

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1794

In the Matter of PACIFICORP, dba PACIFIC )	COMMUNITY RENEWABLE ENERGY
POWER, )	ASSOCIATION AND RENEWABLE
)	ENERGY COALITIONS'S MOTION
Investigation into Schedule 37 - Avoided Cost )	FOR CLARIFICATION OF SCOPE OF
Purchases from Qualifying Facilities of 10,000 )	PROCEEDING
kW or Less )	)
)	EXPEDITED CONSIDERATION
)	REQUESTED

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**I. INTRODUCTION AND SUMMARY**

The Community Renewable Energy Association (“CREA”) and the Renewable Energy Coalition (the “Coalition”) (collectively the “Joint QF Parties”) respectfully file this motion requesting that Administrative Law Judge (“ALJ”) Allan Arlow clarify the scope of this proceeding. Otherwise, the Joint QF Parties fear that they may expend substantial time and financial resources on testimony vetting PacifiCorp’s avoided cost filing, believing that testimony will be within the scope of Order No. 16-307, only to have that testimony potentially ignored or stricken from the record as irrelevant. To date, many of the issues that the Joint QF Parties had intended to address have been ruled as essentially outside the scope of this case given ALJ Arlow’s discovery rulings, and the Joint QF Parties are concerned those rulings could be read as precluding the Joint QF Parties from addressing what they understood to be the most important issues in the case.

The Joint QF Parties also respectfully request expedited consideration of this motion.<sup>1</sup> As the current deadline to file testimony is rapidly approaching and this case was expected to be resolved on an expedited basis, Joint QF Parties request shortened response (7 days) and reply (3 days) periods. Pursuant to OAR 860-001-420(6), Joint QF Parties have conferred with each party to this case via telephone or electronic mail, and no party objects to expedited treatment of this motion.

In Order No. 16-307, the Commission set a broad scope for this proceeding, directing that “an expedited contested case proceeding shall be opened to allow a more thorough vetting of the issues raised in this proceeding[, docket UM 1729,] *and* possible revision to Schedule 37 avoided cost prices on a prospective basis.”<sup>2</sup> In reliance on that order, the Joint QF Parties retained an expert witness to address important elements of PacifiCorp’s avoided costs, including out-dated assumptions in PacifiCorp’s 2015 Integrated Resource Plan (“IRP”) in light of Senate Bill (“SB”) 1547 and other recent events that directly impact the renewable and non-renewable resource deficiency dates, as well as the costs of the avoidable renewable resources.<sup>3</sup>

Two recent discovery rulings could be read to limit the scope of this proceeding dramatically.<sup>4</sup> These rulings appear to read limitations into the Staff Memorandum attached to

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<sup>1</sup> Joint QF Parties will additionally seek a stay of this expedited proceeding to resolve uncertainty as to the proper scope under Order No. 16-307.

<sup>2</sup> Order No. 16-307 at 1 (emphasis added).

<sup>3</sup> CREA and the Coalition are organizations with limited financial resources that do not receive intervenor or ratepayer funding to participate in Commission proceedings, and generally rely upon in-house resources or volunteer testimony from their members. But, as PacifiCorp’s current rates could cause some existing members to shut down their operations if they remain effective when their contracts expire, CREA and the Coalition have taken the unusual step of retaining an outside consultant, whose testimony will be for naught if the scope of this proceeding has been narrowed to exclude full consideration of the issues.

<sup>4</sup> See *ALJ Ruling: Motion to Compel Granted in Part and Denied in Part* (Nov. 2, 2016)

Order No. 16-307 and suggest that parties cannot challenge the assumptions underlying the 2015 IRP in light of SB 1547 and other recent events.

Accordingly, the Joint QF Parties respectfully request that the ALJ Arlow clarify that Order No. 16-307 broadly defined the scope of this proceeding to include an investigation into PacifiCorp's avoided costs. This includes the ability to challenge the assumptions in PacifiCorp's 2015 IRP and subsequent events that impact the renewable and non-renewable resource deficiency dates, including the passage of SB 1547, the retirement of coal plants, and the Company's actual resource procurement plans like renewable requests for proposals. In addition, the Joint QF Parties should have the ability to challenge the costs of the avoidable renewable resources, which PacifiCorp proposes be based on its 2015 IRP Update rather than its 2015 IRP.

