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A DIVISION OF PACIFICORP

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VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-1166

Attn: Filing Center

RE: Docket UM 1734—Reply in Support of Motion for Interim Relief

PacifiCorp d/b/a Pacific Power encloses for filing in the above-referenced docket its Reply in Support of Motion for Interim Relief.

If you have any questions, please contact Erin Apperson, Manager, Regulatory Affairs, at (503) 813-6642.

Sincerely,

R. Bryce Dalley
Vice President, Regulation

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1734

In the Matter of PACIFICORP d/b/a PACIFIC POWER Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap.	**PACIFICORP'S REPLY IN SUPPORT OF MOTION FOR INTERIM RELIEF**

In accordance with OAR 860-001-0420(5), PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) hereby submits to the Public Utility Commission of Oregon (Commission) this Reply in support of its Motion for Interim Relief (Motion). This reply addresses the arguments made by the following parties, all of whom submitted responses to PacifiCorp's Motion for Interim Relief: Obsidian Renewables, LLC; Cypress Creek Renewables, LLC; the Renewable Energy Coalition; the Community Renewable Energy Association; and Oregonians for Renewable Energy Progress (collectively, the Joint Parties); OneEnergy Renewables (OneEnergy); Renewable Northwest (RNW); and Northwest Energy Coalition (NWEC).

I. INTRODUCTION

The Commission should reject the arguments raised by the Joint Parties, OneEnergy, RNW, and NWEC, and instead issue an order granting PacifiCorp's requested interim relief—a reduction in the eligibility threshold for standard QF power purchase agreements (PPAs) for solar projects from 10 MW to 3 MW—pending final resolution of PacifiCorp's

Application to Lower the Qualifying Facility Standard Contract Term and Reduce the Qualifying Facility Standard Contract (Application).[1]

The pace and volume of solar QF development in PacifiCorp's Oregon service territory demonstrate that the requested relief is not only warranted, but imperative. As described in greater detail in its Application and Motion, PacifiCorp is experiencing both a widening gap between its actual avoided costs and current QF prices (due to the costs of solar integration and other factors not currently considered in the methodology for standard avoided cost rates) and an increasingly high volume of requests for long-term solar QF contracts in Oregon (due to decreasing development costs). As the Joint Parties point out, none of the 48 QFs currently in operation on PacifiCorp's Oregon system are solar. In stark contrast, however, there are 27 new QF solar projects under contract but not yet operational, and another 9 solar projects have requested QF contracts. If all these projects become operational, it will increase PacifiCorp's must-buy obligation for solar from 0 MW to approximately 460 MW. Even assuming that only half of this 460 MW of solar comes online, it would represent a massive increase in the Company's solar must-buy obligation in Oregon from 0 MW to over 200 MW.

The interim relief requested by PacifiCorp is precisely the relief granted Idaho Power Company (Idaho Power) in UM 1725. In that docket, the Commission recognized the unprecedented growth in requests for solar projects experienced by Idaho Power and found that, without intervention, the Company would be required to enter into a significant number of long-term solar QF contracts at rates that exceed the utility's actual avoided costs.[2] Thus,

[1] Filed in this docket on May 21, 2015.
[2] *Applications to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination*, Docket No. UM 1725, Order No. 15-199 (June 23, 2015).

given the high volume of solar QF development combined with the disconnect between actual and standard avoided cost, the Commission acted to prevent harm to the utility's ratepayers in the form of narrowly tailored interim relief. The circumstances facing PacifiCorp warrant nothing more and nothing less than the same relief that the Commission granted to Idaho Power's customers just one month ago.

Contrary to the assertions by the Joint Parties and others in this docket, there are sound legal and public policy reasons for the Commission to grant PacifiCorp the interim relief that it adopted for Idaho Power:

- *First*, as the Commission already concluded when it denied the Joint Parties' Motion to Dismiss, there is nothing in the stipulation on issues list in UM 1610 that bars PacifiCorp from asking the Commission to reevaluate its PURPA policies in light of changed circumstances or from granting PacifiCorp's customers interim relief.[3]
- *Second*, the Joint Parties' efforts to undermine PacifiCorp's evidence of the upward trend in solar QF development are not persuasive. Contrary to their assertions, PacifiCorp's evidence that QF solar development is increasing in both volume and scale is clear and unequivocal (see Table 1 below); moreover, the decreasing costs of solar project development, combined with the potential for an extension of the federal income tax credit (ITC), suggest that solar QF development is unlikely to slow in the coming months or years.

