴ House Bill 4126, Sections 3(b).

Allowing PacifiCorp to offer RECs from specified sources as proposed in this docket would allow it to use its entrenched vertical and horizontal market power to unfairly compete with alternative service providers. This is not just fundamentally unfair as a matter of good public policy; it is contrary to Oregon law, as established by SB 1149. Permitting PacifiCorp to offer this service, which was clearly contemplated as part of the VRET proceeding, without any of the protections required by the Commission in Docket UM 1690 – and just a few months after PacifiCorp declined to file a VRET Tariff proposal – flies in the face of both the Commission’s policy and the legislative directives of HB 4126. Rather than grant this request, the Commission should direct PacifiCorp explain and justify why the temporary waiver of the Code of Conduct and the provisions of OAR 860-038-0500 through 0640 should continue to apply to Schedules 270 and 272.

 /S/
Carl Fink
Blue Planet Energy Law, LLC
628 SW Chestnut Street,
Portland, OR 97219
CMFink@BLUEPLANETLAW.com
OSB No. 980262

One of counsel for Northwest and Intermountain Power Producers Coalition