## II. BACKGROUND

This is a proceeding to vet PacifiCorp's avoided cost rates, which PacifiCorp first initiated after acknowledgement of its 2015 IRP.<sup>5</sup> The proceeding to update the avoided costs was initially docketed as UM 1729, and the Commission previously rejected PacifiCorp's proposed rates on the ground that the assumptions underlying them in the IRP had been superseded by passage of SB 1547.<sup>6</sup> The Commission directed the parties to "work together and propose an expedited and non-contested case process to update PacifiCorp's avoided costs in

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("November 2<sup>nd</sup> Ruling"); *ALJ Ruling: Motion to Compel Denied* (Nov. 18, 2016) ("November 18<sup>th</sup> Ruling").

<sup>5</sup> See generally Order No. 16-307 at 1 & App. A at 1-2.

<sup>6</sup> See *PacifiCorp, dba Pacific Power, Schedule 37 Avoided Cost Purchases from Eligible Qualifying Facilities*, Docket No. UM 1729(1), Order No. 16-117 at 1 (Mar. 23, 2016)

light of the passage of SB 1547.”<sup>7</sup> The negotiations failed, however, and PacifiCorp filed a Supplemental Application on June 21, 2016, proposing to use its unacknowledged 2015 IRP Update as the basis for the inputs to the proxy resource assumptions. PacifiCorp justified the reasonableness of its filing based on its claim that preliminary bids into the 2016 request for proposals (“RFP”) supported its proposed avoided costs.

At a public meeting on August 16, 2016, the Commission addressed PacifiCorp’s proposed avoided costs, but it was apparent that parties had not been provided a due process right to fully vet PacifiCorp’s avoided costs. The Coalition argued in docket UM 1729 that it had been deprived of the due process right to challenge inputs to the 2015 IRP, which formed the basis for the proposed deficiency period dates for avoided costs. CREA argued that because it and other parties had been provided no discovery in UM 1729, they were unable to confirm or disprove PacifiCorp’s factual assertions in its Supplemental Application, which included material allegations regarding the highly confidential results of PacifiCorp’s 2016 RFP.

The Joint QF Parties raised several issues before and at that public meeting. Specifically, the Joint QF Parties argued that PacifiCorp’s proposal that the renewable deficiency date was longer than twenty years was incorrect because:

- The passage of SB 1547 would require the acquisition of new renewables in less than twenty years;
- PacifiCorp was in fact attempting to acquire new renewable resources in its 2016 RFP;
- PacifiCorp’s lower costs based on the 2015 IRP Update had not been demonstrated;
- There was no evidence on record to support PacifiCorp’s claims that the 2016

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<sup>7</sup> *Id.*

Renewable RFP supported lower avoided cost rates; and

- PacifiCorp's transmission assumptions inaccurately lowered the rates.

With respect to the non-renewable rates, the Joint QF Parties argued that PacifiCorp's 2024 sufficiency period should not be moved out to 2028 because the Company:

- Had not conducted adequate analysis to determine if the wholesale market has sufficient depth to meet PacifiCorp's summer peak until PacifiCorp's proposed resource sufficiency-deficiency demarcation;
- Recently announced major coal plant retirements (the 337 MW Naughton 3 in 2018, and the 387 MW Cholla 4 in 2025);
- May need to accelerate coal plant retirements because of the Clean Power Plan and SB 1547 requirement to remove coal costs from Oregon rates; and
- May need to replace coal plants with flexible gas plants to integrate the increased need for renewable resources under SB 1547.

PacifiCorp changed its position at that public meeting and presented a whole new theory of its avoided costs, which significantly deviated from its previous position presented in its Supplemental Application. The Supplemental Application proposed a renewable resource deficiency date of 2018 and relied upon alleged bids for an Oregon wind farm into the 2016 Renewable RFP as the basis to set the proxy resource costs. In contrast, at the public meeting, PacifiCorp argued that it would not be renewable deficient until at least 2028 (or later). The Joint QF Parties pointed out at the public meeting that they could not respond to PacifiCorp's initial or revised arguments because parties had been denied discovery rights regarding PacifiCorp's avoided costs in docket UM 1729, which was a non-contested case.