[3] *Investigation Into Qualifying Facility Contracting And Pricing,* Docket No. UM 1610, Order No. 15-130 (April 16, 2015).

- *Third,* given the established pace of solar development on the Company's system, PacifiCorp's customers deserve the same protections as those granted to Idaho Power's.

For these reasons, and as explained in greater detail below, PacifiCorp respectfully requests that the Commission reduce the standard solar QF PPA eligibility threshold from 10 MW to 3 MW, effective as of July 9, 2015, the date of PacifiCorp's Motion.

II. ARGUMENT

A. Standard of Review for PacifiCorp's Motion for Interim Relief

The Commission's authority to grant PacifiCorp's request for interim relief arises from its fundamental regulatory duty to "represent the customers of any public utility or telecommunications utility and the public generally in all controversies . . . [and] make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates."[4] Thus, the Commission may grant the requested interim relief if it determines that such action is necessary to carry out its statutory duty to protect utility customers from harm.

In Order No. 15-199, the Commission described the policy goals underlying its implementation of PURPA, specifically noting its obligations to promote development while ensuring that customers pay no more than avoided cost:[5]

> To that end, we must balance our duty to "create a settled and uniform institutional climate for QFs in Oregon," while ensuring the electric utilities "purchase power from QFs at rates that are just and reasonable to the utility's customers, in the public interest, and that do not discriminate against QFs,

[4] ORS 756.040(1) (Commission "shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions.").
[5] Order No. 15-199 at 6.

> but that are not more than avoided costs." Accordingly, we consider both the impact on PURPA development and the impact on Idaho Power's Oregon customer's in our decision.[6]

Applying that standard, the Commission concluded that the "unprecedented pace and volume of QF development justifies interim relief in order to prevent harm to Idaho Power's ratepayers."[7] To that end, the Commission reduced Idaho Power's standard contract eligibility cap from 10 MW to 3 MW for solar QFs, noting that "effect of this relief is that projects greater than 3 MW in size will fall under our large QF policies, where contracts are negotiated between the developer and the utility pursuant to Commission-approved guidelines."[8]

Importantly, the Commission's conclusion was not based on a finding that all—or even most—of the QFs requesting PPAs would ultimately come to fruition. To the contrary, the Commission expressly acknowledged that "some of these solar QFs may not be built."[9] Nonetheless, the Commission concluded that, "even using conservative estimates, we are convinced that a sufficient number of projects will proceed and eventually require Idaho Power, without some form of interim relief, to enter into substantial long-term contracts that exceed the Company's actual avoided costs."[10]

B. PacifiCorp's Customers will Suffer Substantial Harm if the Commission does not Grant the Requested Interim Relief.

As detailed in PacifiCorp's Motion, Application, and testimony of Bruce Griswold, even PacifiCorp's new standard avoided cost prices in Schedule 37, which went into effect on June 24, 2015, do not properly reflect the actual costs incurred by the Company.[11] As a

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[6] *Id.*
[7] *Id.* at 7.
[8] *Id.*
[9] *Id.* at 6.
[10] *Id.*
[11] *Application to Update Schedule 37 Qualifying Facility Information*, Docket UM 1729, Order No. 15-205 (June 23, 2015).

result of this disconnect between PacifiCorp's Schedule 37 rates and its actual avoided costs, PacifiCorp's customers are likely to suffer financial harm if PacifiCorp is required to enter into a long-term standard contract for even one large (greater than 3 MW) solar projects. Here, as the table below illustrates, the volume and rate of recent QF development on PacifiCorp's system suggests that PacifiCorp's customers will likely bear the costs of a substantial number of long-term contracts with prices in excess of PacifiCorp's actual avoided costs:

