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June 23, 2014

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Public Utility Commission of Oregon
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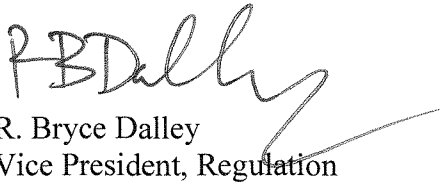
Attn: Filing Center

Re: Docket UM 1610—PacifiCorp's Request for Certification

PacifiCorp d/b/a Pacific Power submits for filing the attached request for certification of the Administrative Law Judge's June 10, 2014 ruling in the above-referenced docket.

Please direct questions regarding this filing to Natasha C. Siores, Director of Regulatory Affairs and Revenue Requirement, at (503) 813-6583.

Sincerely,



R. Bryce Dalley
Vice President, Regulation

Enclosures

cc: UM 1610 Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1610

In the Matter of
PUBLIC UTILITY COMMISSION OF
OREGON
Investigation into Qualifying Facility
Contracting and Pricing.

**PACIFICORP'S REQUEST FOR
CERTIFICATION OF ALJ RULING**

I. INTRODUCTION

1
2 PacifiCorp d/b/a Pacific Power (PacifiCorp) respectfully requests certification to the
3 Public Utility Commission of Oregon (Commission) of the ruling issued by the
4 Administrative Law Judge (ALJ) on June 10, 2014 (Ruling) granting motions for
5 clarification filed by Obsidian Renewables, LLC (Obsidian), and One Energy, Inc.
6 (OneEnergy) and the Community Renewable Energy Association (CREA).

7 As detailed below, certification is appropriate because the Ruling will prejudice
8 PacifiCorp and its customers. PacifiCorp filed its avoided cost update over 70 days ago.
9 PacifiCorp's filing is currently suspended pending an investigation into whether the rates and
10 contract terms comply with Order No. 14-058. Over 300 megawatts (MW) of qualifying
11 facility (QF) projects have since applied for long-term contracts at rates that greatly exceed
12 PacifiCorp's avoided costs. Due to the downward trend in avoided cost prices, PacifiCorp
13 estimates that these contracts will require PacifiCorp's customers to bear over \$160 million
14 in excess of PacifiCorp's actual avoided costs.

15 The Ruling improperly comingles PacifiCorp's compliance filing with rehearing of an
16 issue (the methodology for calculating capacity payments to solar QF resources) that was not
17 challenged during Phase I and was decided in Order No. 14-058. The Ruling will

1 unnecessarily delay approval of PacifiCorp’s compliance filing and allow QF developers
2 more time to apply for long-term contracts at outdated avoided cost rates. The result: QFs
3 are advantaged by obtaining long-term PPAs at rates that greatly exceed actual avoided costs,
4 and PacifiCorp and its customers are saddled with unnecessarily high avoided cost rates.
5 Rehearing of the capacity payment issue is unwarranted at this time.

6 **II. BACKGROUND**

7 **A. The Utilities’ Avoided Cost Compliance Filings**

8 On February 24, 2014, the Commission entered an order in Phase I of this docket and
9 instructed PacifiCorp, Portland General Electric Company (PGE), and Idaho Power
10 Company to file within 60 days revised standard contract forms that set forth standard prices,
11 terms and conditions for QFs.¹

12 PacifiCorp submitted revised standard contracts consistent with Order No. 14-058 on
13 April 10, 2014.² PacifiCorp’s filing also satisfied the requirements of ORS 758.525.
14 PacifiCorp requested a rate effective date of May 10, 2014, and asked the Commission to
15 waive the requirements of OAR 860-029-0040(4), which would require PacifiCorp to file an
16 avoided cost update within 30 days after the Commission acknowledges its 2013 Integrated
17 Resource Plan (IRP).

18 Renewable Energy Coalition (REC) asked the Commission to suspend PacifiCorp’s
19 filing to “review the filing’s compliance with Order 14-058.”³ REC also asked that the
20 Commission delay considering PacifiCorp’s filing until May 30, 2014, and consolidate it

¹ Order No. 14-058 (Feb. 24, 2014), as revised by Errata Order No. 14-114 (Apr. 7, 2014).

² Advice No. 14-007.

³ See REC’s Motion to Suspend Pacific Power’s Advice Filing 14-007 and Commission Consideration of Such Filing Until May 30, 2014 (Apr. 17, 2014).