Ultimately, the Commission ordered PacifiCorp to file new avoided costs with prices based on renewable and non-renewable deficiency periods beginning in 2028 based on the cost

and performance data from its 2015 IRP, plus updates related to gas price forecasts and the production tax credit.<sup>8</sup> However, the Commissioners openly discussed that they did not believe PacifiCorp's filings were accurate and also recognized that parties had no opportunity to vet all available data.<sup>9</sup> Thus, the Commission also directed: "an expedited contested case proceeding shall be opened *to allow a more thorough vetting of the issues raised in this proceeding and possible revision to Schedule 37 avoided cost prices on a prospective basis.*"<sup>10</sup> The latter part of this direction indicates a very broad scope where the rates themselves be vetted to determine if they are reasonable.

While undertaking the vetting directed by the Commission, discovery disputes brought to light a disagreement between parties about the scope of this proceeding. Because this is an expedited procedure, there was no discussion on the scope of issues prior to discovery. The Joint QF Parties believe two recent discovery rulings include statements that could be read to limit the scope of the issues that may now be raised in this proceeding and therefore request clarification.

First, the *November 2<sup>nd</sup> Ruling* included several limiting statements regarding the scope of relevant information related to PacifiCorp's 2016 RFP. The ruling recited positions taken by Staff as explained in the Appendix to Order No. 16-307. The ruling explained that Staff's position was not to use the 2015 IRP Update or RFP to set avoided cost rates. The ruling then relied on those Staff positions to conclude as follows: "Thus, Order No. 16-307 removed the discussion of any bids submitted or reviewed by the company after the 2015 IRP from

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<sup>8</sup> See Order No. 16-307.

<sup>9</sup> See August 16, 2016 OPUC Public Meeting at 1:20:20 ("I'll be honest, I'm struggling with the sufficiency/deficiency date. I don't believe its twenty-never and I don't believe its 2018.").

<sup>10</sup> Order No. 16-307 (emphasis added).

consideration in the next phase of the proceeding.”

Second, the *November 18<sup>th</sup> Ruling* made additional limiting statements regarding the modeling used by PacifiCorp to develop the renewable and non-renewable deficiency dates in the 2015 IRP. The ruling stated that “vetting should be done in a manner that provides for a consistent set of data and methodology” and therefore agreed with PacifiCorp that “conflating information from two different time periods, fail to meet the tests of relevancy.”<sup>11</sup> The ruling also rejected the Coalition’s attempt to obtain meaningful access to PacifiCorp’s IRP System Optimizer and PaR models, which are used by PacifiCorp to set the resource sufficiency-deficiency demarcation to calculate Schedule 37 rates.

Collectively, these two recent rulings suggest that testimony regarding events that occurred after PacifiCorp’s 2015 IPR are only relevant if considered by Staff of the Commission.<sup>12</sup> Thus, uncertainty remains as to what can be used to challenge the currently effective avoided costs or the out-dated assumptions underlying the 2015 IRP.

### **III. LEGAL BACKGROUND**

Avoided costs are the incremental costs of PacifiCorp’s next avoidable generation resources.<sup>13</sup> In Oregon, interested parties are provided the opportunity to challenge a utility’s avoided cost rates through contested case proceedings because “[s]tandard rates for purchases shall be implemented . . . [i]n the same manner as rates are published for electricity sales . . . .”<sup>14</sup>

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<sup>11</sup> *November 18<sup>th</sup> Ruling* at 2.

<sup>12</sup> Or potentially PacifiCorp, as PacifiCorp has proposed to use the 2015 IRP Update information to set rates, and has justified those rates based on the claimed and unvetted 2016 Renewable RFP.

<sup>13</sup> 18 C.F.R. § 292.101(b)(6).