Table 1: QF Projects in PacifiCorp's Oregon Service Territory

	All QF Projects		**QF Solar Only**	
QF Status	# of Projects	Nameplate Capacity (MWs)	# of Projects	Nameplate Capacity (MWs)
Operational	48	213.1	-	-
PPA executed, but not operational	35	277.6	27	221.5
Requested PPA, but PPA not executed	10	242.5	9*	239.00
Total	93	733.2	36	460.5

*This number includes five projects that have requested standard QF PPAs (49.8 MW) and four projects that have requested Schedule 38 QF PPAs (189.2 MW).

As illustrated in Table 1, the percentage of QF activity in PacifiCorp's Oregon service territory for solar projects is increasing in an unprecedented manner. To date, PacifiCorp has entered into QF PPAs for 221.5 MW of solar and has received requests for another 239 MW; even if only 50 percent of these solar projects become operational, PacifiCorp's power purchases from solar QFs would be more than double its current purchases from Oregon QFs. These numbers demonstrate a significant statistical increase in solar development.

It is also important to note that PacifiCorp has continued to receive formal requests for solar standard contracts since July 9, 2015 (the date of its Motion), despite the fact that its updated June 24, 2015, avoided cost prices are substantially lower than the old prices. Such

additional requests may well result in long-term commitments of very significant dollar amounts. For example, requiring PacifiCorp to purchase 10 MW from a single hypothetical solar QF under the current Schedule 37 prices for a 15-year fixed price term beginning in 2017 would cost PacifiCorp customers approximately $19.8 million. If the Commission grants the requested interim relief, the maximum value of a PPA for a single solar QF project would be $6.0 million, or $13.8 million less per project. Thus, even if there is a temporary lull in requests for standard contracts as developers recalibrate their projects in light of the new rates, it remains appropriate for the Commission to grant PacifiCorp's Motion.

C. PacifiCorp's Request for Interim Relief is Not Barred by the Stipulation in UM 1610.

The Joint Parties allege that PacifiCorp is "legally barred from seeking any relief in this docket on an interim basis or otherwise" because PacifiCorp executed a binding stipulation in Docket UM 1610 without bargaining for the right to request changes to the Commission's PURPA policy as they apply to PacifiCorp outside of Docket UM 1610.[12]

The Commission already implicitly considered and rejected this argument when it denied the Joint Parties' Motion to Dismiss PacifiCorp's application for a reduced fixed-price standard contract term and eligibility cap.[13] Indeed, there is nothing in the UM 1610 stipulation that bars PacifiCorp from asking the Commission to reevaluate its PURPA policies in light of changed circumstances, or from requesting interim relief while the Commission does so. The fact that the parties explicitly agreed that it was appropriate for Idaho Power to bring its requests in a separate case cannot be read to imply that PacifiCorp waived its right to do the same. Oregon law is clear that a waiver of a legal right must be

[12] Joint Parties Response at 3.

[13] *Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap*, Docket No. UM 1734, Order No. 15-209 (July 7, 2009) (stating "we expect that our investigation of PacifiCorp's application will proceed roughly in parallel with our review of Idaho Power's application, as the two dockets will involve similar policy considerations.").

explicit and unequivocal.[14] At the time of the UM 1610 stipulation, PacifiCorp had not yet determined the precise type of relief it would be seeking and therefore it did not join in Idaho Power's "heads up" to the parties; PacifiCorp's "no comment" is a far cry from the type of clear and unequivocal action required for waiver of a legal right.[15]

D. PacifiCorp's Customers Are Entitled to the Same Level of Protection that the Commission Provided to Idaho Power's Customers.