1 with the compliance filings submitted by PGE and Idaho Power.⁴ On April 30, 2014, the
2 Commission adopted Staff’s recommendations and opened an investigation into PacifiCorp’s
3 compliance filing.⁵ The Commission agreed with Staff that PacifiCorp’s filing “merits
4 further analysis due to the scope of the changes included in the filing, which go beyond those
5 required by Order No. 14-058.”⁶ And since the Commission has not yet acknowledged
6 PacifiCorp’s IRP, the Commission deferred the question of whether OAR 860-029-0040(4)
7 should be waived.

8 The Commission did not, however, suspend PacifiCorp’s compliance filing to allow
9 for a broader reconsider the Commission’s decisions in Order No. 14-058. Instead,
10 PacifiCorp’s filing was suspended for the limited purpose of determining whether it complied
11 with Order No. 14-058. Furthermore, the Commission did not expressly rule that
12 PacifiCorp’s compliance filing must be consolidated with PGE’s and Idaho Power’s.⁷

13 Despite the fact that PacifiCorp submitted its avoided cost update over 70 days ago, a
14 procedural schedule has not been established. A workshop is scheduled for June 27, 2014,
15 during which time Staff and the parties will discuss the procedural schedule for evaluating
16 PacifiCorp’s, Idaho Power’s, and PGE’s compliance filings.

17 REC’s attempt to delay the effective date of PacifiCorp’s new avoided cost rates is
18 not surprising. PacifiCorp’s Advice 14-007 reflects a significant downward trend in avoided

⁴ Idaho Power served its compliance filing on April 25, 2014, and PGE served its compliance filing on May 30, 2015.

⁵ Order No. 14-148 (Apr. 30, 2014).

⁶ *Id.*; Apr. 22, 2014, Staff Report at 3.

⁷ In light of Order No. 14-148, the ALJ denied REC’s Motion to Suspend as moot. *See* Ruling, May 12, 2014. That includes denying REC’s request to consolidate PacifiCorp’s, PGE’s, and Idaho Power’s compliance filings. On May 28, 2014, the Commission opened an investigation into Idaho Power’s compliance filing. *See* Order No. 14-181. The Commission did not rule that Idaho Power’s compliance filing must be consolidated with those filed by PacifiCorp and PGE. The Commission has not yet issued an order opening an investigation into PGE’s compliance filing.

1 cost rates—a decrease of approximately \$18/MWh in its Schedule 37 rates. PacifiCorp has
2 received over 300 MW of QF PPA requests since filing Advice 14-007. PacifiCorp estimates
3 that if all 300 MW of QF resources are contracted at the current (but outdated) avoided cost,
4 PacifiCorp will pay over \$160 million in excess of its current and actual avoided costs
5 (which are indefinitely suspended for investigation). Those costs will ultimately be borne by
6 PacifiCorp’s customers. And additional PPA requests are expected as long as there is
7 uncertainty about when PacifiCorp’s lower (and accurate) avoided cost rates will go into
8 effect.

9 **B. Motions for Clarification and Reconsideration**

10 Phase I of this proceeding concluded on February 24, 2014, when the Commission
11 issued Order No. 14-058. That order had a narrow scope, and the Commission ruled that it
12 would “retain [its] current methodology for calculating standard avoided cost prices and
13 standard renewable avoided cost prices, with the modifications described [in the order].”⁸
14 Among the issues addressed in Phase I—and decided in Order 14-058—was the manner in
15 which capacity payments for Renewable Solar QF Resources are calculated. The
16 Commission adopted Staff’s method for calculating volumetric capacity adjustments, as set
17 forth in Staff/102-103.⁹ No party challenged Staff’s methodology for calculating capacity
18 adjustments during Phase I of this docket.

19 On April 24, 2014, Obsidian filed a Motion for Clarification, which asked the
20 Commission to clarify the manner in which the capacity payments for Renewable Solar QF
21 Resources are calculated in accordance with Staff/102-103 and Order No. 14-058. Obsidian
22 alleges that the methodology approved in Order 14-058 results in a double discount. On the

⁸ Order No. 14-058 at 2.

⁹ *Id.* at 15.

1 same day, OneEnergy and CREA filed a Motion for Clarification and Application for
2 Reconsideration, which sought: 1) “clarification” of how capacity payments for Renewable
3 Solar QF Resources are calculated; and 2) reconsideration of issues relating to third-party
4 transmission costs. While the Obsidian and OneEnergy/CREA motions are couched in terms
5 of “clarification,” they effectively sought reconsideration of straightforward volumetric
6 capacity payment calculations that were adopted in Order 14-058 (and that were not
7 challenged during Phase I). But Obsidian and OneEnergy/CREA made no effort to
8 demonstrate that the limited grounds for reconsideration were satisfied.