<sup>14</sup> OAR 860-029-0040(4). The rules further provide that: “Any standard rates filed under OAR 860-029-0040 shall be subject to suspension and modification by the Commission.” OAR

Generally, the starting point for review of avoided cost rates is the last acknowledged IRP.<sup>15</sup> The IRP process evaluates a utility’s resource strategy covering a 20-year time horizon based on the results on numerous model runs that the Company (and not the Joint QF Parties) decides to conduct. Utilities are required to submit updated avoided cost filings within 30 days of acknowledgement of their IRPs and on May 1 of every year.<sup>16</sup> However, the Commission has historically encouraged parties to seek suspension of an avoided cost filing to address concerns about natural gas forecasts or “any other aspect of a utility’s filing.”<sup>17</sup> After much debate, the Commission recently determined challenges to a utility’s avoided cost calculation should occur after the acknowledgement of a utility’s IRP.<sup>18</sup> This expedited proceeding to more thoroughly vet the issues raised in docket UM 1729 and challenge the temporary rates put in place in Order No. 16-307 attempts to conform PacifiCorp’s recent filings to that Commission policy.

#### IV. ARGUMENT

The Joint QF Parties seek clarification that the scope of this proceeding includes any issue reasonably calculated to impact the determination of the date and costs associated with PacifiCorp’s next avoidable major renewable and non-renewable resources – the primary issues that were debated in docket UM 1729. At a minimum, the Joint QF Parties should be able to

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860-029-0080(6).

<sup>15</sup> *Re Investigation Into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014); *Re Investigation into determination of resource sufficiency, pursuant to Order No. 06-538*, Docket No. UM 1396, Order No. 10-488 at 8 (Dec. 22, 2010).

<sup>16</sup> *Re Investigation Into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 14-058 at 2 (Feb. 24, 2014) (the annual update may be waived if it falls within 60 days of May 1).

<sup>17</sup> *Re Investigation Relating to Electric Utility Purchases from QFs*, Docket No. UM 1129, Order No. 05-584 at 36-37 (May 13, 2005); *Re Investigation Relating to Electric Utility Purchases from QFs*, Docket No. UM 1129, Order No. 06-538 at 44 (Sept. 20, 2006).

<sup>18</sup> *Re Investigation Into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 16-174 at 14 (May 13, 2016).



thoroughly vet the issues that they raised in UM 1729 and propose revisions “to Schedule 37 avoided cost prices on a prospective basis.”<sup>19</sup> However, the Joint QF Parties are concerned that the recent discovery rulings effectively prevent them from actually vetting the exact issues that they raised in UM 1729 and have effectively made it impossible for them to actually propose any specific revisions to Schedule 37. Clarification of the scope is necessary to confirm that the Joint QF Parties have an opportunity to vet all of their issues in this proceeding.

**1. The Joint QF Parties Are Only Seeking to Vet Previously Raised Issues.**

As noted above, avoided costs are the incremental costs of PacifiCorp’s next avoidable generation resources.<sup>20</sup> That topic obviously opens the door to a very wide range of potentially relevant information. A summary review of the Staff Memorandum attached to Order No. 16-307 confirms the broad range of issues in play with regard to those next avoidable resources.<sup>21</sup> As noted above, however, the recent discovery rulings cast a cloud of doubt over the issues that may be raised by parties in testimony and resolved by the Commission in the final order in this contested case.

Despite the potentially broad range of issues that the Joint QF Parties could raise in this case, they are in fact narrowly focusing on only a small handful of issues. The key issue that the Joint QF Parties plan to address in this case is the next date upon which PacifiCorp is planning to build or acquire a renewable and non-renewable resource. Those dates are should be within the scope of the proceeding for a number of reasons, including: the Commission sets PacifiCorp’s

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<sup>19</sup> See Order No. 16-307 (emphasis added).

<sup>20</sup> 18 C.F.R. § 292.101(b)(6).