The Joint Parties argue that PacifiCorp's motion is "all about keeping up with Idaho Power," and that the "primary rationale for granting interim relief to Idaho Power in UM 1725 does not apply to PacifiCorp."[16] As illustrated by the compelling numbers presented above in Table 1, this characterization could not be further from the truth. PacifiCorp's Motion is about protecting its customers from bearing the costs of purchasing power from a significant number of large (greater than 3 MW) solar QF projects at prices that PacifiCorp believes it will prove to be demonstrably higher than its actual avoided costs. Contrary to the assertions of the Joint Parties, PacifiCorp is requesting the same relief that the Commission granted Idaho Power because it finds itself in similar circumstances, not just as a "me-too" filing.[17]

Moreover, nothing in Commission Order No. 15-199 provides support for the Joint Parties argument that "the primary rationale for granting interim relief to Idaho Power in UM 1725 does not apply to PacifiCorp."[18] On the contrary, in Order No. 15-199, the

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[14] *Assoc. of Or. Corrections Emps. v. State*, 353 Or 170, 183 (2013) ("To make out a case of waiver of a legal right there must be a clear, unequivocal, and decisive act of the party showing such a purpose.").
[15] The Joint Parties argue that that Idaho Power's express reservation of rights in the UM 1610 Stipulation would be rendered meaningless if PacifiCorp is permitted to raise the same issues despite the fact that it did not expressly reserve the right. That is not the case. By including Section I in the UM 1610 Stipulation, Idaho Power gained the parties' agreement not to object to the filing being made outside of UM 1610. The Joint Parties are correct that PacifiCorp did not bargain for and obtain the same agreement, leaving the parties free to object to PacifiCorp's request for a separate docket to address its standard QF contract term and eligibility cap.
[16] Joint Parties Response at 4-5.
[17] *Id.* at 4.
[18] Joint Parties Response at 5.

Commission offered a clear explanation of the reason for its interim relief—it was based entirely on the circumstances facing Idaho Power, as described in that portion of the order supporting its findings and conclusions. Moreover, the selected quotations offered by the Joint Parties as support for this argument are nothing more than the Commission paraphrasing ***Staff's*** position.[19] In reality it does not appear that parity with the Idaho jurisdiction played a significant, if any, part in the Commission's decision.

Finally, the Joint Parties efforts to downplay PacifiCorp's concerns about "geographic arbitrage" are not well taken. PacifiCorp's Motion raises a concern that, unless the Commission grants PacifiCorp's request for a temporary 3 MW cap of solar QFs, the 3 MW cap on solar QFs in Idaho Power's service territory will likely result in a perceptible shift of solar QF development onto PacifiCorp's system. The Joint Parties are correct that PacifiCorp has not offered any evidence that developers have actually shifted from Idaho Power to PacifiCorp service territory; the Commission granted Idaho Power the interim relief just one month ago—on June 23, 2015. But it would be neither surprising nor unprecedented if developers were to select locations for their QF projects that offer the best possible terms and prices.

While the Commission need not grant PacifiCorp's request for interim relief on this basis alone, geographic arbitrage is a very real concern. For example, Idaho Power has already experienced QFs moving across the state line to secure more favorable terms.[20] If

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[19] Order No. 15-199 at 4.

[20] *In the Matters of Tumbleweed Energy II, LLC v. Idaho Power Co., Western Desert Energy, LLC v. Idaho Power Co.*, Docket Nos. UM 1552 & UM 1553, Order No. 12-283 (Mar. 13, 2012) (Commission rejected QF complaints in which proposed transactions would require "not just moving power across state lines, but requiring the same utility to accept their power, wheel it, and then purchase it in a new jurisdiction under PURPA"). *See also Kootenai Elec. Cooperative, Inc. v. Idaho Power Co.*, Docket No. UM 1572, Order No. 14-013 (Jan. 9, 2014) (QF located in Idaho with contracted point of delivery also in Idaho requested Oregon PURPA contract because point at which transmission line changed ownership from Avista to Idaho Power was located in Oregon).