9 Staff subsequently recommended that the Commission “allow the parties to address
10 this limited question regarding the design of the volumetric avoided cost prices in the
11 investigations currently open to address the utilities’ recent filings to comply with Order
12 No. 14-058.”¹⁰ Staff also recommended that the Commission reject the OneEnergy/CREA
13 request for reconsideration of third-party transmission issues on grounds that the parties
14 failed to demonstrate that the criteria for reconsideration were satisfied.

15 On June 10, 2014, the ALJ issued the Ruling for which PacifiCorp now seeks
16 certification. Deciding only Obsidian’s motion for clarification, the ALJ ruled that the
17 “parties should address the methodology applicable to renewable solar QF resources, raised
18 by Obsidian’s motion for reconsideration [sic], in the investigations currently taking place for
19 Pacific Power’s and Idaho Power’s compliance filings in this docket.”¹¹ The ALJ did not
20 simply *clarify* calculations adopted in Order No. 14-058. Instead, the ALJ mistakenly

¹⁰ Staff Response to Requests for Clarification and Request for Reconsideration (May 9, 2014).

¹¹ Ruling at 2. The ALJ noted that a separate ruling on the OneEnergy/CREA motion would be issued at a later date.

1 granted *reconsideration* of those calculations and instructed the parties to address the issue in
2 connection with PacifiCorp’s and Idaho Power’s compliance filings.

3 On June 20, 2014, the Commission rejected OneEnergy’s and CREA’s motion for
4 reconsideration of certain third-party transmission issues.¹² The Commission ruled that
5 “OneEnergy and CREA ask for more than clarification of Order No. 14-058 yet fail to
6 demonstrate that reconsideration of the order is warranted[.]”¹³

7 III. LEGAL STANDARD

8 Oregon Administrative Rule (OAR) 860-001-0110(1) specifies that any party may
9 request that the AJL certify an ALJ’s ruling for the Commission’s consideration within
10 fifteen days.¹⁴ Under OAR 860-001-0110(2), the ALJ must certify the ruling to the
11 Commission if the ALJ finds:

- 12 (a) The ruling may result in substantial detriment to the public
13 interest or undue prejudice to a party;
- 14 (b) The ruling denies or terminates a person’s participation; or
- 15 (c) Good cause exists for certification.

16 IV. ARGUMENT

17
18 Certification is appropriate because the Ruling will result in substantial detriment to
19 the public and undue prejudice to PacifiCorp. Furthermore, good cause exists for
20 certification.

21 The Ruling effectively grants reconsideration of an issue addressed in Phase I and
22 resolved in Order No. 14-058—namely, the methodology for calculating volumetric capacity
23 payments to solar QFs. In Order No. 14-058, the Commission explicitly adopted Staff’s
24 methodology for calculating Renewable Solar QF Resource capacity payments as set out in

¹² Order No. 14-229 (Apr. 30, 2014).

¹³ *Id.* at 2.

¹⁴ This motion, having been filed within 15 days of service of the Ruling, is timely per OAR 860-001-0110(1).

1 Staff/102-103. That methodology is straightforward and was not contested by any party in
2 Phase I.¹⁵

3 The Ruling did not, as Obsidian, OneEnergy, and CREA requested, simply “clarify”
4 the methodology for calculating volumetric capacity payments. Instead, the Ruling reopened
5 an issue that was fully and finally resolved by Order No. 14-058 and instructed the parties to
6 “address the methodology applicable to renewable solar QF resources ... in the investigation
7 currently taking place for Pacific Power’s and Idaho Power’s compliance filings[.]”¹⁶

8 The practical effect of the Ruling is that the ALJ granted reconsideration of issues
9 that were addressed during Phase I and that were finally decided in Order No. 14-058, and
10 the Ruling incorrectly dovetailed reconsideration of those issues into the Commission’s
11 evaluation of PacifiCorp’s compliance filing. But Obsidian and OneEnergy/CREA did not
12 move for reconsideration. Rehearing or reconsideration may be granted only if the applicant
13 demonstrates that: (1) there is new evidence that is essential to the decision and that was
14 unavailable and not reasonably discoverable before issuance of the order; (2) there has been a
15 change in the law or policy since the date the order was issued related to an issue essential to
16 the decision; (3) that there was an error of law or fact in the order that is essential to the
17 decision; or (4) good cause exists for further examination of an issue essential to the
18 decision.¹⁷

19 The Ruling neither discussed these factors nor concluded that any of them had been
20 satisfied.

¹⁵ See *Patu Wind Farm, LLC v. Portland Gen. Elec. Co.*, Docket No. UM 1566, Order No. 14-494 (Dec. 20, 2012) (ruling that “after-the-fact” requests to reconsider the MAG clause in PGE’s standard contract were inappropriate when the party seeking reconsideration failed to object to the MAG clause at the time it was filed).