<sup>21</sup> See Order 16-307 at Appendix A at 1-10 (discussing deficiency periods beginning in 2018 for renewable resources and 2028 for standard resources, capital costs and performance data from the IRP Update and RFP responses, updates to gas forward price curve and production tax credit, among other topics).

deficiency period avoided costs based on the costs of the next avoidable renewable and non-renewable resources; the timing and costs of those resources were the focus of the debate in docket UM 1729; and this issue has the largest impact on avoided cost prices. Specifically, the Joint QF Parties intend to challenge: 1) the renewable sufficiency period and recommend that it be moved up from 2028; 2) the thermal sufficiency period and recommend that it be moved up from 2028; and 3) a limited number of inputs and assumptions for setting the renewable proxy resource costs. The Joint Parties do not plan to challenge the Commission's underlying methodologies for setting avoided cost rates, such as the Commission's policy of using resource sufficiency and deficiency periods and the use of forward market price forecasts for sufficiency period rates with no capacity payments. Given limited resources, the Joint QF Parties are not planning to present evidence on the vast majority of the inputs and assumptions that PacifiCorp has unilaterally chosen to use to base its avoided cost rates. Instead, the Joint QF Parties only intend to raise important and critical topics that have previously been raised in docket UM 1729.

## **2. The November 2<sup>nd</sup> Ruling Suggests Recent Events are Irrelevant.**

The *November 2<sup>nd</sup> Ruling* suggests that the Joint QF Parties may not be able to discuss the significance of the 2016 RFP because Staff did not support use of the unacknowledged 2015 IRP Update or RFP results. The ruling appears to rely on the Staff Memorandum attached to Order No. 16-307 as defining the scope of the proceeding. The Staff Memorandum is relevant to the scope of the proceeding, however, only to the extent that it identifies some (but not all) of the issues that were raised in docket UM 1729. Stated another way, although Staff's Memorandum lists several issues included within the scope of the Commission's directive in Order No. 16-307, it does not limit the scope of the issues to be vetted in this proceeding or otherwise bar the Joint

QF Parties from raising relevant issues, especially those identified prior to Order No. 16-307. Order No. 16-307 adopted temporary rates based in part on Staff's recommendation, but never explicitly removed from this discussion the consideration of events that occurred after the 2015 IRP's acknowledgment.

The suggestion that events occurring after acknowledgment of the 2015 IRP are not within the scope of this proceeding is contrary to the Commission's consideration of other post-IRP updates. For example, PacifiCorp has proposed changes based on the 2015 IRP Update. Its opening testimony in this docket (UM 1794) specifically argues:

Because of significant reductions in the cost of renewable resources since the 2015 IRP was prepared, and because the Company's RPS compliance strategy is to continue to rely on unbundled REC purchases, if Schedule 37 assumes a renewable resource is acquired in 2028 (a departure from the acknowledged 2015 IRP) it should also reflect the most current estimates of the costs to acquire such a resource if retail customers are to remain indifferent to purchasing the output of a renewable QF.

PAC/100, Dickman/6:9-15. PacifiCorp goes on to rely on data from its IRP Update and other date sources developed subsequent to the 2015 IRP.<sup>22</sup> It would be fundamentally unfair to allow PacifiCorp to propose rates relying on events since the 2015 IRP acknowledgement, but to deny the Joint QF Parties the ability to rely on events and data that have been developed since the 2015 IRP's acknowledgement in response.

Likewise, the currently effective rates rely on information developed subsequent to the acknowledgement of the 2015 IRP. The Commission itself set the 2028 date based on enactment of SB 1547 and the Company's decision not to acquire any renewable resources in its 2016 Renewable RFP, which are both events that occurred after acknowledgement of the 2015 IRP.

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<sup>22</sup> PAC/100, Dickman/11-14.

Moreover, despite Staff's views on the RFP information, that RFP was placed in issue by PacifiCorp in docket UM 1729 and should therefore be squarely within the scope of issues in this proceeding.<sup>23</sup> Even more importantly, the Commission itself relied upon the 2016 Renewable RFP when setting rates. Since the Commission itself relied upon the 2016 Renewable RFP to set rates, the Joint QF Parties have the right to address the significance of the 2016 Renewable RFP to propose new rates. Thus, the Joint QF Parties request clarification as to whether the *November 2<sup>nd</sup> Ruling* states that PacifiCorp's RFP information and other data is outside the scope of this proceeding because it occurred after PacifiCorp's IRP process.