QFs are willing to take on the differences in siting, land use, tax laws and other regulatory requirements and benefits to cross state lines, as demonstrated by the cases in footnote 20, it is even more likely that they might move from one utility service territory to another within the same state. More importantly, the prospective concern is less that existing projects might move a project from one utility's service territory to another, and more that differing QF standard contract requirements for different utilities will become the primary consideration for new QFs selecting a site. Finally, a QF does not need to be sited within a utility territory to invoke the must purchase obligation.[21] The QF has a right to transport its energy to the preferred utility and will do so if the difference between rates or terms make it the economic choice.[22]

E. The Current Volume of PPA Requests for Large Solar Projects is Unprecedented and Likely to Continue for the Foreseeable Future.

The Joint Parties dedicate several pages to their argument that the "current volume of PURPA contract requests is neither extreme nor unprecedented."[23] As support for this allegation, the Joint Parties have provided a detailed discussion and analysis of PacifiCorp's interconnection queue based on the testimony of David W. Brown of Obsidian Renewables. The basic premise of the Joint Parties' argument regarding PacifiCorp's interconnection queue boils down to this—to be taken seriously, an increase in QF requests for standard contracts should have an immediate and commensurate increase in interconnection requests and agreements.

In PacifiCorp's experience, however, there is no such immediate correlation. The standard contract request and the generation interconnection request are two separate

[21] 18 CFR 292.303(a).
[22] *Id.*
[23] Joint Parties Response at 6.

processes managed by two separate and distinct business units that were created separately in response to, and in compliance with, FERC standards of conduct rules. Eventually, of course, any serious QF that intends to sell power must request interconnection with the utility's system. However, given the cost and diligent prosecution that is required to successfully pursue an interconnection request through to an interconnection agreement, many developers request and obtain a standard contract for a project *substantially before* moving forward with the interconnection request. [24]

Despite the dynamic creating a potential lag between PPA requests and interconnection requests, PacifiCorp notes that the general trends in the interconnection queue in its Oregon service territory do, in fact, show an unprecedented increase in solar QFs in 2014 and 2015. Between 2007 and 2013, according to the Joint Parties, PacifiCorp received interconnection requests for an average of 21 projects per year (low of 14 and high of 27).[25] During 2014, PacifiCorp received interconnection requests for 47 projects; to date in 2015, it has received interconnection requests for another 21 (on track for 42 by year end).[26] These requests, the vast majority of which are for solar QFs, show that the pace of development in 2014 was double that of any prior year, at least with regard to the overall number of separate interconnection requests.[27]

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[24] OneEnergy's response to PacifiCorp's Motion provides support for PacifiCorp's perspective on this matter—suggesting that "to deter speculation," the Commission should consider imposing additional financial security requirements for projects larger than 3 MW in response to PacifiCorp's motion for interim relief. OneEnergy explains that the standard power purchase agreement program in Oregon is "favorable for developers" because "we can accept the PPA at an early stage in the project development cycle, and the potential consequences of failure under the PPA (*e.g.,* paying shortfall energy damages to the utility) are relatively small and unlikely to occur. In some way, the standard power purchase agreements in Oregon look like options in favor of the developer to build the project if they can." *See* Docket UM 1734, OneEnergy's Letter Response to PacifiCorp's Motion for Interim Relief (July 17, 2015).

[25] Joint Parties Response at 7-8.

[26] Joint Parties Response at 7; Obsidian/100, Brown/4.

[27] The Joint Parties analysis of this data focuses on whether the *capacity* of development increased in at unprecedented rates in 2014, concluding that it had not; total capacity of interconnection requests in 2014 was 542 MW, down from every prior year except 2007 and 2011. These capacity levels, however, related to

Finally, the Commission should not put much stock into the Joint Parties' assertions that the current volume of PURPA contract requests is unlikely to continue, especially with regard to solar QFs. While the Joint Parties are correct that—under current law—the federal ITC window for solar QF projects requires new projects to be completed and achieve commercial operation before December 31, 2016,[28] history suggests that Congress may act to extend the solar ITC beyond December 31, 2016. Indeed, on February 2, 2015, President Obama proposed a permanent extension of production tax credits and ITCs for renewables in his presentation of the fiscal 2016 budget.[29] More recently, Congressman Mike Thompson of California introduced H.R. 2412, which would extend solar ITCs for another five years, through 2021, and is backed by 34 co-sponsors.[30]