¹⁶ Ruling at 2.

¹⁷ OAR 860-001-0720(3).

1 By comingling rehearing of the calculation of volumetric capacity payments with
2 consideration of PacifiCorp's avoided cost update, the Ruling will substantially harm
3 PacifiCorp's rate payers and prejudice PacifiCorp. PacifiCorp filed its avoided cost update
4 over 70 days ago. In Order No. 14-148, the Commission opened an investigation into
5 PacifiCorp's compliance filing. That order did not initiate a broader rehearing or
6 reconsideration of Order No. 14-058. Instead, the issue to be addressed in the compliance
7 process is narrow—is PacifiCorp's compliance filing consistent with Order No. 14-058?

8 Despite the passage of over two and a half months since PacifiCorp submitted its
9 compliance filing, a procedural schedule has not yet been established, and therefore
10 PacifiCorp has no reasonable way of determining when its updated avoided costs will go into
11 effect. In the meantime, over 300 MW of QF resources have applied for standard contracts
12 under PacifiCorp's current (but outdated) avoided costs. PacifiCorp estimates that if all 300
13 MW of QF resources are contracted at the current (but outdated) avoided cost, PacifiCorp
14 will pay over \$160 million in excess of its current and actual avoided costs (which are
15 indefinitely suspended for investigation). PacifiCorp's customers will ultimately be asked to
16 bear the costs associated with 15 years of QF payments that greatly exceed PacifiCorp's
17 actual avoided costs. This harm to PacifiCorp and its customers will be further exacerbated
18 the longer its updated avoided costs remain suspended because additional QFs are certain to
19 apply for long-term contracts under the outdated avoided costs.

20 Dovetailing the rehearing of the volumetric capacity payment issue will only further
21 delay consideration of PacifiCorp's compliance filing to the advantage of QF developers and
22 to the detriment of PacifiCorp and its customers. But that unnecessary delay can be avoided
23 by overturning the ALJ's Ruling and affirming the calculation adopted in Order No. 14-058.

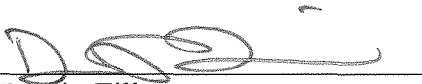
1 The Ruling provides no discussion of why approval of PacifiCorp's compliance filing should
2 be delayed to rehear issues that were fully decided in Phase I and Order No. 14-058. Indeed,
3 the Ruling effectively expands the scope of the process established in Order No. 14-148.
4 That order opened an investigation into PacifiCorp's compliance filing; however, it did not
5 open a broader investigation or rehearing of Order No. 14-058. Given the fact that Phase II
6 of this proceeding will begin in the near future, there is no legitimate reason to suspend
7 PacifiCorp's avoided cost update longer than it already has.

8 V. CONCLUSION

9 The ALJ's June 10, 2014, ruling improperly grants rehearing of an issue that was
10 addressed in Phase I of this docket and finally decided in Order No. 14-058. The Ruling will
11 further delay consideration of PacifiCorp's compliance filing. The further delay of
12 PacifiCorp's avoided cost update will, in turn, harm PacifiCorp and its customers by
13 requiring them to pay rates for QF power that greatly exceed PacifiCorp's avoided costs until
14 the updated rates go into effect. As noted above, PacifiCorp has received over 300 MW of
15 long-term PPA applications since it filed its avoided cost update over two-and-a-half months
16 ago, and additional applications are expected. For the reasons set out in this request, the
17 Ruling will prejudice PacifiCorp and its customers. Accordingly, good cause exists for
18 certification.

Respectfully submitted this 23rd day of June, 2014.

By:


Dustin Till
Senior Counsel
PacifiCorp d/b/a Pacific Power

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of PacifiCorp's Request for Certification on the parties listed below via electronic mail and/or US mail in compliance with OAR 860-001-0180.

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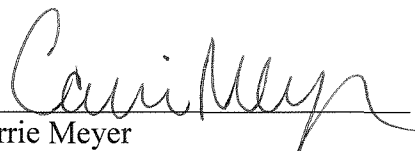
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Dated this 23rd day of June 2014.


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