**3. The November 18th Ruling Suggests Additional Model Runs are Irrelevant and Changes Cannot Be Made to Account for Recent Events.**

Similarly, the *November 18<sup>th</sup> Ruling* suggests that a party may not recommend changes to the outcome of the 2015 IRP unless that party somehow avoids “conflating information from two different time periods.”<sup>24</sup> This suggests that any additional model runs obtained by the Joint QF parties may be outside the scope of this proceeding. Taken to its logical extreme, the limitation against “conflating information from two different time periods” would require a whole new IRP Update be completed in order to recommend any changes be made to discrete elements of the IRP. Parties should have the ability to recommend discrete changes to the 2015 IRP in order to actually vet PacifiCorp's data and assumptions, which will allow the parties to vet the sufficiency/deficiency demarcation date.

Any requirement that changes must not “conflate information” is contrary to the

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<sup>23</sup> See August 16, 2016 OPUC Public Meeting at 42:55 (stating that the results of the RFP process support using the acknowledged 2015 IPR information to maintain PURPA's indifference standard); *id.* at 1:25:35 (stating that Staff's proposal would lead to rates significantly higher than the opportunities turned down in the RFP process).

<sup>24</sup> *November 18<sup>th</sup> Ruling* at 2.

Commission's own reasoning supporting Order No. 16-307. The Commission started with information from PacifiCorp's acknowledged IRP, then added information from SB 1547 and the 2016 Renewable RFP as well as Staff's Memorandum, PacifiCorp's Supplemental Application, and PacifiCorp's entirely new position argued at the August 16 public meeting to set the current avoided cost rates. The current avoided cost rates are a conflation of information from numerous time periods. PacifiCorp itself has proposed to conflate information from even more time periods when it proposed in its direct testimony to use some inputs and assumptions from the acknowledged 2015 IRP, but different ones based on the 2015 IRP Update—all of which the Company previously argued are supported by the 2016 Renewable RFP.

The Joint QF Parties likewise intend to rely upon facts from a different time period than the 2015 IRP, that have not yet been fully presented to the Commission for review. The purpose of which is to ascertain what PacifiCorp's renewable and non-renewable sufficiency-deficiency demarcations would be if more reasonable and accurate assumptions were used. In short, the Company's currently effective rates include conflated time periods, PacifiCorp has proposed even more conflating of time periods in its opening testimony, and there is simply no way for the Joint QF Parties to respond and vet PacifiCorp's avoided cost rates without also conflating different time periods.

**4. The Impact of the Discovery Rulings and Scope of the Proceeding Need to Be Clarified.**

In sum, an overly broad reading of the *November 2<sup>nd</sup> Ruling* and the *November 18<sup>th</sup> Ruling* could preclude consideration of relevant evidence the Joint QF Parties intend to submit regarding the recent events since acknowledgement of the 2015 IRP and their potential impact on the avoided costs. Those events include the passage of SB 1547, closure of coal plants, and


PacifiCorp's pursuit of new renewable resources in the 2016 RFP. All of these topics were raised in docket UM 1729. These issues remain within the scope to this proceeding and should be proper topics for inclusion in the Joint QF Parties' testimony. In the wake of the two discovery rulings, the Joint QF Parties are unclear as to what evidence is available (and relevant) to vet PacifiCorp's avoided cost filing. Thus, setting aside the merits of the narrow discovery disputes, ALJ Arlow should clarify that the discovery rulings were limited to the discoverability of the specific data requests, and that they did not intend to re-write Order No. 16-307 so as to limit the issues that may be presented in testimony.

## **V. CONCLUSION**

The Joint QF Parties respectfully request that ALJ Arlow clarify that Order No. 16-307 broadly defined the scope of this proceeding to include an investigation into PacifiCorp's avoided costs, including the continued veracity of assumptions in PacifiCorp's 2015 IRP in light of SB 1547 and other recent events that directly impact the renewable and non-renewable resource deficiency dates, as well as the costs of the avoidable renewable resources.

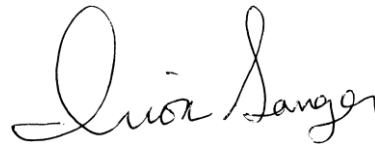
RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of November, 2016.

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