The Joint Parties' dire predictions about a slowing in proposed solar development also disregards well-documented facts regarding the decreasing cost of developing solar projects. As noted in Mr. Griswold's Direct Testimony, market data from various solar trade organizations show that total installation costs for utility-scale solar systems have fallen below $2.00 per watt.[31] This is a dramatic decrease—as recently as 2011, the price *of solar panels alone* was $2.00 per watt, without even taking into account permitting, construction, and other installation expenses.[32] With such an important factor in the cost of solar

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interconnection requests for non-QF projects, as well as QFs over 10 MW, including many large wind and non-solar projects.

[28] The Energy Policy Act of 2005 (P.L. 109-58) created the 30 percent Investment Tax Credit ("ITC") for residential and commercial solar energy systems, applicable from January 1, 2006, through December 31, 2007. In 2008, Congress passed legislation on a bipartisan basis that provided an eight-year extension of the commercial and residential solar ITC. *See* I.R.C. § 48(a)(2)(A)(i)(II), (ii) and § 25D(g).

[29] *See* Fiscal Year 2016 Budget of the U.S. Government at 20-21, 57, 126 (Feb. 2, 2015) (noting that "Congress routinely extends [incentives for renewable energy] on a year-to-year basis").

[30] *See* H.R. 2412, 114th Cong. (1st Sess. 2015). There has been no additional action on H.R. 2412 since it was referred to the House Committee on Ways and Means on May 19, 2015. However, there is still time for Congress to act to enact the bill (or a similar proposal) before the end of the 114th Congress in December 2016.

[31] PAC/100, Griswold/37.

[32] *Id.*

development in an apparent freefall, the Commission should proceed cautiously in locking Oregon ratepayers into long-term contracts for large solar projects.

F. Even Assuming a High Failure Rate for Proposed Solar QFs in PacifiCorp's Oregon Service Territory, Interim Relief from Long-Term Contracts is Warranted.

The volume of requests for standard QF contracts is the only reasonable metric for evaluating prospective harm to its customers, even if, as the parties point out, some (even significant) percentage of the projects may not ever become operational. The Commission cannot wait until a flood of projects are under construction to take the threat seriously—at that point, it would be too late.

Ultimately, for the reasons outlined above in section II.B, the Joint Parties' final argument—that a low completion rate for QF projects precludes the requested interim relief—fails. As noted above, the Commission's Order No. 15-199 already made it clear that it need not base its findings and conclusions in support of interim relief on an assumption that *all* proposed projects will be built. In fact, the Commission specifically stated that "even using conservative estimates, we are convinced that a sufficient number of projects will proceed and eventually require Idaho Power, without some form of interim relief, to enter into substantial long-term contracts that exceed the Company's actual avoided costs."[33]

As Commission Staff noted in UM 1725, PURPA's must-buy requirements are not intended to help sophisticated developers to, as Staff puts it, "lock in favorable avoided costs prices for an extended period."[34] Granting immediate relief in the form of an eligibility cap of 3 MW for standard contracts is a reasonable and targeted approach to minimizing the

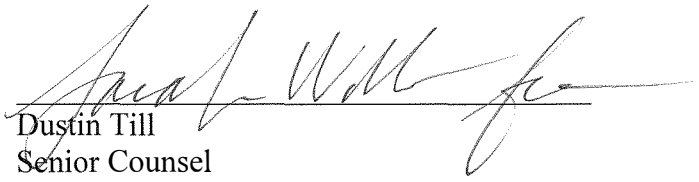
[33] Order No. 15-199 at 6.
[34] Docket UM 1725, Commission Staff's Response to Idaho Power's Motion for Temporary Stay at 8.

extent to which large solar developers benefit from over-priced standard contracts at the expense of PacifiCorp and its customers.

III. CONCLUSION

For all of the reasons stated above, PacifiCorp requests that the Commission issue an order adopting PacifiCorp's request interim relief until the Commission has concluded its investigation in this docket.

Respectfully submitted this 24th day of July, 2015.

By: 

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